

# **Police Powers and Responsibilities and Other Legislation Amendment Bill 2018**

## **Explanatory Notes**

**For**

## **Amendments To Be Moved During Consideration In Detail By The Honourable Mark Ryan MP, Minister for Police and Minister for Corrective Services**

### **Short title**

Police Powers and Responsibilities and Other Legislation Amendment Bill 2018

### **Objectives of the Amendments**

The objective of the amendments to be moved during consideration in detail of the Police Powers and Responsibilities and Other Legislation Amendment Bill 2018 (the amendments to the Bill) is to ensure that the Queensland Police Service has sufficient powers to ensure the continued monitoring of offenders who have committed sexual offences against children by ensuring that the monitoring scheme provided by the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (the CPOROPOA) will continue to apply to those offenders who have been subject to orders made under Part 2, Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) (the DPSOA).

The amendments to the Bill seek to ensure that legislation designed to effect the protection of children from sexual offenders will achieve that purpose. The amendments to the Bill are not intended to have a punitive effect. The intent of the amendments to the Bill is to provide for ongoing monitoring of child sexual offenders to enhance the protection of children.

The CPOROPOA provides a comprehensive monitoring regime for reportable offenders in Queensland. Reportable offenders include those persons sentenced to a term of imprisonment or subject to a supervision order (this includes an order made under Part 2, Division 3 of the DPSOA) for an offence prescribed under that Act which is committed against, or in relation to a child (a reportable offence).

The CPOROPOA requires reportable offenders to make an initial report of their personal details to the Commissioner of Police within a time period set by the CPOROPOA. The range of information that reportable offenders must report under this Act is extensive and includes, amongst other things, their name, date of birth, residential details, details relating to any vehicle they own or drive, details of any social networking sites with which the offender registers or opens, details of telephone and internet accounts used or intended to be used by the reportable offender and details, if known, for any child with whom the offender has reportable contact.

Reportable offenders, unless specifically exempted, are also required to report to the Commissioner of Police periodically. Reportable offenders are required to report to the Commissioner of Police a minimum of four times in each year. The CPOROPOA sets out varying timeframes for when changes to particular personal details must be reported. For example, a change of reportable contact with children must be reported within 24 hours of the contact occurring, while plans to leave Queensland for greater than 48 hours must be reported at least 7 days before leaving the state.

The CPOROPOA imposes these reporting obligations on reportable offenders for varying durations depending upon the number of reportable offences the offender has committed and whether the reportable offender has received a notice of reporting obligations. For example, a reportable offender who has ever been found guilty of one reportable offence and has never received a notice of reporting obligations must comply with the report under the CPOROPOA for five years. If an offender has ever been found guilty of one or more reportable offences and, after being given a notice of reporting obligations, commits and is found guilty of a further single reportable offence, the offender must report for 10 years. An offender who has ever been found guilty of one or more reportable offences, is given a notice of reporting obligations and commits and is found guilty of more than one single further reportable offence must report for life.

A reportable offender who fails to comply with their reporting obligation commits an indictable offence and is liable to a maximum penalty of 300 penalty units or five years' imprisonment.

The CPOROPOA also provides a further layer of community protection by allowing the Commissioner of Police to apply to a Magistrates Court for an offender prohibition order (OPO) in relation to a 'relevant sexual offender' who is reasonably believed to have engaged in 'concerning conduct'. Under CPOROPOA, a 'relevant sexual offender' is a person who:

- is a reportable offender; or
- would have been a reportable offender:
  - if their sentence for a reportable offence had not ended prior to the commencement of the CPOROPOA; or
  - if all reporting periods for the person had not ended including under another offender prohibition order; and,
  - the person is not subject to a supervision order or an interim supervision order under the DPSOA (a DPSOA supervisor order) or a forensic order.

Further, the CPOROPOA defines concerning conduct to mean an act, omission or course of conduct that poses a risk to the lives or sexual safety of 1 or more children or children generally. Concerning conduct is not restricted to unlawful behaviour but

may include precursor or preparatory behaviours that lead to actual offences against children. For example, a relevant sexual offender may loiter around playground equipment at parks regularly used by children. This behaviour may constitute concerning conduct.

An OPO is a civil order used to monitor the behaviour of relevant sexual offenders where that conduct poses a risk to the lives or sexual safety of one or more children or of children generally. OPOs fall into two categories namely either a temporary order or a prohibition order.

