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16 MAR 2017

Mr Neil Laurie
The Clerk of the Parliament
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Laurie

On 29 November 2016 The Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 (the Bill) was introduced into the Legislative Assembly. The Bill was referred to the Education, Tourism, Innovation and Small Business Committee (the Committee).

The Committee, after considering the Bill, recommended the explanatory notes for the Bill be replaced with more comprehensive explanatory notes. Specifically, Recommendation 8 of the Committee Report noted that the explanatory notes for the Bill should satisfy the requirements of section 23 of the *Legislative Standards Act 1992* and that comprehensive replacement explanatory notes should be tabled as a priority.

In accordance with Standing Order 31, it would be appreciated if you could table the replacement Explanatory Notes for the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016.

Further, I respectfully request that this letter be tabled as explanation of the replacement Explanatory Notes.

Arrangements have been made with LitSupport for 100 copies of the replacement Explanatory Notes to be provided in accordance with the Standing Rules and Orders of the Legislative Assembly.

Thank you for your assistance in this matter.

Yours sincerely

The Honourable Mark Ryan MP
Minister for Police, Fire and Emergency Services
Minister for Corrective Services

Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016

Replacement Explanatory Notes

Short title

The short title of the Bill is the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016.

Policy objectives and the reasons for them

Queensland separates its offender reporting legislation into two distinct but intrinsically linked Acts. The *Child Protection (Offender Reporting) Act 2004* (CPORA) places reporting obligations on offenders, who have been convicted of sexual or particular other serious offences against children. These reportable offenders are required to report their personal details and whereabouts at regular intervals for a period of time after their release from government detention or upon the commencement of a supervision order (reportable offenders).

Schedule 2 of the CPORA outlines the range of information that a reportable offender must report. This information includes personal particulars of the reportable offender such as their name, address, date of birth, distinguishing marks etc. to the vehicle the reportable offender owns or uses and any club or organisation the reportable offender is affiliated to. The CPORA requires a reportable offender to report to the police commissioner any change to the offender's personal details.

The *Child Protection (Offender Prohibition Order) Act 2008* (CPOPOA) provides for the protection of the lives and sexual safety of children by regulating the day to day conduct of relevant sexual offenders through the issue of offender prohibition orders (OPOs). Relevant sexual offenders are reportable offenders, previous reportable offenders and offenders who would have been reportable offenders had their sentences not been completed prior to the introduction of the offender reporting legislation. Relevant sexual offenders are also referred to in the CPOPOA as respondents to an application or a proceeding.

Both the CPORA and the CPOPOA form part of a nationally consistent suite of legislative and policy responses, aimed at managing the activities of reportable offenders who have been convicted of child sex offences, or other particular serious offences against children, to reduce the likelihood that those offenders will re-offend.

The Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 (the Bill) gives effect to the recommendations made through the Crime and Corruption Commission's (CCC) 2013 statutory review of the operation of the CPOPOA. The CCC's report titled: *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008* (CCC report) was tabled in Parliament in December 2014. Other amendments contained in the Bill streamline the administration of the offender reporting legislation and enhance the current protections for children.

In this regard, the Bill amalgamates the CPOPOA into the CPORA to form the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004.* This amalgamation will be achieved through inserting a new part 3A which will integrate the processes and prohibitions associated with OPOs with the monitoring process used by police to manage reportable offenders under the CPORA.

Additional amendments contained in this Bill will enhance the holistic management of reportable offenders. These amendments include streamlining, simplifying and strengthening

OPO processes in accordance with the recommendations made by the CCC. This will include aligning terminology, clarifying the civil aspects of the OPO process and allowing an OPO application to be heard concurrent with any associated criminal proceedings. Furthermore, civil court processes will prohibit a self-represented offender from cross-examining a child witness or a person who was a child when the alleged offence occurred.

The court will have the capacity to allow an OPO application to be heard concurrent with any associated criminal proceedings and to make any OPO with the consent of a respondent. However, where the interests of justice are not satisfied, the court will be required to conduct a hearing on the OPO application.

Conversely, where the court does consider that it is in the interests of justice to make the OPO without a hearing, the court will be armed with a wider range of criteria to determine whether the respondent is able to consent to the order. For example, the Bill allows the court to assess whether the offender has a cognitive disability, a mental illness or an addiction or other illness which impedes the person's capacity to consent.

An application for an OPO can only be made to a court when a respondent has engaged in concerning conduct. In making an OPO, the court must have regard to the nature *and* pattern of conduct recently engaged in by a respondent. The Bill will amend the parameters of 'concerning conduct' by allowing the court to have regard to the nature *or* pattern of the conduct and removing the reliance on 'recent conduct' to more appropriately align with the actual risk the offender poses to the lives and sexual safety of children in the community.

The Bill also introduces an extended information sharing framework designed to allow government and non-government entities to give and receive information relative to a reportable offender. The exchange of pertinent offender information will reduce some of the impost on those departments who are responsible for the management of reportable offenders in the community.

The new framework enhances the protection of the information associated with the OPO process, such as the name of the respondent or the victim, by increasing the maximum penalty from two years imprisonment to up to 300 penalty units or five years imprisonment where information is released for the purposes of harassing or intimidating a respondent.

Extended protection from liability provisions will protect members of the community who provide information about a reportable offender to the police commissioner from civil, criminal and administrative liability where the information is given honestly.

The Bill will also amend the penalty for failing to comply with an OPO to be commensurate with penalties for similar offences under the CPORA. Accordingly all offences associated with reporting and compliance under the amalgamated legislation will be crimes carrying a maximum penalty of 300 penalty units or five years imprisonment.

The parameters of who will be considered a reportable offender have been extended to include anyone who intends or attempts to commit a reportable offence against a child and does not come under the auspices of the offender reporting legislation simply because the indictment does not reflect the reportable offence, or the attempted offence does not amount to an offence on the statute books or the offender pleads guilty to a lesser charge. This is an important child protection mechanism which strengthens the capacity for the criminal justice system to respond to child sex offending.

The Bill significantly reduces the current timeframes for reportable offenders to report travel into and out of Queensland. These timeframes have been reduced from seven days to 48 hours. This will reduce the opportunity for reportable offenders to travel outside of Queensland for short periods of time undetected. Reportable offenders will also be required to report the details of any children they are travelling with or any children they intend or expect to have reportable contact with while travelling.

The Bill will also clarify that reportable contact with a child occurs outside of Queensland. Reportable contact can occur when a reportable offender visits another jurisdiction or when the offender communicates with a child in another jurisdiction online. The amendment recognises that sexual offending against children is evolving alongside the development of information technology systems.

The Bill will amend the reporting obligations from reportable offenders by clarifying that a change in personal particulars includes when that personal particular no longer applies to the reportable offender. For example a reportable offender will be required to advise the police commissioner of the sale of a motor vehicle the offender had owned. Further reportable offenders who are subject to an order under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSOA) will be required to make an initial report.

The Bill will also clarify that those reportable offenders who are also subject to an OPO will be required to report to police until all of the reporting periods under the amalgamated legislation have ended. The amendment recognises that these particular offenders, by virtue of an OPO, pose an immediate risk to the lives or sexual safety of children.

The Bill allows reporting obligations to be suspended where a reportable offender has a significant mental illness. The suspension will only operate where the illness is significant and prevents the offender from meeting their reporting obligations. The reportable offender must not pose a risk to the lives or sexual safety of children.

The Bill introduces new powers which will allow police to require access information to electronic devices or to information which is able to be accessed through electronic devices, in circumstances where there is a reasonable suspicion that the reportable offender has committed an offence under the offender reporting legislation and to allow police to inspect electronic devices in the possession of those reportable offenders who pose the greatest risk of re-offending. These new powers will allow police to intervene prior to the commission of an offence and to disrupt the offending cycle.

Other powers allow police to take fingerprints to enrol a reportable offender in an automated reporting system and take photographs of any information which is required to be reported under schedule 2 of the CPORA. Photographs of a reportable offender will also be able to be taken at a location other than at a police station, allowing police to structure the operational component of their compliance management functions more efficiently.

A number of amendments streamline the administration of the offender reporting legislation. The Bill removes the obligation for receipts to contain the name and signature of a person who takes a report from a reportable offender and allows the police commissioner to determine what information will be entered on the component parts of the child protection register, including the National Child Offender System (NCOS). The Bill will also remove the obligation for the police commissioner to provide a notice of the length of an offender's reporting obligations after each report is made and allow a notice of a change in reporting obligations to be given as soon as practicable after the change occurs.

Reportable offenders who are not able to act on their own behalf will be able to authorise another person to receive and review information which is held on the NCOS and/or their status as a reportable offender.

The length of an assumed identity held by a Queensland Police Service (QPS) civilian staff member has been increased to align with those held by police officers undertaking the same role.

Achievement of policy objectives

The policy objectives are achieved by amending the relevant legislation including the CPORA and the *Police Powers and Responsibilities Act 2000* (PPRA) to give effect to the recommendations made by the CCC through a review of the CPOPOA and streamlining the

administration of the offender reporting legislation to provide a cohesive and holistic response to the management of reportable offenders in the community.

Amendments to the CPORA

Making an initial report – section 4 CPORA

Reportable offenders who are subject to an order under the DPSOA are suspended from their reporting obligations under the CPORA while a DPSOA order is in effect. An initial report provides police with vital information about a reportable offender, for example, tattoos and other distinguishing marks, children the reportable offender is likely to have reportable contact with upon their release, passwords to social networking sites, the make, model and registration of any vehicles the offender owns or drives or other relevant details. While a reportable offender can change those details during the suspended period without advising the police, the information obtained during an initial report provides a vital starting point for police investigating an offence against a child.

The Bill amends section 4 (Relationship between this Act and Dangerous Prisoner (Sexual Offenders) Act 2003) of the CPORA to require these reportable offenders to make an initial report prior to the operation of the suspension period. The amendment aligns with other suspension provisions under the CPORA.

Offences which contain a reportable offence as a factual element – section 5 CPORA

Currently the CPORA only allows an offence under schedule 1 (Prescribed Offences) to be considered a reportable offence. This may lead to instances where offenders commit offences that would ordinarily be considered to be reportable offences but are dealt with by the court in a different manner. For example, a person who has been charged with entering a dwelling and committing rape will ordinarily be indicted and convicted for both offences under sections 419(4) (Burglary) and 349 (Rape) of the Criminal Code. As rape is a reportable offence, upon conviction, the offender would be considered a reportable offender under the CPORA. However, where the offence is not particularised and the person is only convicted for the offence of enter and commit an indictable offence (Rape) under section 419(4), the offender will not be captured under the CPORA.

Similarly, a person who is charged with entering a dwelling with the intent to commit rape under section 419(1) may only be indicted on a charge of entering a dwelling with intent to commit an indictable offence. The intent to commit rape, while a component of the facts, is not a standalone offence and is therefore absorbed into the indictment under section 419.

Pleas to lesser charges may also impact on the manner in which an indictment is considered by the court. For example, on 14 May 2016, a person was charged with an offence under sections 210(1)(f) (Indecent treatment of a child under 16 years – take photograph etc.) and 228D (Possessing child exploitation material) of the Criminal Code. The person pled guilty to a lesser charge which is not a reportable offence.

The Bill addresses this issue by amending section 5 (Reportable offender defined) of the CPORA to include a person who has been found guilty of an offence, which is not a reportable offence, where the court declares that it is satisfied the facts and circumstances surrounding the offence constitute elements of a reportable offence. The amendment recognises the importance of identifying and monitoring any person who is found guilty of committing, attempting to commit or intending to commit a sexual or other particular serious offence against a child.

Specify that where the offender's reporting obligations are due to cease before the end of an OPO, these obligations continue to apply for the duration of the OPO – section 8 CPORA (Recommendation 3 – CCC report)

In some circumstances, a period of reporting for an existing reportable offender will end prior to the conclusion of an OPO. The CCC report highlighted that neither the CPORA nor the

CPOPOA specifies whether an existing reportable offender is required to continue to report until the OPO ends, or when all reporting obligations under the CPORA end.

An amendment to section 8 (When a person stops being a reportable offender) clarifies that a person stops being a reportable offender at the end of all reporting periods of an offender reporting order, or OPO to which the person is subject. The resultant impact of the amendment may see some reportable offenders reporting for longer.

Reportable contact outside of Queensland – section 9A CPORA

Section 9A (Reportable contact defined) of the CPORA requires a reportable offender to report any 'reportable contact'. However, this section does not state whether the contact includes contact with a child outside of Queensland.

Emerging technology has increased the rate at which people connect online through social media. The global network has reduced the distance between people and countries resulting in greater opportunities for reportable offenders to connect with children outside of Queensland.

