

6 December 2013

Our ref 339/63

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

By Post and Email to: lacsc@parliament.qld.gov.au

Dear Research Director

Child Protection (Offender Reporting - Publication of Information) Amendment Bill 2013

Thank you for the opportunity to provide comment on the *Child Protection (Offender Reporting - Publication of Information) Amendment Bill 2013* (the Bill). This submission has been prepared with the assistance of our Criminal Law Committee.

Please note that in the time available to the Society and the commitments of our committee members, it is not suggested that this submission represents an exhaustive review of the Bill. It is therefore possible that there are issues relating to unintended drafting consequences or fundamental legislative principles which we have not identified.

The Bill creates a mechanism by which the Police Commissioner can publish on a public website information about:

- reportable offenders under the *Child Protection (Offender Reporting) Act 2004*¹;
- offenders under the *Dangerous Prisoners (Sexual Offenders) Act 2003*; or
- if a person has been found guilty at any time of an offence punishable by imprisonment for 5 years or more and the Minister is satisfied that the person poses a risk to the lives or sexual safety of 1 or more children, or of children generally.

The Society is concerned with the amendments proposed in the Bill for the following reasons:

¹ Page 1 of the Explanatory Notes states: "A 'reportable offender' describes a person whom a court sentences for a reportable offence. A reportable offence is an offence which comprises of a sexual or serious element involving a child or an incapable person as listed in Schedules 1 and 2 of the *Criminal Law (Sexual Offences) Act 1978*."
https://www.legislation.qld.gov.au/Bills/54PDF/2013/ChildProtOffenderRepAB13_PE.pdf

- These amendments may not enhance public safety; in fact it may have the opposite effect. We note that when these laws were being debated in Western Australian, the WA Police Union expressed concern with the proposal for this reason. The ABC reported:

Yesterday, the Police Union president Russell Armstrong said that the website would be counterproductive, making it harder for police to monitor sex offenders.

"Once their name is put onto a database and available to the public they will go underground," he said.

"They would move to different locations, wouldn't make contact with police and the only time we would come into contact with them is when they reoffended."²

- The important principle of rehabilitation, one of the sentencing principles under s9 of the *Penalties and Sentences Act 1992*, may be undermined by this legislation. Specifically, those who are living in the community under supervision orders may become alienated and stigmatised if they are publicly identified.
- We are unsure of the purpose of releasing this type of information to the public. Clearly this information is important for police, security and supervision operations. However we are concerned that the release of this information publicly will encourage vigilante action against those identified. Whilst we note the creation of a new offence under proposed s74AN ("conduct intended to incite animosity towards or harassment of identified offenders"), we do not consider that this is enough protection from unwanted actions from members of the public (noting that this only applies to conduct taking place in public, will be difficult to police, and it is unclear what the standard will be for determining conduct that incites animosity or harassment).

Similarly, the President of the Adults Surviving Child Abuse organisation in Western Australia voiced concern with this proposal for this reason:

Adults Surviving Child Abuse president Cathy Kezelman agreed there was a risk of vigilantism.

"There are a number of dangers with a website like this," Dr Kezelman said.

"There's a risk of what people do with the information and whether there's a sense of community panic if they find out there's an offender living in the area and decide to take the situation into their own hands, so it needs to be very well policed."³

- For reportable offenders, the types of personal information that can be published under s16 of the *Child Protection (Offender Reporting) Act 2004* includes the person's date of birth, address, email address, passport details, details of employment (including the location and name of employer), motor vehicle registration and details of any tattoos or

² ABC, Johnson defends sex offenders website, 8 November 2011 found at: <http://www.abc.net.au/news/2011-11-08/johnson-defends-sex-offenders-website/3652786>

³ 'WA sex offender website operating', The West Australian, 15 October 2012: <http://au.news.yahoo.com/a/15115429/wa-sex-offender-website-operating/>

permanent distinguishing marks. The Society is concerned with the breadth of sensitive information about a person which can be published. An unintended consequence of releasing such information is that these details may be collected and used for identity theft purposes, which is an important reason why there are strict safeguards and control of access to information held by government agencies and other organisations. It is also of concern that workplace details may be published, which could affect innocent third parties such as the owner and other employees who may be associated with the person. There may be negative consequences for the operation of the business if community members avoid attending or dealing with the business, or alternatively disruptions from members of the community may occur. Again, we are unsure of how the release of this information will enhance public safety.

- There is a risk that persons who are at the lower end of the scale of offending will be caught by these provisions. For example, a 17 year old may be in a sexual relationship with a 15 year old. The 17 year old may be charged and convicted of the offence of carnal knowledge with a child under 16 pursuant to s215 of the *Criminal Code 1899* and may be subject to the provisions of this Bill. We also note that persons with mental health issues and intellectual disabilities may also be caught by these provisions.
- Identifying the offender publicly will have the unintended consequence of identifying the families of offenders, and their communities may ostracize and blame them for the actions of the offender. This issue may be particularly problematic in small communities.
- As this regime is in place in Western Australia, we consider that empirical evidence should be gathered from that jurisdiction (and others which have instituted similar arrangements) to determine whether it has in fact had a positive effect on public safety. Without such information, we do not consider that there is the appropriate evidence base to support these amendments.

The Society also has had a brief opportunity to review the *Child Protection (Offender Reporting) Amendment Bill 2013* which expands police powers to enter and search premises of a reportable offender under the *Child Protection (Offender Reporting) Act 2004* without consent of the premises owner or a warrant. Broadly, the Society considers that current police powers are sufficient. We also note that police resources will need to be increased in order to be able to put these powers into effect, and details of this should be ascertained.

Thank you for the opportunity to provide these comments. Please contact our Policy Solicitor, Ms Raylene D'Cruz on (07) 3842 5884 or r.dacruz@qls.com.au for further inquiries.

Yours faithfully

Annette Bradfield
President