Proceedings for a prohibition order are started by an application made by the Commissioner of Police who must reasonably believe that the person is a relevant sexual offender and has engaged in concerning conduct. The court may make a prohibition order if satisfied, on the balance of probabilities, that:

- the respondent is a relevant sexual offender; and
- having regard to the nature or pattern of conduct engaged in by the respondent,
  - the respondent poses an unacceptable risk to the lives or sexual safety of a child or children generally; and
  - the making of the prohibition order will reduce the risk.

A prohibition order takes effect upon the respondent being notified of its existence and remains in force for 5 years for an adult respondent or 2 years for a child respondent.

In contrast to prohibition orders, temporary orders are made in urgent circumstances where concerns are held that a relevant sexual offender has engaged in concerning conduct which poses an immediate risk to the lives or sexual safety of a child or children generally and a temporary order is necessary to reduce that risk. In these circumstances, the Commissioner of Police may apply to a magistrate for a temporary order to prevent the respondent engaging in that conduct.

In making a temporary order, a magistrate will make the same considerations as a court determining a prohibition order. A magistrate may make a temporary order if satisfied, on the balance of probabilities, that:

- a respondent is a relevant sexual offender; and
- having regard to the nature or pattern of conduct engaged in by the respondent:
  - the respondent poses an unacceptable risk to the lives or sexual safety of a child or children generally; and
  - the making of the prohibition order will reduce the risk.

Once made, a temporary order may exist for a period stated in the order. During this period, the Commissioner of Police must apply to the court for the prohibition order in relation to the respondent.

An OPO may place limitations upon a relevant sex offender by prohibiting the offender associating or contacting specific people, being in or going to certain locations, engaging in stated behaviour or being in stated employment. This could include conditions prohibiting an offender corresponding with other relevant sexual offenders, being within 200 metres from a school, taking photos of children or engaging in employment in a café in the vicinity of a school.

It is an offence to fail to comply with an OPO. The maximum penalty associated with a breach of an OPO is 300 penalty units or five years' imprisonment.

Changes to the OPO scheme will include amending the definition of concerning conduct to mean an act or omission, or course of conduct the nature of which poses a risk to the 'safety or wellbeing' of one or more children, or children generally. The amendment may allow the Court to consider a greater range of factors when determining whether it is appropriate to make an OPO. Further amendments to the OPO scheme will include allowing a court to order a respondent to wear a tracking device, submit to psychological treatment or comply with a condition the court considers necessary to protect the safety or wellbeing of a child or children.

## **Achievement of policy objectives**

The objective is achieved through amending the CPOROPOA by:

- creating a new category of reportable offender, namely a post-DPSOA reportable offender;
- imposing a reportable obligation on a post-DPSOA reportable offender to report for the remainder of the offender's life;
- requiring the reportable obligations for a post-DPSOA reportable offender to commence upon the DPSOA order ending;
- requiring a post-DPSOA reportable offender to make an initial report to the Commissioner of Police within 24 hours of the DPSOA order ending;
- requiring a post-DPSOA offender to report to the Commissioner of Police any change of residence or locality where they can be found within 24 hours after the change happens;
- clarifying that this Act provides for the making of OPOs that require reportable offenders to do particular things to reduce the risk to the safety or wellbeing of 1 or more children or children generally;
- amending the OPO scheme by defining *concerning conduct* to mean an act or omission, or course of conduct the nature of which poses a risk to the safety or wellbeing of 1 or more children, or children generally; and
- allowing a court to set conditions in an OPO that a respondent must:
  - wear a tracking device for a stated period;
  - comply with a condition necessary to allow the operation of a tracking device;
  - reside at a particular residence;
  - submit to psychological treatment;
  - comply with any condition necessary to protect the safety or wellbeing of 1 or more children, or of children generally.

## **Alternative ways of achieving the policy objectives**

There is no alternative way to achieve the policy objective.

## **Estimated cost for government implementation**

These amendments have the potential to both increase the number of OPOs that may be granted by a court and the length of time a post-DPSOA reportable offender is obliged to report his or her personal details to the Commissioner of Police. This may

lead to financial implications that will be largely borne by the Queensland Police Service (QPS) as the administering agency for the CPOROPOA. The QPS will source appropriate resources to offset the cost involved in implementing these amendments.