The Bill amends section 9A to make it clear that reportable contact with a child occurs in Queensland or elsewhere. Reportable contact must be reported within 24 hours of the contact occurring and includes physical contact, any communications that occur orally, in person, by telephone, on the internet or in writing. However, reportable contact does not include incidental contact with a child.

Reporting a cessation of personal particulars – section 19A CPORA

With the exception of a residential address, there is no requirement for reportable offenders to report the cessation of their personal particulars. For example, when a reportable offender sells a vehicle and purchases another vehicle, he or she is only required to report the acquisition, not the sale. This results in an accumulation of information on the child protection register which may not be accurate. Retaining inaccurate information about a reportable offender on the NCOS has the potential to hamper police investigations and may also result in a reportable offender coming to the attention of police unnecessarily.

Reporting travel into and outside of Queensland – sections 19A, 20, 22 and 23 CPORA

The Bill amends sections 19A (Reporting changes in personal details), 20 (Intended absence from Queensland to be reported), 22 (Reportable offender to report return to Queensland or decision not to leave) and 23 (Report of other absences from Queensland) to reduce the timeframes associated with reporting travel into and outside of Queensland from seven days to 48 hours. Despite a significant reduction in reporting timeframes in 2014, some offenders continue to circumvent the seven day reporting period by delaying a report of any changes until seven days after they have entered and remained in Queensland for seven days; or by returning to Queensland for less than seven days; or cycling periods of travel into and out of Queensland for up to six days.

Sections 20 and 23 of the CPORA have also been amended to require reportable offenders to provide the details of any children they intend to travel with or any children they intend to have contact with during a period of travel. The amendment reduces the opportunity for reportable offenders to either meet children interstate or take children interstate for the purposes of committing sexual or particular other serious offences against those children. The amendment does not remove the obligation for a reportable offender to report any 'reportable contact' while traveling within 24 hours after the contact occurs. Reports of this information can be made by telephone or online.

Receipt of information to be acknowledged – section 28 CPORA

The Bill amends section 28 (Receipt of information to be acknowledged) of the CPORA by removing the administrative impost associated with including the signature and name of the police officer or other person on the receipt issued after a report is made by a reportable offender. The amendment also recognises advancing technology in offender reporting which removes the requirement for a person to physically receive a report.

There are approximately 3000 reportable offenders in Queensland. Each reportable offender is required to report a minimum of four times in each year. This does not include reports of travel or changes to the personal details which are required to be reported under the CPORA. Continuing to require a name and signature of the police officer or other person receiving the report to be included on each of these reports reduces the capabilities of the QPS Child Protection Offender Registry (the Registry).

The receipt will retain all other information that is required to be provided. The amendment has no impact on reportable offenders.

Power to take fingerprints – section 30 CPORA

The Bill extends the parameters of section 30 (Power to take fingerprints) of the CPORA to allow a police officer to take fingerprints from a reportable offender when he or she makes an initial report. This will allow reportable offenders to be able to use an automated electronic reporting device when reporting. Automated reporting devices provide flexible reporting processes for reportable offenders and reduce the impost on the QPS by approximately 79% when compared to reporting in person. The fingerprints taken for this purpose form part of the logon to prevent unauthorised access to the automated reporting device and to verify the user and link the user to the correct information.

The fingerprint information taken for the purposes of enrolling in and using reporting devices is not new. All reportable offenders are required to provide their fingerprints as a consequence of the offences that they have committed. Fingerprint information is held on the National Automated Fingerprint Identifications System (NAFIS). Information uploaded on the automated electronic devices is not used for any other purpose.

Power to take photographs – section 31 CPORA

Section 31 (Power to take photographs) of the CPORA is amended to allow a police officer to photograph a reportable offender at a time and location, other than when making a report in person at a police station and to photograph anything that is required to be reported under schedule 2 of the CPORA. The amendments allow police to structure the operational component of their compliance management functions in a more effective manner and provides police with a clear visual record of information which is required to be reported, including the intricacies of that information.

Provide police with the power to require a person to provide access information for seized or detained computers or electronic equipment; and make the penalty for failure to comply with a direction to provide access information equivalent to the penalty for failure to comply with an OPO, or treat refusal as failure to comply with an OPO – new section 51B CPORA (Recommendation 13 – CCC report).

Section 51B (Access information to storage devices) is a new provision which requires a reportable offender to provide access information to a storage device or to information which can be accessed through a storage device in circumstances where police have a responsible suspicion that an offence under the amalgamated legislation has been committed. The requirement to provide access information under section 51B excludes the application of the privilege against self-incrimination on the grounds that giving the access information might tend to incriminate the person. Section 51B allows the answer given as a consequence of the requirement to be admissible as evidence, as well as any evidence obtained as a result of compliance with the requirement to provide access information.

Section 51B includes an offence provision where a reportable offender fails to comply with the requirement to provide access information will be liable to a maximum penalty of 300 penalty units or five years imprisonment. This is consistent with other offences under the CPORA and the proposed penalty increases for offences under the CPOPOA.

Excluding the application of the privilege against self-incrimination is similar to section 465AA(6) of the *Crimes Act 1958* (Vic) and section 197 (Restriction on use of privileged answers, documents, things or statements disclosed or produced under compulsion) of the *Crime and Corruption Act 2001* and is consistent with the findings of the Organised Crime Commission of Inquiry, which advocates the Victorian legislation as a good template for change.

The new access requirement is supported by safeguards which, in so far as possible, protect the rights of reportable offenders. In this regard, the requirement to provide access information will be limited to those police officers who are responsible for the management of reportable offenders in the community or have been authorised by the police commissioner to exercise those powers.

A police officer who requires access information from a person, will be required to make a post approval application to a magistrate. Furthermore, the details of the search will be recorded in the register of enforcement Acts under Chapter 21, Part 2, Division 3 of the PPRA. A reportable offender will not commit an offence for failing to provide access information in circumstances where a post approval order is not granted by a Magistrate.

Notices given to reportable offender – sections 54 and 56 CPORA

The Bill amends section 54 (Notice to be given to reportable offender) of the CPORA by removing the obligation on the police commissioner to provide each reportable offender with a notice stating the length of his or her reporting period on each occasion the offender verifies or changes his or her personal details. Rather, the police commissioner will give a reportable offender a notice containing his or her reporting obligations when an initial report is made.

The amendment promotes efficiency in the reporting process by eliminating a requirement on the police commissioner to repetitiously provide information to a reportable offender. The amendment does not remove the obligation on the police commissioner to advise a reportable offender when a period of reporting changes.

Section 56 (Notice to be given when reporting period changes) has been amended to allow the police commissioner to give a reportable offender a notice of a change of reporting period as soon as practicable after the change occurs. Currently notices are required to be provided under section 56 prior to the next mandated report. While section 55 (Courts to provide sentencing information to police commissioner) of the CPORA requires a court to provide the police commissioner with the details of any order or sentence which is imposed on a reportable offender as soon as practicable after the sentence or order is made, the information may not be received by the QPS in a manner which allows section 56 to be complied with. For example, the information may be received a few days prior to the reportable offender's next mandated report and the Registry may not have time to prepare and personally serve the notice on the offender prior to the next reporting date. This is exacerbated if the reportable offender does not have a fixed address or is travelling outside of Queensland.

Suspension of reporting obligations for significant mental illness – sections 67A, 67C, 67D, 67F and schedule 5 CPORA

An amendment to sections 67A (Application of this division), 67C (Suspension of reporting obligations of reportable offenders on police commissioner's own initiative), 67D (Reportable offenders may apply for suspension of reporting obligations), 67F (Revocation of suspension) and schedule 5 (Dictionary) of the CPORA allows the current suspension provisions to apply to a reportable offender who has a significant mental illness and is not able to comply with his or her reporting obligations as a consequence of the mental illness. The extended provisions are able to be revoked by the police commissioner in circumstances where it is evident that the offender poses a risk to the lives or sexual safety of children and/or is capable of complying with the mandated reporting obligations.

Information held on the child protection register – section 68 CPORA

The Bill amends section 68 (Child protection register) of the CPORA by removing the obligation for the police commissioner to include the information under section 68(2). Section 68 of the CPORA requires the police commissioner to enter certain information on the child protection register, regardless of its relevance, the business practices of other jurisdictions or any decisions made about the register at a national level.

All information about every reportable offender in Queensland is held on the Queensland Police Records and Information Exchange (QPRIME) component of the child protection register. The information entered on the NCOS is the information required under section 68 of the CPORA. While it could be construed that the police commissioner is only required to ensure that the information required to be entered on the register is held on one of the component parts, the nature of the provision is to establish and maintain a national repository of information.

Section 68 commenced in 2005. Technology, information sharing and the concept of what comprises a child protection register has changed over time. In Queensland, QPRIME is the main repository of information. Some of this information is also held on the NCOS. Information which is not on the NCOS is able to be given to or received by another jurisdiction when a request is made or a reportable offender relocates.

Reportable offender's rights in relation to register and review an entry on register – sections 73 and 74 CPORA

Sections 73 (Reportable offender's rights in relation to register) and 74 (Review about entry on register) of the CPORA are amended to allow a person to act on behalf of a reportable offender in relation to obtaining a copy of the information held on the NCOS, seeking an amendment of any reportable information that is incorrect, and/or seeking a review of an entry on the child protection register. The authority for a person to act on behalf of the reportable offender must be in writing to the police commissioner.

Prohibit a self-represented offender from cross-examining (in person) a protected witness in any proceeding – new section 77B CPORA (Recommendation 17 – CCC Report)

A new section 77B (Cross-examining protected witness) prevents a self-represented reportable offender or a respondent from cross-examining a protected witness or a person who was under 16 years of age when the alleged offence occurred during a proceeding under the offender reporting legislation. The amendment cites part 2, division 6 (Cross-examination of protected witnesses) of the *Evidence Act 1977* as applying in these circumstances. Division 6 applies only to criminal proceedings other than summary proceedings under the *Justices Act 1886*. A self-represented offender will be able to seek legal representation for the purposes of cross-examination and the court will provide adequate time for this to occur.

Amendments to the CPOPOA

Relocate the provisions of the CPOPOA into the CPORA and repeal the CPOPOA (Recommendation 1 – CCC Report)

The Bill relocates the provisions of the CPOPOA into the CPORA to remove the inconsistences which have occurred as a consequence of separate regulatory regimes. The CPOPOA will be repealed upon the commencement of the amalgamated legislation. The provisions of the CPOPOA are re-numbered under this Bill.

Clarify the definition of concerning conduct – sections 6 and 8 CPOPOA (Recommendation 2 – CCC report)

Section 6 (Application) of the CPOPOA is renumbered as section 13A and amended to clarify that concerning conduct is conduct which may include the following: conduct that constitutes an offence; conduct that is a single act or omission.

Section 8 (Making an order) of the CPOPOA is renumbered as section 13C. Section 13C details that a court may make a prohibition order after making certain considerations including assessing the nature and pattern of the conduct engaged in by the respondent. The new section 13A replaces the word **'and'** with the word **'or'** in the phrase 'nature and pattern of conduct'. Additionally, section 13C of the CPOPOA removes the reference to the *lives or sexual safety of children* and replaces it with the *lives or sexual safety of one or more children, or of children generally.*

Remove 'recent' as it applies to concerning conduct – sections 6 and 9 CPOPOA

Section 6 (13A) of the CPOPOA sets the parameters for making an application for an OPO. In part, the application requires the police commissioner to believe on reasonable grounds that the person is a relevant sexual offender and has recently engaged in concerning conduct. In considering the application for the OPO made by the police commissioner, the court must be satisfied of the matters provided in section 8 (13C) of the CPOPOA and consider the matters in section 9(13D) of the CPOPOA.

Section 8 (13C) requires a court to be satisfied on the balance of probabilities that having regard to the nature and pattern of conduct recently engaged in, the respondent poses an unacceptable risk to the lives or sexual safety of children. While section 9(13D) (Matters a court must consider before making an order) (13D) details the matters which must be considered by a court for section 8(13C) of the CPOPOA, for example, the seriousness of the respondent's reportable offences committed against a child, the period since the reportable offences were committed, the age of the respondent and age of the victim and the difference in age between the respondent and the victim of the offence, the respondent's present age, the seriousness of the respondent's criminal history and the effect of the prohibition order sought in comparison with the level of risk of the respondent re-offending against a child.

The Bill removes the obligation in the new section 13A which requires the police commissioner to consider the timing of the conduct when making an application for an OPO. The court will be able to consider the timing of the conduct which is the subject of the OPO when the application for an OPO is heard.

Application of unacceptable risk

Queensland is the only Australian jurisdiction which requires that the conduct exhibited by an offender must pose an unacceptable risk to children. The CCC report noted that the term 'unacceptable risk' is a common threshold in Queensland supported by substantial case law.

While it is recognised by the courts that any risk to the lives or sexual safety of children is unacceptable, the purpose of the amalgamated legislation includes a statement which embodies this community expectation.

This statement is reflected in a new section 10B (When a person poses a risk to children) of the new offender reporting legislation and makes it clear that a person poses a risk to the lives or sexual safety of one or more children, or of children generally, if there is a risk that the person will engage in conduct that may constitute a reportable offence against or in relation to a child or children.

Clarify the ambiguities about OPOs made by consent – section 21 CPOPOA (Recommendation 16 – CCC Report)

Section 21 (Making an offender prohibition order for an adult respondent by consent) of the CPOPOA is relocated as section 13P. Section 13P is amended to clarify the extent to which an OPO can be made by consent. In this regard, the Bill allows an OPO, a temporary OPO and a variation of an OPO to be made with the consent of an adult respondent.

Section 13P has also been amended to require a magistrate or a court to consider the provisions of sections 13C and 13D in circumstances where it is considered that it is not in the interests of justice to conduct a hearing for an OPO. These sections set out the key criteria to determine whether a respondent is a relevant sexual offender, whose conduct poses a risk to the lives and sexual safety of children. These sections also require the court to consider the nature and scope of the respondent's previous offending behaviour, the effect of the order in comparison with the level of risk posed by the respondent; or the extent to which the application will impact on the respondent's circumstances.

The Bill also extends the information a court can consider under section 13P(4), when it is not in the interests to conduct a hearing for an application for an OPO. The additional information includes whether the offender has a cognitive disability or a significant mental illness that requires ongoing treatment by a psychiatrist, or an alcohol or drug addiction that impairs the respondent's decision-making ability or has caused the respondent to be hospitalised.

When it is in the interests to conduct a hearing, a magistrate or court must conduct a hearing to consider the facts of the application.

Align the offence provision with the penalty for failing to comply with CPORA reporting obligations – 38 CPOPOA (Recommendation 14 – CCC Report)

Section 38 (Failure to comply with an offender prohibition order) of the CPOPOA has been relocated as section 51A and the maximum penalty has been increased to align with the maximum penalties for similar offences under the CPORA. In this regard, a reportable offender who fails to comply with a condition of an OPO commits a crime and will be liable to a penalty of up to 300 penalty units or five years imprisonment.

The offence will be able to be heard summarily at the election of the prosecution.

Improve information sharing between the QPS and relevant agencies, and between the QPS and members of the public - sections 41 - 44, 47 and 48 CPOPOA (Recommendation 11 – CCC Report)

The Bill relocates sections 41 – 44, 47 and 48 of the CPOPOA as sections 51C, 74D, 74E 74F, 74I and 74J respectively and amends those provisions to address the risks associated with limited information sharing and enhances protection from liability provisions. In particular section 51C is amended by increasing the maximum penalty associated with releasing protected information for the purposes of harassing or intimidating a respondent to an OPO application to 300 penalty units or five years imprisonment.

The amendments also allow the police commissioner to give information to and receive information from entities under sections 42 (74D) and 43 (74E). An entity is defined under the *Acts Interpretation Act 1954* and includes a person or unincorporated body. This is a broad definition which allows the police commissioner to determine who is best placed to provide information about all offenders who come under the auspices of the offender reporting legislation.

An amendment to section 74D extends the information the police commissioner can require about an offender. Under, section 74D the police commissioner can require information from any entity that is relevant to:

- deciding whether an application for an order can be made under the amalgamated legislation;
- making an order under the amalgamated legislation;
- amending or revoking an order under the amalgamated legislation;
- serving an application or an order under the amalgamated legislation; or
- investigating an alleged breach of the obligations or an order under the amalgamated legislation.

Section 74D continues to exclude Queensland Health or health services providers administered under the *Hospital and Health Boards Act 2011.* While Queensland Health and health service providers play an important role in the protection of children, information about a child, who is at risk of harm is able to be reported under the *Child Protection Act 1999* and through the Suspected Child Abuse and Neglect system. The continued exclusion also recognises that health information is highly confidential and should not be disclosed without a due consideration to the rights of patients.

An amendment to section 74E extends who can receive information from the police commissioner about an OPO. In this regard, the police commissioner can give an entity a reportable offender's name and date of birth, the term of the OPO, the conduct prohibited by the OPO and anything that the police commissioner considers reasonably necessary to ensure the safety of a child or children in the care of the entity or the safety of the offender.

Section 74E continues to exclude Queensland Health or health services providers administered under the *Hospital and Health Boards Act 2011.* While Queensland Health and health services providers play an important role in the protection of children, they are not a primary child protection agency. Information about a reportable offender who is subject to an OPO, can be given to Queensland Health through the Suspected Child Abuse and Neglect system.

An amendment to section 74F will allow all prescribed entities who provide services to offenders and victims. That entity may give information to a person performing a function under a relevant Act or for the purpose of an approved teacher protecting the life or sexual safety of a student of a school. The amendment allows prescribed entities to receive timely information about an OPO, where it is necessary and appropriate for that person to receive that information.

Section 74J extends the protection from liability provisions to any person who honestly gives the police commissioner information about a reportable offender. The amendment closes a gap in the legislation which did not protect members of the community from civil, criminal or administrative liability for any information they gave about a reportable offender.

Clarify the civil application process, standard of proof and rules of evidence, and allow concurrent hearings - section 39, 40 and 50 and section 54 CPOPOA (Recommendation 15 – CCC report)

The Bill relocates sections 39, 40, 50 and 54 as sections 77D, 77E and 77C and 13ZI respectively and inserts new sections 77A, 77B and 77F. These provisions clarify the civil application process associated with the making of an OPO.

The new provisions also allow criminal offences arising out of the conduct on which an application for an OPO is based to be dealt with concurrent to the application for an OPO.

Section 77A (Application of the *Evidence Act 1977*) clarifies the application of section 53 (Proof of judicial proceedings) of the *Evidence Act 1977* in the civil OPO processes. Section 53 of the *Evidence Act 1977* provides the parameters for proving judicial documents that are to be tendered as evidence in Queensland courts. For example, a person can tender an original of

the document if required or a copy endorsed by the court or certificate under the hand of the registrar of the court. Section 77A allows section 53 to apply to OPO processes.

Section 77A also applies the provisions of the *Uniform Civil Procedures Rules 1999* (UCPR) to all OPO processes with the exception of a temporary OPO and the prosecution of an offence. The UCPR sets out the processes for all civil proceedings, including the rules of evidence.

Prohibiting the cross-examination of protected witnesses by unrepresented respondent – new section 77B (Recommendation 17 – CCC report).

The Bill inserts a new provision to prohibit an unrepresented respondent cross-examining a protected witness.

New section 77B (Cross-examination of protected witness) prevents a self-represented reportable offender or a respondent from cross-examining a protected witness or a person who was under 16 years of age when the alleged offence occurred during a proceeding under the offender reporting legislation.

Section 77B cites part 2, division 6 (Cross Examination of protected witnesses) of the *Evidence Act 1977* as applying in these circumstances. Division 6 applies only to criminal proceedings other than summary proceedings under the *Justices Act 1886*. For the purposes of the amalgamated legislation a protected witness includes a person who is 16 years or older at the time of the court proceeding but who was a child under 16 years when the alleged offence occurred.

Amendments to the PPRA.

Power to inspect – section 21B PPRA

The Bill introduces section 21B (Power to inspect storage devices for the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004) of the PPRA to allow a police officer to inspect any device which is capable of storing or accessing information in the possession of a reportable offender who:

- has been released from government detention or sentenced to a supervision order in the preceding three months; or
- has been convicted of a prescribed internet offence (up to a maximum of 4 inspections in a twelve month period); or
- is the subject of a device inspection order made by a magistrate for the reportable offender.

This cohort of offenders represent the greatest risk of sexually re-offending against children. Queensland Corrective Services (QCS) has provided data showing that approximately 40% of reportable offenders released from detention, re-offended within the first three months of their release. Furthermore, information held on the NCOS indicates that over 30% of reportable offenders in 2015/16 were convicted of internet based offences against children. Internet based offences include, using the internet to procure a child under 16 years, using a carriage service for sexual activity with a person under 16, possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service, etc. A number of these offenders were also convicted of contact offences that occurred simultaneously to offences involving the internet.

Offenders who have been assessed as posing an increased risk of offending are assessed through the use of an empirically validated risk assessment tool. Empirically validated tools are used by all policing and corrections jurisdictions to determine the level of risk an offender has at any particular time, based on changes in the offender's circumstances, such as job loss, death of a family member, homelessness, social isolation and/or the uptake of precursor behaviours such as alcohol or drugs.

Computers have opened a new sphere of high-tech crimes where information communication technology equipment and or data are used for offending or as a tool for the commission of an offence. The Royal Commission into Institutional Responses to Child Sexual Abuse has conservatively estimated the cost of child abuse and child trauma on the Australian community at $6.8 billion per annum. Prevention, disruption and early intervention are key strategies to reduce the social costs to victims and offenders.

The purpose of authorising police officers to inspect devices is to identify online activity which has or may lead to offending behaviours such as accessing child related websites, searching for and viewing images of children and researching or accessing groups who endorse child exploitation including child exploitation material. The provision aims at ensuring that a reportable offender is not at risk of, or committing, further reportable offences against children.

Inspection of a device involves attaching a commercially available software program to the device. The software scans the device and produces a report advising police of websites and social media sites accessed, browser searches undertaken, any instant messaging services used, chat rooms accessed, an account of image files on the computer, and identifies any software or hardware linked to the device.

The software used by the QPS also has the capacity to identify the presence of child exploitation material. This functionality cannot be removed from the software and it is not intended to limit any police powers where something on the device may be evidence of an offence. In this regard, any offences identified as a consequence of the inspection may result in enforcement action.

Additionally, where information on the device indicates an offender is at risk of committing a reportable offence through the presence of precursor activities, for example accessing child specific websites, police will refer the offender to an appropriate support service to address the behaviours which may lead to offending.

The QPS employs a case management approach to offender management and monitoring. Each officer who is responsible for the management of reportable offenders in the community is a highly trained detective. These detectives are skilled at building rapport with reportable offenders which allows them to gauge their risk level at any given time. This is an important strategy which supports a preventative approach as opposed to an enforcement approach.

The new inspection power includes significant protective mechanisms to ensure that the rights of reportable offenders are not unduly abrogated. In this regard, an inspection for internet based offences is limited to a maximum of four times in a twelve month period. Any further inspection would require approval from a magistrate and must be based on increased risk. All inspections based on increased risk are required to be approved by a magistrate.

A device inspection order may be used as an alternative to a search warrant, for the purpose of authorising an inspection of a device for the purposes of the offender reporting legislation. Unlike a traditional search warrant, the inspection order will only allow police to inspect devices which can access the internet or access information through the internet, or store information.

Each inspection will be required to be entered on the register of enforcement acts and a report will be tabled in Parliament each year detailing the number of inspections undertaken and any action taken by police as a consequence of those inspections.

It should be noted that a reportable offender who is of the opinion that the repeated use of the inspection process constitutes an abuse of power, are able to make a formal complaint to the CCC or to the Ethical Standards Command of the QPS. This represents an effective safeguard as the police commissioner has made it clear that any abuse of any power by a police officer will not be tolerated.

The new provision aligns with the narrative supporting recommendation 13 of the CCC report and supports contemporary policing strategies to prevent and disrupt crime rather than simply respond to a crime after it has been committed. In particular, the CCC concluded that while

breaches which occur in public places can be readily dealt with by police using their existing powers to search, detain and arrest, it is possible and very likely that offenders will engage in prohibited conduct inside their homes and the existing police powers to monitor compliance in these instances are limited.

Assumed identities – sections 284 and 285 PPRA

Sections 284 (Form of authority) and 285 (Period of authority) of the PPRA are amended to allow the period of authority for an 'authorised civilian', to acquire or use an assumed identity to remain in force until varied or cancelled. Authorised civilians are QPS staff members and this amendment will remove an administrative restriction that requires these staff members to re-apply for an assumed identity every three months and align the period of authority for assumed identities with an 'authorised officer'.

Alternative ways of achieving policy objectives

The policy objectives cannot be achieved without legislative amendment. The recommendations made by the CCC which are contained in the Bill require a regulatory response.