## **Consistency with fundamental legislative principles**

The proposed amendments have been prepared with due regard to the fundamental legislative principles outlined in the *Legislative Standards Act 1992*. Potential breaches of fundamental legislative principles are addressed below.

### **Legislation should have sufficient regards to the rights and liberties of individuals – *Legislative Standards Act 1992*, section 4(2).**

The proposed amendments will make substantial changes in the operation of the CPOROPOA as it applies to post-DPSOA reportable offenders. The proposed amendments will:

- result in post-DPSOA reportable offenders being required to report their personal details to the Commissioner of Police for the duration of their life rather than, in some instances, 5 years or 10 years; and
- oblige post-DPSOA reportable offenders to report to the Commissioner of Police within 24 hours:
  - their initial report upon their DPSOA order ending; and
  - any change of their personal details in relation to their residence or locality where they can be found.

The amendments will also impact those post-DPSOA reportable offenders who have previously committed reportable offences and are found guilty of further reportable offences in the future.

These amendments will impact on the rights and liberties of post-DPSOA reportable offenders by making their reporting obligations more onerous or through re-enlivening or extending their reporting obligations for a substantial period of time.

However, the rights and liberties of these offenders have to be weighed against the interests of the community generally. Parliament has recognised that any risk to a child or children generally is unacceptable. Measures such as those taken in these amendments to promote the safety or wellbeing of children and to improve the QPS's ability to monitor post-DPSOA reportable offenders is justifiable and warranted.

Additionally, amendments to the OPO scheme will lead to two distinct outcomes. Firstly, re-defining the term 'concerning conduct' will allow a larger scope of acts, omissions or activities to be considered by a court as concerning conduct, potentially resulting in more temporary orders or prohibition orders being made. Secondly, upon determining that an OPO is appropriate for a reportable offender, these amendments allow a court to impose a greater range of conditions that can be employed to more appropriately manage the reportable offender.

These amendments will impact upon the rights and liberties of reportable offenders as more of their activities may potentially be considered by a court to be concerning conduct and further, if a court does make an OPO against them, the court may impose

additional conditions that impact upon their freedoms. However, these concerns must be measured against the rights of children to live in our community without the fear of being the victim of an offence at the hands of a child sex offender.

Finally, the amendments to the OPO may be considered to have a limited retrospective effect as a court, in determining whether a reportable offender should be subject to an OPO, may apply the new proposed definition of concerning conduct when assessing conduct that occurred prior to the commencement of these amendments. This may have the potential effect of causing reportable offenders to be subject to OPOs in circumstances where prior to the making of these amendments, the relevant sexual offender's acts, omissions or course of conduct may not have fallen within the definition of concerning conduct.

However, these amendments are justified as they are required to improve the safety or wellbeing of children and are limited in their application. The effect of the amendments on the individual must be balanced against the need for community protection.

## **Consultation**

Consultation has been undertaken with the Department of the Premier and Cabinet, the Department of Justice and Attorney-General and the Office of the Queensland Parliamentary Counsel.

## Notes on provisions

*Amendment 1* inserts new clauses 3A to 3M in the Bill.

*Clause 3A* Amendment of section 3 (Purposes of this Act) inserts the new section 3(2)(f). The new section 3(2)(f) clarifies that a purpose of this Act is to provide for the making of orders against reportable offenders to:

- prohibit the offender from engaging in conduct posing a risk to the safety or wellbeing of 1 or more children, or children generally;
- require the offender to do particular things to reduce the risk to the safety or wellbeing of 1 or more children, or of children generally.

*Clause 3B* Amendment of section 5 (Reportable offender) inserts a new category of reportable offender namely a post-DPSOA reportable offender.

*Clause 3C* Insertion of new section 7A defines a post-DPSOA reportable offender to mean a person who was sentenced for a reportable offence before or after the commencement, and who was, but is no longer subject to a division 3 order under DPSOA and was no longer required under the CPOROPOA to comply with any reporting obligations. This clause provides that a person becomes a post-DPSOA reportable offender upon the DPSOA order ending.