Estimated cost for government implementation

It is anticipated that the financial implications associated with the regulatory framework contained in the Bill will not be significant. Any additional costs can be met from existing resources.

Consistency with fundamental legislative principles

The *Legislative Standards Act 1992* (LSA) requires that during the development of legislation, sufficient regard is to be given to the fundamental legislative principles. Section 4 of the LSA requires legislation to have sufficient regard to the rights and liberties of individuals and the institution of Parliament.

Whether the legislation has sufficient regard to the rights and liberties of individuals—s 4(2)(a) LSA:

A number of the legislative amendments impose obligations and/or impinge on the rights and liberties of offenders who are currently required to report under the CPOPOA and CPORA for a period of time after their sentence; or after their release from government detention; or because their behaviour poses an unacceptable risk to the lives or sexual safety of one or more children or of children generally.

Those amendments include:

- requiring a reportable offender who is subject to an order under the DPSOA to make an initial report (section 4 CPORA);
- extending the parameters of who will be considered a reportable offender (section 5 CPORA);
- requiring a reportable offender to continue to report until all processes which make that person a reportable offender have finished (section 8 CPORA);
- clarifying that reportable contact with a child includes contact that occurs outside of Queensland (section 9A CPORA);
- reporting the cessation of all personal details which are required to be reported under schedule 2 of the CPORA (section 19A CPORA);
- requiring a reportable offender to report an extended stay outside of Queensland within 48 hours of making the decision (section 20 CPORA);
- requiring a reportable offender to provide details of any children the offender intends to travel with or with whom the offender expects to have contact with while outside of Queensland (sections 20 and 23 CPORA);
- requiring a reportable offender to report any change of travel while outside of Queensland beyond 48 hours (section 21 CPORA);

- requiring a reportable offender to report a return to Queensland within 48 hours (section 22 CPORA);
- expanding the power for police to take fingerprints which will allow a reportable offender to be enrolled in reporting processes using an automated electronic reporting device (section 30 CPORA);
- reducing the number of times a reportable offender will receive a report on the length of his or her report period (section 56 CPORA);
- reducing the threshold of what a court can consider when making an OPO to include the nature or pattern of conduct (section 8 CPOPOA – new section 13A);
- extending the parameters regarding the risk an offender poses to children to include children generally (sections 8, 14 and 42 CPOPOA – new sections 13C, 13I and 74D);
- removing the threshold of recent as it applies to concerning conduct (section 6 CPOPOA – new section 13A);
- extending information sharing to other government and non-government entities and members of the community (sections 41 – 44 and 47 CPOPOA - new sections 51C, 74D, 74E and 74I);
- extending the protection from liability provisions under the new legislation to include any person or agency who honestly gives information about a reportable offender (section 48 CPOPOA – new section 74J);
- elevating the offence for failing to comply with an OPO from a simple offence with a maximum penalty of two years imprisonment, to an indictable offence with a maximum penalty of 300 penalty units or 5 years imprisonment (section 38 CPOPOA – new section 51A); and
- prohibiting a self-represented offender from cross-examining a protected witness during any proceeding under the amalgamated legislation (new section 77B).

Requiring a reportable offender who is subject to an order under the DPSOA to make an initial report.

DPSOA offenders present the greatest risk to the community and are subject to the most stringent monitoring by QCS. Reportable offenders who are subject to a DPSOA order are suspended from any reporting obligations under the CPORA for the length of the order. Currently this includes an initial report of their personal details.

An amendment to section 4 of the CPORA will require a reportable offender who is subject to a DPSOA order to make an initial report prior to a suspension under section 4 being effected. This imposes an obligation on these offenders to provide their personal particulars to police within seven days of their release from government detention.

An initial report provides police with vital information about a reportable offender, for example, tattoos and other distinguishing marks, children the offender is likely to have reportable contact with upon his or her release, email addresses, telephone numbers, passwords to social networking sites, the make and model of any vehicles the offender owns or drives etc. While there is capacity for the offender to change those details during the suspended period without advising the police, the information obtained during an initial report, particularly in relation to tattoos or other distinguishing body marks, provides a vital starting point during any police investigation regarding the commission of a reportable offence.

Due to the nature of the offences committed by DPSOA reportable offenders and the risk they present to children in the community, it is essential that information is available to police to facilitate the investigation and prosecution of any future offences these offenders may commit.

The amendment mirrors other suspension mechanisms under the CPORA. For example, a reportable offender who is suspended on the basis of a significant cognitive impairment must have made an initial report to the police prior to the suspension being invoked.

Extending the offences which make a person a reportable offender

An amendment to section 5 of the CPORA will extend the definition of a reportable offender. Under the current provision a person is considered a reportable offender if they are sentenced for a reportable offence or if they are an existing reportable offender, or a corresponding reportable offender or subject to an offender reporting order. The amendment to section 5 will extend the provision to include a person who has been sentenced for an offence, which is not a reportable offence, but the court is satisfied that the facts and circumstances of the offence have elements of a reportable offence (based on the sentencing court being satisfied that the 'factual element' was a reportable offence).

In this regard, a person who is found guilty of an offence (for example, of entering a dwelling with the intent to commit rape under section 419(1) of the Criminal Code) under the new legislation will be considered a reportable offender despite there being no standalone offence for intent to commit rape. Similarly, a person who is found guilty of an offence of grievous bodily harm which is sexually motivated will be considered a reportable offender regardless of whether the sexual component of the offence amounts to a prescribed offence under schedule 1 of the CPORA.

While the amendment modifies the parameters regarding who will be considered to be a reportable offender, it is an important protection for children in the community. Offenders who have previously avoided registration on the NCOS as a result in which indictments are presented to the court or because he or she has pleaded guilty to a lesser charge may be considered a reportable offender under the CPORA. In particular, a person may become a reportable offender based on the sentencing court finding, on the balance of probabilities that the factual element amounted to a reportable offence.

While it is not the intention of the offender reporting legislation to impose an additional penalty on the reportable offender, the legislation does require a reportable offender, to be monitored for a period of time to reduce the likelihood that they will re-offend. The amendment recognises the purposes of the Act and it is a further protective mechanism for children in the community. The amendment does not affect an offender's right to review an entry on the child protection register under section 74 of the CPORA.

Requiring a reportable offender to continue to report until all processes which make that person a reportable offender have finished

An amendment to section 8 of the CPORA will clarify that a reportable offender must continue to report to police until all processes which make the person a reportable offender have ended, including the reporting obligations attached to an OPO. While this amendment has the capacity to extend a period of reporting for a reportable offender for up to five years, it is limited to those reportable offenders who are subject to an OPO because a court considers that the nature or pattern of conduct exhibited by the offender poses an unacceptable risk to the lives or sexual safety of one or more children or of children generally.

It is the purpose of the offender reporting legislation to provide, in part, for the protection of the lives or sexual safety of children. This is achieved in a number of ways, including:

- requiring an offender to keep police informed of his or her whereabouts and other personal details for a period of time after a conviction for a reportable offence; and
- prohibiting particular sexual offenders from engaging in conduct which poses a risk to the lives or sexual safety of one or more children or of children generally.

The amendment aligns with that purpose.

Clarifying that reportable contact includes contact which occurs outside of Queensland

An amendment to section 9A of the CPORA will clarify that reportable contact extends to contact which occurs outside of Queensland. Reportable contact with a child includes any physical contact and any communication which occurs orally or in writing. However, it does not include contact which occurs incidentally during the normal course of living, for example,

being served by a child at a restaurant or supermarket. Reportable contact must be reported within 24 hours after the contact occurs.

The amendment places an obligation on reportable offenders to advise the police of any reportable contact he or she has with a child outside of Queensland, within 24 hours after the contact occurs. It is acknowledged that 24 hours to report contact with a child places a significant obligation on reportable offenders. However, reports can be made almost instantaneously by telephone, online via the QPS Website, or by facsimile. A reportable offender will not commit an offence for failing to report contact with a child where there is a reasonable excuse.

It is not the intention of this amendment to impose an untenable obligation on reportable offenders. Rather, the amendment aims to improve the safety of children by restricting the opportunity for reportable offenders to travel interstate for the purposes of making contact with children undetected.

Reporting the cessation of all personal details which are required to be reported under schedule 2 of the CPORA

Schedule 2 of the CPORA provides a list of the personal details which are required to be provided to police as part of the offender's reporting obligations. While there is a requirement for these details to be updated, there is no requirement, with the exception of general residence, to advise when these details are no longer relevant to the offender.

The current manner in which an offender's details are reported and retained has resulted in an accumulation of inaccurate information about the offender on the NCOS. Inaccurate information not only hampers police investigations, it may also result in a reportable offender coming to the attention of police unnecessarily.

An amendment to section 19A of the CPORA will place an obligation on a reportable offender to report when any of his or her personal details are no longer current. The effect of the amendment on reportable offenders is not significant. Reportable offenders are able to make changes to their personal details at any time. These changes can be made by telephone, email, online, mail or facsimile. There is no obligation for a reportable offender to attend a police station or provide immediate evidence to support the change.

Requiring a reportable offender to provide details of any children the offender intends to travel with or with whom the offender intends to have contact with while outside of Queensland

An amendment to sections 20 and 23 of the CPORA imposes an obligation on reportable offenders to provide police with the details of any children the reportable offender intends to travel with, regardless of whether the details of those children have been reported as part of the offender's mandated reporting obligations. And further, for the purpose of section 20, the details of any children with whom the offender expects to have contact with outside of Queensland.

It is important that police are aware of when reportable offenders are travelling with children and who those children are. Unreported contact with children is contrary to the purpose of the CPORA and it places children at risk. As there is no requirement for a reportable offender to report the details of children they are travelling with or having contact with while they are outside of Queensland reportable offenders may travel interstate for the purposes of committing contact offences or taking children interstate for the purpose of committing contact offences or for the purposes of permitting others to commit contact offences against the child/children. This amendment will deter reportable offenders from committing sexual or other serious offences against children when travelling outside of Queensland.

This amendment complements amendments to section 9A of the CPORA, which will require a reportable offender to report any contact he or she has with a child outside of Queensland within 24 hours after the contact occurs.

Requiring a reportable offender to report a return to Queensland within 48 hours

An amendment to sections 20(1), 21(1), 21(2), 22(2) and 23(4) of the CPORA will impose an obligation on a reportable offender to report:

- a change of travel or a decision to extend travel whilst out of Queensland;
- a change of personal details after an absence from Queensland;
- a period of travel out of Queensland; and
- a return to Queensland after a period of travel;

within 48 hours after the change occurs.

The current timeframes provide reportable offenders with 7 days to advise police of any travel plans or changes which occur during a period of travel. This is a considerable period of time given that a report can be made by telephone, online or by email.

While it is acknowledged that 48 hours presents a significant reduction in reporting timeframes, it is considered necessary to appropriately monitor those reportable offenders who may attempt to circumvent their reporting obligations by:

- delaying the report of any changes to their personal details until seven days after they have entered and remained in Queensland for seven days;
- returning to Queensland for less than seven days; or
- cycling periods of travel into and out of Queensland up to six days.

Reducing the timeframes associated with reporting travel into and out of Queensland is about risk minimisation. It is the purpose of the CPORA that reportable offenders keep police informed of their whereabouts to reduce the likelihood of re-offending. Continual monitoring forms part of that risk minimisation process.

Concerns about any infringement of reportable offender's individual rights are mitigated as those offenders who are legitimately unable to report changes to their personal details will be able to take advantage of the reasonable excuse provision which exists under section 50 of the CPORA. This important safeguard will continue to operate under the new legislation.

Allow police to take fingerprints for the purpose of enrolling a reportable offender in an automated reporting system

An amendment to section 30 will allow police to take fingerprints for the purposes of enrolling a reportable offender in an automated electronic reporting device, for example an automated kiosk. The amendment imposes an obligation on reportable offenders to provide identifying particulars outside of the current parameters of the CPORA (where identity is in doubt) and the *Police Powers and Responsibilities Act 2000* (PPRA).

An automated reporting device is a standalone product that is not linked to an external database. In this regard all information must be manually inputted, including fingerprints and photographs. The device can only be accessed with a particular offender's fingerprint. This not only ensures the security and privacy of the reportable offender's information, it prevents another person reporting on the offender's behalf.

The information which is required to be inputted into an automated electronic reporting device is not new information. All reportable offenders are required to provide their fingerprints as a consequence of the offences they have committed. This information is held on the National Automated Fingerprint Identifications System (NAFIS).

Automated electronic reporting devices will provide reportable offenders with an additional reporting option in the future upon establishment of the automated reporting system.

Reducing the number of times a reportable offender will receive a report on the length of his or her report period

There are approximately 3000 reportable offenders in Queensland. Each offender is required to report to the police a minimum of four times in each year. Further reports are required when any changes are made to the offender's personal details, including for example, residence,

mobile phone number, passwords to social networking sites etc. A person who takes a report from a reportable offender must acknowledge that report in a written notice that must contain the length of the offender's reporting period.

Requiring the QPS to continue to provide information about the length of an offender's reporting period on each occasion a report is made creates an untenable impost on the Child Protection Offender Reporting Registry. Furthermore, it creates a risk of inaccurate information being provided to an offender about the length of his or her reporting period.

An amendment to section 54 of the CPORA will remove the requirement on the QPS to provide each offender with a notice detailing the length of his or her reporting period when a report of personal details is made to the police commissioner. While the amendment has the capacity to impinge on a reportable offender's right to information about his or reporting period, the information will continue to be provided in the following circumstances when:

- the reportable offender is sentenced for a reportable offence or made subject to an offender reporting order;
- the reportable offender is released from government detention;
- the offender enters Queensland and has not previously been given a notice of his or her reporting obligations;
- the offender becomes a corresponding reportable offender in Queensland;
- the length of the offender's original reporting period has changed.

Reducing the threshold of what a court must consider when making an OPO to include the nature or pattern of conduct

The new section 13C will reduce the threshold of what a court may consider when determining an application for an OPO by replacing the word **'and'** with the word **'or'** in the phrase 'nature and pattern of conduct'. This amendment clarifies that the court may consider a single act to be concerning conduct.

An OPO is only brought to a court when there is a reasonable belief, on the balance of probabilities, that an offender is engaging in conduct which poses an unacceptable risk to the lives or sexual safety of children. In making an OPO, the court allows an additional layer of protection to be applied to children in the community by prohibiting a reportable offender or a relevant sexual offender from engaging in a particular activity or attending a particular place, for example, using the internet or attending a local park. These prohibitions target precursor behaviour and are aimed at reducing the likelihood that a reportable offender or relevant sexual offender will engage in contact offences against children.

Extending the parameters regarding the risk an offender poses to children to include children generally

Currently, the police commissioner may only apply for, and a court may only make, an OPO if it is considered that the subject person is a relevant sexual offender and has recently engaged in concerning conduct. The Bill will amend the definition of concerning conduct by removing the requirement that any act or omission that constitutes a risk to the lives or sexual safety of a child has to occur recently.

Replacing the term lives or sexual safety of children with lives or sexual safety of one or more children or of children generally will assist police applying for and prosecuting an OPO in the courts. This will impact on reportable offenders and relevant sexual offenders who engage in concerning conduct.

An OPO is intended to restrict the conduct of a reportable offender or relevant sexual offender, where that conduct poses an unacceptable risk to the lives or sexual safety of children. Concerning conduct by a reportable offender or relevant sexual offender can be a precursor to a contact offence against a child. In this regard, it is considered that the lives and sexual safety of children outweigh the rights of those offenders who continue to engage in conduct which places that safety at risk.

Removing the threshold of recent as it applies to 'recent concerning conduct'

The amendment abrogates the rights of relevant sexual offenders (respondents) by removing the reliance on 'recent' as it applies to concerning conduct. This is despite the CCC's determination, that 'recent' was an important safeguard, based on the potential impact an OPO represented to the movements and activities of a particular offender. The amendment takes into account a number of issues raised by the QPS to a Joint Working Group (JWG) established under recommendation 9 of the CCC report.

In particular, the QPS attested that while information about concerning conduct is received from a number of sources including people who have directly witnessed or heard of the behaviour, for example members of the public, child safety officers, school teachers or other police officers, it is not systematically recorded. The information must be verified and an appropriate course of action determined. This may include an OPO, or enforcement action where the conduct constitutes an offence under the offender reporting legislation.

To determine the veracity of information about concerning conduct, police must review information held on the Queensland Police Records and Information Management Exchange (QPRIME), including street checks, QPS offence histories, QCS case conference summaries and contact summaries and QCS incident reports. This process impacts on the time frames associated with making an application for an OPO.

To ensure that the timing of the conduct retains some relevance to the application for an OPO, the new section 13D, will require a court to consider when the conduct subject to the proposed prohibition order happened, prior to making an OPO.

Extending information sharing to other government and non-government entities and members of the community

The amendments which extend the current information sharing provisions to allow the police commissioner to require information from any government or non-government entity and to give information to those entities and members of the community, could be seen as abrogating a reportable offender's right to privacy. However, this amendment addresses the concerns raised by the CCC in its report on the operation of the CPOPOA about who could give and receive information about a reportable offender.

Accordingly, the information which is given to a government or non-government entity is limited to the offender's name and date of birth, the term of any order, any conduct prohibited and anything considered reasonable necessary to allow the entity to identify the offender to ensure the safety or children in the care of the entity or the offender. To protect the rights of reportable offenders, any person who administers the offender reporting legislation will be liable to a maximum penalty of up to 300 penalty units or five years imprisonment in circumstances where information about an offender who is a respondent to an OPO process is given to another person for the purposes of intimidating or harassing the respondent. This increase is consistent with other offence provisions under the offender reporting legislation and acts as a safeguard against vigilante style behaviour.

Protection from liability

It may be suggested that the Bill will extend the application of section 75 of the CPORA to protect a person from civil, criminal and administrative liability where the person honestly provides information about a reportable offender or relevant sexual offender without malice, may impinge on the rights of reportable offenders and relevant sexual offenders.

Some offenders attempt to circumvent their obligations under the offender reporting legislation by establishing alternate residences or engaging in prohibited activities in an alternate location. This type of subversive behaviour may indicate that the offender intends to engage or is engaging with children. It is vital that this information is directed to those best placed to act upon it. This amendment promotes the timely disclosure of information about an offender who has the capacity to commit offences against children, particularly where the information indicates the offender is acting contrary to an OPO under the CPOPOA or reporting obligations under the CPORA.

A person who provides false or misleading information will commit an offence and be liable to a maximum penalty of up to 300 penalty units or five years imprisonment. This is commensurate with other offences under the offender reporting legislation and aims to deter people providing information about a reportable offender that is untrue or vexatious.

The amendment will increase the maximum penalty for a breach of an OPO from two years imprisonment to five years imprisonment or 300 penalty units. The offence will also be elevated from a simple offence to an indictable offence and will be a crime.

While this has the capacity to impose a greater penalty on those reportable offenders who fail to comply with the conditions of an OPO, it is commensurate to the ongoing and unacceptable risk a reportable offender places on the lives and sexual safety of children and addresses a disparity in the offender reporting legislation, which has long imposed a lesser maximum penalty as compared to other offences found within CPORA.

The amendment will be balanced by allowing a breach of an OPO to be dealt with summarily at the election of the prosecution. Additionally, reportable offenders who are legitimately unable to report changes to their personal details will be able to take advantage of the reasonable excuse provision which continue to apply under the new section 51A.

Prohibiting a self-represented offender from cross-examining a protected witness during any proceeding under the amalgamated legislation

A new provision to prohibit a self-represented respondent from cross-examining a protected witness during a proceeding under the amalgamated legislation creates an obligation on respondents (relevant sexual offenders) to a proceeding and/or reportable offenders to obtain appropriate legal representation or abstain from cross-examination. A protected witness will be a person under the age of 16 years or a person. The new provision will not prevent the offender from representing himself or herself during the remainder of the proceedings.

To safeguard the rights of reportable offenders or respondents (relevant sexual offenders) during a proceeding for an OPO, the new provision may allow the offender to obtain legal representation for the purposes of cross-examination. If suitable representation cannot be arranged by the offender, a court may arrange for Legal Aid to represent the offender during the cross-examination. A reasonable amount of time will be provided to allow the offender to arrange for legal representation.

The 2010 Australian Law Reform Commission report on family violence found that personal cross-examination of child witness had a negative impact on the nature and quality of the evidence received by the court. This is likely to be amplified in those cases where the respondent and the child have or have had an intimate or family relationships. In this regard, allowing respondents to cross-examine child witnesses has limited benefit to the proceedings while adversely affecting child witnesses.

Whether the legislation confers power to enter premises, and search for or seize documents of other property, only with a warrant issued by a judge or other judicial officer—s4(3)(e) LSA:

The inspection provision under section 21B of the PPRA allows police to inspect any device which stores or is capable of accessing information which is in the possession of a reportable offender, in certain circumstances. This power builds on the current authority under section 21A of the PPRA which allows police to enter the premises of a reportable offender to verify the details which are required to be reported under the offender reporting legislation.

The inspection provision is limited to those reportable offenders who:

- have been released from government detention or sentenced to a supervision order in the preceding three months;
- have been found guilty of a prescribed internet offence (up to a maximum of 4 inspections in a twelve month period); or
- is subject to a device inspection order made by a magistrate.

This cohort of offenders represent the greatest risk of sexually re-offending against children. QCS has advised that approximately 40% of reportable offenders re-offend within the first three months of release from government detention. Furthermore, information held on the NCOS indicates that over 30% of reportable offenders who were convicted and entered onto the child protection register in 2015/16 were convicted of internet based offences against children, including, making, possessing and distributing child exploitation material and using the internet to procure a child under 16 years. A number of these offenders were also convicted of contact offences simultaneous to the internet offences.

Offenders who have an increased risk of offending are assessed through the use of an empirically validated risk assessment tool. Empirically validated tools are used by all policing and corrections jurisdictions to determine the level of risk an offender has at a particular time, based on changes in circumstances, such as job loss, death of a family member, homelessness, social isolation and/or the uptake of precursor offending behaviours such as alcohol or drugs.

The software used by the QPS has the capacity to identify the presence of child exploitation material. In addition to this functionality, the software can identify websites and social media sites accessed, browser searches undertaken, any instant messaging services used, chat rooms accessed, an account of image files on the computer, and identifies any software or hardware linked to the device.

The software is a comprehensive tool. The purpose of its use in this context is to identify online activity which has or may lead to offending behaviours such as accessing child related websites, searching for and viewing images of children, and researching and/or accessing groups who endorse child exploitation including child exploitation material. The provision also aims at ensuring that a reportable offender is not at risk of, or committing further reportable offences against children.

The new inspection power includes significant protective mechanisms to ensure that the rights of reportable offenders are not unduly abrogated. In this regard, an inspection for internet based offenders is limited to four times in a twelve month period. Any further inspection would require approval by a magistrate and must be based on an elevated risk that the reportable offender will engage in conduct that may constitute a reportable offence. All inspections based on increased risk are required to be approved by a magistrate. A device inspection order may be used as an alternative to a search warrant, for the purpose of authorising an inspection of a device for the purposes of the offender reporting legislation. Unlike a traditional search warrant, the inspection order will only allow police to inspect devices which can access the internet or access information through the internet or store information.

There is no capacity for police to seize or remove a device unless there is a reasonable suspicion that an offence has been committed. Any subsequent enforcement action which is taken by police will be subject to judicial oversight. Each inspection will be required to be entered on the register of enforcement acts and a report will be tabled in Parliament each year detailing the number of inspections undertaken and any action taken by police as a consequence of those inspections.

A further safeguard is the capacity for any reportable offender, who is of the opinion that the repeated use of the inspection process constitutes an abuse of power, to make a formal complaint to the CCC or to the Ethical Standard Command of the QPS. The police commissioner has made it clear, that any abuse of any power by any police officer will not be tolerated.

As at June 2015, there were approximately 1,004,805 children in Queensland under the age of 16 years. One in every five of these 1,004,805 children or 200,961 children are at risk of becoming victims of a sexual offence. Of these one in five children who are at risk and may be offended against, only one in five will report their sexual assault to the police and only one in five of those investigations will result in a prosecution. This is a generational theme. The rights of children must at some point be made a priority over the rights of those people who have been convicted of a sexual or particular other serious offence against children.

The power to inspect devices aligns with the purposes of the child protection legislation and also supports contemporary policing strategies aimed at disrupting and preventing crime, rather than police reacting to crime that has already been committed. Prevention, disruption and early intervention are key strategies to reducing the social and economic costs to victims, offenders and the community.

Whether the legislation provides appropriate protection against self-incrimination—s4(3)(f) LSA:

New powers allow police to require a reportable offender to provide access information to any device or to any information which can be accessed through the device, such as a cloud storage device. The extent of the new requirement is limited to those circumstances where police reasonably suspect that a reportable offender has committed an offence under the offender reporting legislation, for example, failed to provide information that is required to be reported.