*Clause 3D* Amendment of section 13A (Application) amends the definition of *concerning conduct* so that concerning conduct will mean an act or omission, or a course of conduct the nature or pattern of which poses a risk to the safety or wellbeing of 1 or more children, or of children generally. Section 13A (Application) of the CPOROPOA authorises the Commissioner of Police to apply to a court for a prohibition order if the Commissioner of Police reasonably believes that a person is a relevant sexual offender and has engaged in concerning conduct.

This new definition of concerning conduct is reflective of a comparative provision adopted in Tasmania and allows a greater range of factors to be considered by the Commissioner of Police in determining if an application for a prohibition order should be made in relation to a relevant sexual offender.

*Clause 3E* Amendment of section 13C (Making prohibition order) amends the test to be applied by the court when determining if a prohibition order should be made. The amendment will allow a court to make a prohibition order after considering the matters mentioned in section 13D of the CPOROPOA and upon being satisfied on the balance of probabilities that:

- the respondent is a relevant sexual offender; and
- having regard to the nature or pattern of conduct engaged in by the respondent-
  - the respondent poses an unacceptable risk to the safety or wellbeing of 1 or more children or children generally; and
  - the making of the prohibition order will reduce the risk

This amendment will increase the range of factors that may be considered by a court in determining if a prohibition order should be made.

*Clause 3F* Amendment of section 13D (Matters court must consider before making prohibition order) obliges a court, when considering if a prohibition order should be made, to consider whether the respondent has ever been subject to a DPSOA order.

*Clause 3G* Insertion of new section 13FA authorises a court making a prohibition order to require a respondent to:

- wear a tracking device for a stated period;
- comply with any necessary condition to facilitate the operation of a tracking device;
- reside at a particular residence;
- submit to psychological treatment; and
- comply with any condition the court considers necessary to reduce the risk to the safety or wellbeing of 1 or more children or children generally.

*Clause 3H* Amendment of section 13I (Applying for temporary order). Section 13I authorises the Commissioner of Police to apply to a magistrate for a temporary order if the Commissioner of Police reasonably believes:

- that a person is a relevant sexual offender and has engaged in concerning conduct;
- the making of a temporary order is necessary to prevent an immediate risk of the respondent engaging in conduct posing a risk to the safety or wellbeing of 1 or more children or of children generally; and
- the making of the temporary order will reduce the risk.

This amendment will increase the range of factors that may be considered by the commissioner in determining if an application for a temporary order should be made.

*Clause 3I* Insertion of new section 13LA is a consequential amendment made to ensure that the requirements that may be made of a respondent in a prohibition order may similarly be imposed by a magistrate making a temporary order. These requirements may oblige a respondent to:

- wear a tracking device for a stated period;
- comply with any necessary condition to facilitate the operation of a tracking device;
- reside at a particular residence;
- submit to psychological treatment; and
- comply with any condition necessary to reduce the risk to the safety or wellbeing of 1 or more children or children generally.

*Clause 3J* Amendment of section 19A (Reporting changes in personal details) obliges a reportable offender who has been subject to a DPSOA order to report to the Commissioner of Police any change of residence or locality where he or she may be found within 24 hours of the change occurring.

*Clause 3K* Amendment of section 35 (When reporting obligations begin) provides that, for a post-DPSOA reportable offenders, their reporting obligations commence when they become a post-DPSOA reportable offender i.e. when the DPSOA order ends.



*Clause 3L* Insertion of new section 38A outlines that a reportable offender who has ever been subject to a DPSOA order must comply with reporting obligations for the remainder of the offender's life.

*Clause 3M* Amendment of s 41 (Supreme Court may exempt particular reportable offenders) provides that a reportable offender may not apply to the Supreme Court for an order suspending his or her reporting obligations until 15 years has passed since the later of the following days:

- the day the offender was last sentenced in relation to a reportable offence or a corresponding reportable offence;
- the day the offender was last released from government detention in relation to a reportable offence or a corresponding reportable offence;
- the day the offender was last subject to a DPSOA order.

*Amendment 2* inserts new clauses 4A and 4B in the Bill.

*Clause 4A* Amendment of sch 3 (When reportable offender may make initial report) outlines that the timeframe in which a post-DPSOA reportable offender must make his or her initial report is within 24 hours.

*Clause 4B* Amendment of sch 5 (Dictionary) is a technical amendment made to comply with contemporary drafting standards. This amendment declares that the definition of post-DPSOA reportable offenders is found in s 7A (*Post-DPSOA reportable offender* defined).