The requirement to provide access information will specifically exclude the privilege against self-incrimination. This is similar to section 465AA(6) of the Crimes Act 1958 (Vic) and section 197 of the Crime and Corruption Act 2001 and consistent with the recommendations made by the Organised Crime Commission of Inquiry, which advocates the Victorian legislation as a good template for change. A person who fails to comply with a direction to provide access information will be liable to a maximum penalty of 300 penalty units or five years imprisonment.

The new requirement for access information is not dissimilar to section 154 of the PPRA, which allows a magistrate or a judge to order a person in possession of access information for a storage device to give that information to a police officer who is in possession of a warrant issued under Chapter 7 of the PPRA. However, the Queensland Organised Crime Commission of Inquiry highlighted the insufficiency of section 154 to address non-compliance with an order to provide access information. In particular, the Commission of Inquiry noted that the power (to require access information) provided by section 154 of the PPRA, combined with the offence provision in section 205 of the Criminal Code, provides insufficient disincentive to offenders who have more to lose by complying. For example, an offence under section 228B (Making child exploitation material) of the Criminal Code carries a maximum penalty of 14 years imprisonment.

To safeguard the rights of individuals, a police officer who requires a person to provide access information will be required to apply to a magistrate in writing for an order approving the requirement for access information. This will be similar to the post-search approval order

required to validate the search and seizure powers under section 161 of the PPRA. A person will not commit an offence for failing to provide access information in circumstances where an approval for the requirement is not granted by a magistrate.

The amendment aims to assist police keep pace with the ever evolving range of internet based sexual offences against children, including the possession or distribution of child exploitation material, the production of child exploitation material, online grooming and solicitation of children, including cybersex, and conspiring with others to commit these types of offences and/or to carry on a business which involves these types of offences. Research has clearly identified a relationship between internet based sex offending and contact sex offending. It is not possible for the police to properly assess and manage the risks posed by reportable offenders without an appropriate legislative authority to access information which is stored on devices. Access to electronic devices will assist forensic examiners inspecting devices to decode any encrypted information which might not otherwise be accessed.

Consultation

Consultation was undertaken during the drafting of the Bill with the following key child protection agencies, representatives from the legal fraternity and with government agencies:

- Bravehearts;
- Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd;
- Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd;
- Office of the Public Guardian;
- Office of Information Commissioner;
- Protect All Children Today;
- Queensland Law Society;
- The Bar Association of Queensland; and
- Office of the Information Commissioner.

Summary of views expressed and resultant impact on the content of the Bill

Consultation on the Bill was generally favourable with the provisions contained in the Bill.

The following issues were raised:

Agency	Issue raised	Comments and Recommendations
Office of Information Commissioner (OIC)	**Information sharing**: While the OIC notes that the draft Bill provides for broader information sharing about a reportable offender in specified circumstances, including to non-government entities, it appears that the current offence provisions in the CPOPOA are being retained, restricting further disclosure of personal information obtained by non-government entities and other persons (new Section 51C).	Important information protections have been retained in the draft Bill. The particular provision cited by the OIC prevents a person who has access to information about a respondent or child witness in an OPO process releasing information. There are a list of circumstances which allow this information to be released, including disclosure to a police officer, disclosure for a purpose of administering the OPO process or to manage a respondent or for the protection of a child who is the subject of the information. Other information provisions in the Bill have been extended, to allow information which is relevant to a process under the offender reporting legislation to be shared between the QPS and other government and non-government entities and between the QPS and members of the community. Protection from liability for giving information has been extended in the Bill

		where information about a reportable offender is given honestly.
Queensland Law Society (QLS)	**Extending Reporting Obligations:** The QLS did not agree with the recommendation to extend the duration of the reporting obligations. CPORA mandates that a reportable offender have reporting obligations which require them to report their details to police following release from government detention. The Bill proposes that these reporting obligations continue until all processes which make that person a reportable offender have concluded, including being subject to an OPO. This means that an offender's reporting obligations will be extended if the OPO extends beyond the original reporting period under CPORA. In their view, this extension has the potential to create an influx in prosecutions of people for technical breaches which might not necessarily endanger the safety of children. In addition, this influx would exacerbate the already serious issue of overcrowding in Queensland's correctional facilities which are in most cases, are already operating beyond their capacity.	The specific provision of the Bill in relation to extending reporting obligations is in line with CCC Recommendation 2-Revise the relevant legislation to specify that where the offender's reporting obligations are due to cease before the end of an OPO, these obligations continue to apply for the duration of the OPO. This is an important recommendation. The amendment seeks to ensure that a reportable offender, who, as a consequence of an OPO, is considered to present an immediate risk to the lives or sexual safety of children, is appropriately monitored for the entirety of the OPO period.
	concerning conduct: The QLS is concerned by the broad, ambiguous nature of the conduct that is captured by the term, concerning conduct. The examples of concerning conduct provided in the confidential consultation draft are problematic and have the potential to create unintended consequences. In their view, the prohibition of 'living near education premises' is problematic and vague. There is no clarity around the terms 'education premises' or 'near'. It is unclear, for example, whether a family day care facility or home run music or tutorial classes would constitute an education premise. If so, it would be difficult for a reportable offender to comply with their obligations as they might genuinely not know that these activities are taking place near his or her place of residence.	The specific provision of the Bill in relation to extending reporting obligations is in line with CCC Recommendation 3-amend the CPOPOA to clarify the definition of concerning conduct. The definition of concerning conduct has been further clarified in the Bill to include conduct that may be an 'offence' and may be a 'single act'. No further changes have been made. The examples in the provision are only a guide as to the types of behaviour which may be considered concerning, taking into account the respondent's previous offending history. The nature of the prohibitions which are put in place are a matter for the Courts based on the information provided by the police commissioner. It is noteworthy that the reasonable excuse defence under clause 36, section 77E of the Bill applies to a respondent who unwittingly fails to comply with a condition of an OPO. The examples that QLS refer to in the legislation are from the existing CPOPOA and have not been amended or changed. There is no indication that these particular

		examples have raised issues prior to this process.
	Recent: The QLS did not support the removal of the threshold of 'recent' as it applies to recent concerning conduct. In their view, this is an important safeguard that should not be removed.	The threshold which requires a relevant sexual offender to engage in 'recent' concerning conduct has not been removed, rather, it has been relocated. While the police commissioner does not have to reasonably believe the conduct occurred 'recently' (clause 11, 13A), the Courts must consider the timing of the conduct before an OPO can be made (clause 11, 13D).
	Conduct that may be prohibited: The QLS was concerned with clause 13F(1)(b) which provides the ability for an order to be made to prohibit the respondent from being in stated locations or a stated kind of location.	Clause 11, section 13F provides examples about the types of conduct which may be prohibited. Section 13F is a guiding provision which does not require the court to make any particular prohibition. It is a matter for the court to determine whether a prohibition applied for is appropriate in the circumstances and will reduce the risk that the offender poses to the lives or sexual safety of children. This may include a stated location, for example, a park, a school precinct etc. These prohibitions are important to reduce the opportunity for offenders to engage in precursor behaviour linked to offending. Where a prohibition relates to entering or remaining a certain place, there must be capacity for the reportable offender to remove personal property from the place.
Aboriginal and Torres Strait Islander Legal Service (ATSILS)	**UCPR and concurrent proceedings**: ATSILS questioned allowing concurrent proceedings to operate in a similar manner to other civil processes in Queensland, as 'running both criminal and civil proceedings concurrently could be interpreted as an abuse of process [and] may enable the prosecution to use the OPO proceedings to obtain fresh evidence and to test the veracity of its own evidence before the criminal proceedings occur'. The extent to which the evidence in a civil proceeding can be subsequently used in a criminal proceeding so as not to disadvantage an offender in relating to the criminal proceedings has not been properly addressed in the Preliminary Draft. ATSILS recommended the Preliminary Draft be amended to reflect the recommendations of the CCC Report.	The Draft Bill is consistent with CCC Recommendation 15- Amend the CPORA to clarify aspects of the civil application process, standard of proof and rules of evidence and allow concurrent hearings. Clause, 36, 77F of the Bill is balanced to ensure procedural fairness for concurrent hearings. In particular, the existence of OPO information can only be raised during a concurrent criminal proceeding with the leave of the court. The provision reduces the opportunity for ongoing offending to occur by allowing an OPO to be made concurrent with criminal matters associated with the OPO.
	Penalty provision for failing to comply with OPO: ATSILS question whether 5 years' imprisonment for non-compliance alone – is too severe. 'We	The Draft Bill is consistent with CCC Recommendation No 14- Amend the CPOPOA to align offence provision with the penalty for failing to comply with CPORA

	have had a recent homeless client in the Brisbane area, subject to multiple non-compliance breaches, simply by virtue of his itinerant life style. Without any further offending, it appears he is destined to be returned to prison'.	reporting obligations. This recommendation was supported by Government. A lesser penalty is counterintuitive considering a person who is subject to an OPO is considered by a court to represent an increased risk to children by virtue of the behaviours engaged it. The prosecution can elect for the matter to be heard summarily which carries a lesser penalty.
	Extending who is considered a Reportable offender: ATSILS would be strongly opposed to this provision. Their primary stance is that if an accused is sentenced in relation to an offence which is not a reportable offence, it is contrary to fairness to simply 'deem' such after the event. Indeed, given that some people commit offences which are reportable offences but which are totally out of character and a clear one-off blemish – there is logic in a reverse argument that judicial officers should have a discretion, in clearly exceptional circumstances.	Based on the results of consultation, the deeming provision in clause 7, section 5 was amended to remove the deeming provision and allow a court to make an offender reporting order if the court is satisfied the facts and circumstances surrounding the offence constitute an elements offence. Where a court does not make an offender reporting order, the police may make an application to the court within six months of sentencing for the offence. It is the intent of the provision to ensure anyone who intends or attempts to commit a reportable offence is subject to a period of reporting. It is not intended to relieve an accused of reporting requirements on the basis of a guilty plea. There are circumstances where the police commissioner can suspend reporting obligations. These circumstances are limited to age when the offence occurred, capacity to report based on a cognitive, physical or mental impairment and risk the reportable offender poses to the lives or sexual safety of children.
	Extend entry provision under 21A PPRA: ATSILS would be opposed to this provision. Section 21A PPRA currently allows a police officer to enter premises where a reportable offender generally resides to verify the offender's personal details. They would see it as constituting an unnecessary invasion of privacy to allow a police officer to access electronic devices for this stated purpose. They would be concerned that such devices would be accessed for reasons other than verifying personal information. Where such might be the intent – the police have other avenues which can be followed - but which provide certain safeguards (for example, seeking a search warrant.	Initially the Bill considered extending the entry provisions under section 21A of the PPRA. This provision has been removed following consultation and replaced with 21B, which relates to the power for police to inspect storage devices. This is contained in clause 42 of the Bill. The provision has been limited as a result of consultation to ensure that it applies only to those offenders who pose the most risk to children in the community. The provision also requires an inspection device order to be made by a magistrate where police are not authorised to undertake an inspection. Furthermore, the Minister must table a report in Parliament each year of the number and nature of inspections undertaken by the QPS. The CCC noted that police had limited capacity to manage the in house

		behaviours of offenders and that it was likely that offenders would engage in prohibited conduct. While these comments were aimed at offenders subject to an OPO, it is also true of those offenders who use the internet as a tool to offend. The new provision supports contemporary policing strategies to prevent crime by disrupting potential for further offences to be committed against children. It is considered that the rights of children outweigh the rights of sexual offenders.
Bar Association of Queensland (BAQ)	**Access information for storage devices:** The proposed new section 51B creates a new offence of failing to provide access information to an electronic storage device. Whilst the BAQ are supportive of this new provision and the safeguard of the post search warrant approval, they suggest that in order for an offence to be committed the police officer must record the making and content of the requirement in writing at the time of the request.	While it may not always feasible for QPS officers to record the requirement in writing at the time that it is made, police make notes of conversations as a matter of course during an investigation or shortly after it has occurred. Police officers often use recording devices at the time of the entry and inspection, for evidentiary purposes. QPS officers will ensure all safeguards under the police powers are complied with including the giving of the caution.

Regulatory Impact

The Queensland Productivity Commission determined that the provisions of the Bill are excluded from assessment in accordance with 3.2(iii)(i) of the Treasurer's Regulatory Impact Statement System Guidelines which is a general category of exclusion relating to police powers and administration, general criminal laws, the administration of courts and tribunals and corrective services.

Consistency with legislation of other jurisdictions

The Bill is generally consistent with other Australian jurisdictions. A number of the amendments proposed in the Bill deviate from the previously endorsed National Model Laws. However, in recent times, all Australian jurisdictions have in some way diverged from the original national framework to ensure that individual child sex offender registration schemes remain contemporary.

Divergence from the national framework was noted by the Australian New Zealand Policing Advisory Agencies (ANZPAA) in September 2012. It was recognised that at a national level an emphasis has remained on jurisdictional consistency. In this regard, the amendments proposed in the Bill align, where possible, with proposed or enacted legislation in other Australian jurisdictions and takes into account the 2011 review of the Victorian offender reporting legislation by the Victorian Law Reform Commission.

Notes on provisions

Part 1 Preliminary

Clause 1 - Short title

Clause 1 provides that the Bill, once enacted, may be cited as the *Child Protection (Offender Reporting) and Other Legislation Amendment Act 2016.*

Clause 2 - Commencement

Clause 2 states that provisions of the *Child Protection (Offender Reporting) and Other Legislation Amendment Act 2016* commence on 1 July 2017.

Part 2 Amendment of Child Protection (Offender Reporting) Act 2004

Clause 3 - Act amended

Clause 3 states that Part 2 amends the *Child Protection (Offender Reporting) Act 2004*.

Clause 4 - Amendment of section 1 (Short title)

Clause 4 removes the *Child Protection (Offender Reporting) Act 2004* as the short title of the Act and instead inserts the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* as the new short title. The new short title reflects the amalgamation of the *Child Protection (Offender Reporting) Act 2004* with the *Child Protection (Offender Prohibition Order) Act 2008.*

Clause 5 - Amendment of section 3 (Purpose of this Act)

Clause 5 amends the title of section 3 (Purpose of the Act) to 'Purposes of this Act'. The amendment reflects that, as a consequence of the amalgamation of the *Child Protection (Offender Reporting) Act 2004* and the *Child Protection (Offender Prohibition Order) Act 2008*, there is more than one purpose for the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004.*

The purpose of the *Child Protection (Offender Reporting) Act 2004* is outlined in the existing section 3(1) of that Act. This section outlines the purpose of this Act is to require particular offenders who commit sexual or particular other serious offences against children to keep police informed of their whereabouts and other personal details for a period of time, to reduce the likelihood that they will re-offend and to facilitate an investigation and prosecution of any future offences that they may commit.

Clause 5 amends section 3(1) of the *Child Protection (Offender Reporting) Act 2004* by including a statement that Parliament recognises that any risk to the lives or sexual safety of 1 or more children or of children generally, is unacceptable.

Clause 5 amalgamates the purpose of the *Child Protection (Offender Reporting) Act 2004* outlined in the existing section 3(1), with the main purpose of the existing *Child Protection (Offender Prohibition Order) Act 2008,* which is to provide for the protection of the lives of children and their sexual safety into a new subsection (1A).

Clause 5 expands section 3(2) of the *Child Protection (Offender Reporting) Act 2004*, which provides an outline of what the Act achieves, by inserting the existing section 3(2)(a) of the *Child Protection (Offender Prohibition Order) Act 2008* as the new section 3(2)(f). This new subsection clarifies that a reference to the lives or sexual safety of children should be considered to be a reference to the lives or sexual safety of 1 or more children or of children generally.

This clause also promotes the amalgamation of the *Child Protection (Offender Prohibition Order) Act 2008* with the *Child Protection (Offender Reporting) Act 2004*, by including a reference to offenders who commit particular other serious offences against children.

Clause 6 - Amendment of section 4 (Relationship between this Act and Dangerous Prisoners (Sexual Offenders) Act 2003)

Clause 6 will amend section 4(2) by requiring a reportable offender who is subject to an order under the *Dangerous Prisoners (Sexual Offenders) Act 2003* to make an initial report.

Offenders who are subject to an order under the *Dangerous Prisoners (Sexual Offenders) Act 2003* are not required to report under the existing *Child Protection (Offender Reporting) Act 2004* while a period of reporting under that order is in place. The Bill does not change this.

Clause 7 - Amendment of section 5 (Reportable offender defined)

Clause 7 expands the definition of ***reportable offender*** in section 5 (Reportable offender defined) of the *Child Protection (Offender Reporting) Act 2004* to include a person:

- who is sentenced for an offence, that is not a reportable offence, but the sentencing court declares that the facts and circumstances surrounding the offence constitute elements of a reportable offence (section 5(1)(aa)); and
- subject to an offender prohibition order (section 5(1)(e)).

Clause 7 also replaces the word 'merely' in section 5(2), as it applies to when a person may not be considered to be a reportable offender, with the word 'only'. This is an administrative change to ensure that words used in the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* align with modern drafting practices and contemporary language. The amendment does not change how section 5(2) operates.

Clause 7 inserts section 5(5A), which applies to section 5(1)(aa) allowing a court to make a declaration that it is satisfied the facts and circumstances surrounding an offence, constitute elements of a reportable offence. Section 5(5A) only operates if a court finds a person guilty of an offence that is not a reportable offence.

Clause 8 - Amendment of section 8 (When a person stops being a reportable offender)

Clause 8 amends section 8(d) of the *Child Protection (Offender Reporting) Act 2004*. This section clarifies that a person stops being a reportable offender at the end of all reporting requirements of an offender reporting order or an offender prohibition order, to which the person is subject.

Clause 9 - Amendment of section 9A (Reportable contact defined)

Clause 9 inserts a new section 9A(4) to clarify that reportable contact with a child means contact that happens in Queensland or elsewhere.

Clause - 10 Insertion of new s 10B (When a person poses a risk to children)

Clause 10 inserts a new section 10B. This section clarifies when a person poses a risk to the lives or sexual safety of 1 or more children or of children generally. A person poses a risk if there is a risk that the person will engage in conduct that may constitute a reportable offence against or in relation to a child or children.

Clause 11 - Insertion of new Part 3A

Part 3A Offender prohibition orders

Division 1 Offender prohibition orders

Subdivision 1 Prohibition Orders

Clause 11 inserts a new Part 3A (Offender prohibition orders) into the existing *Child Protection (Offender Reporting) Act 2004*. Part 3A relocates the provisions of the *Child Protection (Offender Prohibition Order) Act 2008* about offender prohibition orders as a consequence of the amalgamation of the *Child Protection (Offender Prohibition Order) Act 2008* with the *Child Protection (Offender Reporting) Act 2004.*

Part 3A, Division 1 relocates the provisions of the *Child Protection (Offender Prohibition Order) Act 2008* which relate to the processes associated with an offender prohibition order, a temporary offender prohibition order and varying or revoking an offender prohibition order.

Clause 11 inserts new Subdivision 1, Prohibition orders, which details the process associated with making an offender prohibition order.

Clause 11 – section 13A (Application)

Clause 11 inserts a new section 13A (Application) which is based on s 6(1) of the *Child Protection (Offender Prohibition Order) Act 2008.* This section allows the police commissioner to make an application for an offender prohibition order if the commissioner believes on reasonable grounds that the person, who is the subject of the application, is a relevant sexual offender and has recently engaged in concerning conduct.

Additionally, this clause updates the application process by removing the previous reference to conduct that had been recently engaged in. This allows the police commissioner to make an application for an offender prohibition order regardless of when the concerning conduct occurred.

Clause 11 also inserts a new section 13A(2) which sets out the requirements for an application for an offender prohibition order.

The requirements for an application for an offender prohibition order include:
- that the application is to be made in the approved form;
- particulars of each conviction for a reportable offence for the respondent in the application;
- the particulars of the concerning conduct, which is the subject of the application, engaged in by the respondent, including when the conduct occurred; and
- the conduct that is proposed to be prohibited by the order, including any conditions sought by the police commissioner.

Clause 11 inserts a new section 13A(3) based on the existing section 6(3) of the *Child Protection (Offender Prohibition Order) Act 2008.* This section defines concerning conduct to mean an act or omission or a course of conduct, the nature or pattern of which poses a risk to the lives or sexual safety of 1 or more children, or of children generally.

Clause 11 extends the parameters of section 13A(3) to include conduct:
(a) that constitutes an offence; and
(b) that is a single act or omission.

The amendment makes the definition of concerning conduct clearer in terms of the types of behaviour which can be considered when making an application for an offender prohibition order.

Clause 11 – section 13B (How proceeding for prohibition order is started)

Clause 11 inserts a new section 13B (How proceeding for prohibition order is started) based on section 7 (How a proceeding for an order is started) of the *Child Protection (Offender Prohibition Order) Act 2008*.

This section requires an appearance notice for a proceeding to hear an application for an offender prohibition order to be issued by the police commissioner.

Clause 11 also inserts section 13B(2) which requires the police commissioner to file an application for the proceeding for an offender prohibition order and a copy of the appearance notice for the proceeding with the registrar of the court.

Clause 11 also inserts a new section 13B(3) based on section 7(3) of the *Child Protection (Offender Prohibition Order) Act 2008.* This section requires a police officer to serve a copy of the application and appearance notice on the respondent.

Clause 11 also inserts section 13B(4) based on section 7(4) of the *Child Protection (Offender Prohibition Order) Act 2008.* This section requires a copy of the application documents to be given to the chief executive (child safety) if the application is likely to result in a child respondent needing to change their residence and a parent of a child respondent if reasonably able to be found.

Clause 11 – section 13C (Making prohibition order)

Clause 11 inserts a new section 13C (Making prohibition order) based on section 8 (Making an order) of the *Child Protection (Offender Prohibition Order) Act 2008.*

Section 13C(1) allows a court to 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, he/she poses an unacceptable risk to the lives or sexual safety of 1 or more children and making an order will reduce that risk.

Clause 11 outlines that in making a prohibition order, the court must consider matters outlined in the new section 13D (Matters court must consider before making a prohibition order).

Clause 11 inserts section 13C(2) which is based on section 8(2) of the *Child Protection (Offender Prohibition Order) Act 2008.* This section allows a court to make a prohibition order for a child respondent only after considering a report given to the court under the new section 13E and if the court is satisfied that making an offender prohibition order is the last resort and the most effective way of reducing the risk the child respondent poses to the lives or sexual safety of children.

Clause 11 amends section 13C(2) by replacing the reference to section 10 (Court must order a report before making an order for a child respondent) with section 13E (Court must order report before making prohibition order for child respondent).

Clause 11 inserts section 8(3) of the *Child Protection (Offender Prohibition Order) Act 2008* which states that it is not necessary for the court to identify a risk to a particular child, particular children or a particular class of child and renumbers this section as section 13C(3).

Clause 11 amends section 13C(3) by replacing the reference to 'a particular child, particular children or a particular class of child' with 'a particular child or particular children'. The amendment streamlines the provision. It does not impose a change in the operation or administration of the provision.

Clause 11 inserts section 8(4) of the *Child Protection (Offender Prohibition Order) Act 2008,* which allows a court to hear the application for an offender prohibition order in the absence of the respondent, if the court is satisfied that the respondent was served with the application, and renumbers section 8(4) as section 13C(4).

Clause 11 amends section 13C(4) by replacing the reference to section 7(3) (How a proceeding is started) with section 13B(3).

Clause 11 – section 13D (Matters court must consider before making prohibition order)

Clause 11 inserts a new section 13D (Matters court must consider before making prohibition order) which is based on section 9 (Matters court must consider before making an order) of the *Child Protection (Offender Prohibition Order) Act 2008*. Section 13D states the matters a court must consider before making a prohibition order.

Clause 11 expands the conditions a court must consider by inserting a new (a) into section 13D(1) which requires the courts to consider when the conduct, that is the subject of the application for a prohibition order happened. The remaining conditions as outlined in section 9 the *Child Protection (Offender Prohibition Order) Act 2008* have been renumbered in 13D(1) from (a) – (i) to (b) – (j).

Clause 11 – section 13E (Court must order report before making prohibition order for child respondent)

Clause 11 inserts a new section 13E (Court must order report before making prohibition order for child respondent) which is based on section 10 (Court must order a report before making an order for a child respondent) of the *Child Protection (Offender Prohibition Order) Act 2008.* Section 13E requires the chief executive (communities) to give the court a written report containing information, assessments and reports about the child respondent and the child respondent's family.

Clause 11 applies if the court is satisfied, on the balance of probabilities, that the child respondent is a relevant sexual offender and having regard to the nature or pattern of conduct engaged in by the child respondent, the child respondent poses an unacceptable risk to the lives or sexual safety of one or more children or of children generally and making the order will reduce the risk.

Clause 11 – section 13F (Conduct that may be prohibited)

Clause 11 inserts a new section 13F (Conduct that may be prohibited) which is based on section 11 (Conduct that may be prohibited) of the *Child Protection (Offender Prohibition Order) Act 2008.* Section 13F which provides the manner in which conduct stated in a prohibition order is prohibited.

Examples of the conduct that may be prohibited under section 13F include associating with a certain person, being in a certain location or entering or remaining in a stated place, even if the respondent has a right to be there. If the court prohibits a respondent entering or remaining in a stated place, the court may allow a respondent to recover any personal property which may be at a place the respondent is prohibited from entering.

Clause 11 – section 13G (Term of prohibition order)

Clause 11 inserts a new section 13G (Term of an order) which is based on section 12 (Term of an order) of the *Child Protection (Offender Prohibition Order) Act 2008*. Section 13G sets the term of a prohibition order and states that a prohibition order takes effect on the day notice of the order is given to the respondent and remains in force for five years for an adult respondent and two years for a child respondent.

Section 13G(2) applies section 13G(3) in circumstances where a new prohibition order is made before the end of the existing order and the new order has not been decided before the existing order ends.

Section 13G(3) allows an existing prohibition order to remain in effect until the application for a new order is decided by the court.

Section 13G(4) states that the term of a new order made for a person with an existing prohibition order commences when the existing order ends.

Section 13G(5) defines the ***term*** of an existing prohibition order that is continued because a new application for a prohibition order has commenced does not include the period extended under 13G(3).

Subdivision 2 Temporary orders

Clause 11 inserts a new Part 3A Offender prohibition orders, Subdivision 2 Temporary orders, into the *Child Protection (Offender Reporting) Act 2004*.

Clause 11 – section 13H (Definition for subdivision)

Clause 11 inserts a new section 13H (Definition for subdivision) which is based on section 13 (Definitions for div 2) of the *Child Protection (Offender Prohibition Order) Act 2008*.

Clause 11 defines ***final order****,* as an order under section 13C and ***temporary order***, as an order under section 13 as section 13H.

Clause 11 also amends section 13H by defining a final order to mean an order under section 13C(1) (which is the equivalent to the definition of a final order under section 13 of the *Child Protection (Offender Prohibition Order) Act 2008*).

However this clause does not provide a definition of ***temporary order***.

Clause 11 – section 13I (Applying for temporary order)

Clause 11 inserts a new section 13I (Applying for temporary order) which is based on section 14 of the *Child Protection (Offender Prohibition Order) Act 2008.* This section allows the police commissioner to apply for a temporary offender prohibition order if there is a reasonable belief that the respondent is a relevant sexual offender who has engaged in concerning conduct and the temporary order is necessary to prevent an immediate risk of the respondent engaging in conduct posing a risk to the lives or sexual safety of children.

Clause 11 requires an application for a temporary prohibition order to state the matters in section 13A(2), which includes the previous convictions for a reportable offence, the particulars of the alleged concerning conduct, when the alleged concerning conduct occurred and the conduct sought to be prohibited, and why the order is necessary before the final order is made.

Clause 11 allows an application for a temporary prohibition order under section 13I(3) to be made without notice being given to the respondent, or with notice in the approved form, stating when and how the application will be made and advising the respondent that he or she may be present when the application is heard and may make submissions to the magistrate.

Clause 11 applies sections 800 (Obtaining warrants, orders and authorities, etc., by telephone or similar facility), 801 (Steps after issue of prescribed authority) and 802 (Presumption about exercise of powers under prescribed authority) of the *Police Powers and Responsibilities Act 2000* to an application for a temporary prohibition, allowing an application to be made by phone, fax, radio, email or other similar facility.

Clause 11 – section 13J (Temporary order made by magistrate)

Clause 11 inserts a new section 13J (Temporary order made by magistrate) which is based on section 15 of the *Child Protection (Offender Prohibition Order) Act 2008*.

Section 13J allows a magistrate to make a temporary prohibition order if the magistrate is 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 1 or more children or of children generally and making of the order will reduce the risk.

Clause 11 also requires that the references to order in section 13C be read as a reference to temporary order and states that it is not necessary for the magistrate to be able to identify a risk to a particular child, particular children or a particular class of child and removes the

application of section 13C (2), (4) and (5) and sections13D and 13E for deciding a temporary prohibition order.

Furthermore, a temporary prohibition order is able to be made without notice being given to the respondent, if it is considered necessary by the court and only needs to be supported by information that the magistrate considers sufficient and appropriate, such as oral submissions.

When making a temporary order, section 13J(5) and (6), clause 11 requires a magistrate to fix a date, time and place for an application for a final order and the police commissioner to immediately start a proceeding for a final prohibition order under section 13B(1).

Clause 11 – section 13K (Temporary order made by court)

Clause 11 inserts a new section 13K (Temporary order made by a court) which is based on section 16 (Temporary order made by a court) of the *Child Protection (Offender Prohibition Order) Act 2008.* Section 13K allows a court to make a temporary prohibition order during a proceeding for a final prohibition order on its own initiative or on an application by another party to the proceeding.

Clause 11 also allows the court to make a temporary prohibition order during the proceedings for a final order if the court is satisfied on the balance of probabilities of the matters in section 13C(1) (Making an order), 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 1 or more children or of children generally and making of the order will reduce the risk and adjourns the proceedings after the temporary prohibition order is made.

Furthermore, clause 11 states that the references to order in section 13C(1)(b)(ii) (Making an order) are to be read as a reference to temporary order. It is not necessary for the magistrate to be able to identify a risk to a particular child, particular children or a particular class of child and that sections 13C(2), (4) and (5), 13D (Matters a court must consider before making an order) and 13E (Court must order a report before making an order for a child respondent) do not apply in the process for deciding a temporary order.

Section 13K(4) and (5) in clause 11 also states that a temporary prohibition order only needs to be supported by information that the court considers sufficient and appropriate and that temporary prohibition order may be made in the respondent's absence if the court is satisfied that the application documents for the final order were served on the respondent under section 13B(3).

Clause 11 – section 13L (Conduct that may be prohibited)

Clause 11 relocates section 17 (Conduct that may be prohibited) of the *Child Protection (Offender Prohibition Order) Act 2008* as section 13L. Section 13L applies section 13F (Conduct that may be prohibited) to a temporary prohibition order and as if a reference to a court included, for section 13J (Temporary order made by magistrate), a reference to a magistrate.

Clause 11 – section 13M (Term of temporary order)

Clause 11 inserts new section 13M (Term of temporary order) which is based on section 18 (Term of a temporary order) of the *Child Protection (Offender Prohibition Order) Act 2008*. This section provides when a temporary order takes effect and the time the temporary order remains in force.

Section 13M(1) states that a temporary prohibition order takes effect, if the respondent is present at the time, when the order is made and if the respondent is not present at the time, when a copy of the order is served on the respondent under section 13S(2) (Giving the respondent a copy of an offender prohibition order dealt with in the respondent's absence).

Section 13M(2) states that a temporary order remains in force until:

(a) if the temporary order is made under section 13J (Temporary order made by magistrate), a proceeding for a final order is not started before the return time and date fixed by a magistrate under section 13J(5);
(b) the next mention date for an application for a final order and the court does not extend the term of the temporary order under section 13N (Extending temporary order if application for final order adjourned);
(c) the prescribed period for the temporary order ends;
(d) the court decides the application for the final order;
(e) the commissioner discontinues the application for the final order; or
(f) the temporary order is revoked under section 13Q (Varying or revoking an offender prohibition order) or on appeal.

Furthermore, section 13M (3) defines ***final order*** to mean a final order for the respondent for the temporary order and ***prescribed period*** which means 28 days unless the period for the temporary order is extended under section 13N (Extending a temporary order if an application for a final order is adjourned).

Clause 11 – section 13N (Extending temporary order if application for final order adjourned)

Clause 11 relocates section 19 (Extending a temporary order if an application for a final order is adjourned) of the *Child Protection (Offender Prohibition Order) Act 2008,* which allows a court to extend the period of a temporary prohibition order if an application for a final prohibition order is adjourned and renumbers section 19 as section 13N (Extending temporary order if application for final order adjourned).

Section 13N(1) is based on section 19(1) of the *Child Protection (Offender Prohibition Order) Act 2008,* which allows this section to apply if a temporary order is in force for a respondent to an application for a final order and the court adjourns the application and the temporary order will end before the application for the final order is decided.

Section 13N(2) also allows a court to extend the temporary prohibition order, on application or on its own initiative, for not more than 28 days or a longer period if the respondent consents. A temporary prohibition order can only be extended in the respondent's absence under section 13N(3), if the court is satisfied the application documents were served on the respondent under section 13B(3)(1) (How a proceeding for an order is started).

Subdivision 3 Other provisions about offender prohibition orders

Clause 11 inserts Part 3A, Subdivision 3 (Other provisions about offender prohibition orders) into the *Child Protection (Offender Reporting) Act 2004*.

Clause 11 – section 13O (Who may be present at hearing of application)

Clause 11 relocates section 20 (Who may be present at the hearing of an application) of the *Child Protection (Offender Prohibition Order) Act 2008*, which states who may be present at a hearing of an application as section 13O (Who may be present at hearing of application).

Clause 11 inserts section 20(1) of the *Child Protection (Offender Prohibition Order) Act 2008*, which states that a magistrate hearing an application for an offender prohibition order must hear the application in the presence of the applicant, the respondent – unless the application is heard in the respondent's absence, any witness the magistrate or court allows, another person the magistrate or court considers appropriate, a lawyer representing the applicant, or a person whose presence is considered necessary or desirable for the proper conduct of the proceedings and renumbers section 20(1) as section 13O(1).

Clause 11 inserts section 20(2) of the *Child Protection (Offender Prohibition Order) Act 2008*, which states that this section does not limit section 10.24 (Representation in court) of the *Police Service Administration Act 1990* which allows any officer or service legal officer to

appear for and represent an officer in any proceedings in a Magistrates Court or Childrens Court and renumbers section 20(2) as section 13O(2).

Clause 11 – section 13P (Making order for adult respondent by consent)

Clause 11 inserts section 13P (Making order for adult respondent by consent) based on section 21 (Making an offender prohibition order for an adult respondent by consent) of the *Child Protection (Offender Prohibition Order) Act 2008.* This section allows an offender prohibition order to be made with the consent of the applicant and the adult respondent.

Section 13P(1) allows this section to apply if an application for an offender prohibition order is made to a magistrate or a court for an adult respondent.

Section 13P(2) allows the magistrate or the court to make an offender prohibition order if the applicant and the adult respondent consent to it being made.

Section 13P(3) allows a court to make an offender prohibition order irrespective of whether the court is satisfied of the matters outlined in section 13C and is not required to consider the matters in section 13D unless it is in the interests of justice to do so.

Section 13D details the matters a court must consider when before making a prohibition order under section 13C. These matters include:

- when the conduct that is subject of the proposed prohibition order happened;
- the seriousness of the reportable offences committed and whether the reportable offenders were committed in Queensland or elsewhere;
- the period since the reportable offences were committed; and
- for each reportable offence;
    - the age of the respondent, and the age of the victim of the offence, when the offence was committed;
    - the difference in age between the respondent and the victim of the offence;
- the respondent's present age;
- the seriousness of the respondent's criminal history;
- the effect of the order sought on the respondent in comparison with the level of risk of the respondent committing a reportable offence against a child;
- the respondent's circumstances –
    - to the extent the circumstances relate to the conduct sought to be prohibited;
    - including the reportable offender's accommodation, employment needs and integration into the community;
- and for a child respondent - their educational needs;
- or anything else the court considers relevant.

Section 13P includes the criteria a court must consider when deciding whether making an order under this section would be in the interests of justice. Section 13P(4) outlines these matters to include whether the adult respondent has obtained legal advice or has a cognitive disability, or a significant mental illness that requires ongoing treatment by a psychiatrist, or an alcohol or drug addiction that impairs the respondent's decision-making ability or has caused the respondent to be hospitalised. Other considerations include whether the adult respondent is illiterate or is suffering from some other condition preventing the respondent from understanding the ramifications of consenting to the proposed offender prohibition order being made. This subsection has the effect of ensuring that the court is satisfied that an adult respondent has given informed consent to the proposed offender prohibition order being made.

Finally, this clause confirms that section 13P does not limit the magistrate's or court's power under section 13C, 13J, 13K and 13Q to make an offender prohibition order or temporary offender prohibition order.

Clause 11 – section 13Q (Varying or revoking offender prohibition order)

Clause 11 relocates section 22 (Varying or revoking an offender prohibition order) of the *Child Protection (Offender Prohibition Order) Act 2008,* which allows a court to vary or revoke an offender prohibition order into the *Child Protection (Offender Reporting) Act 2004*, and renumbers section 22 as section 13Q (Varying or revoking offender prohibition order).

Clause 11 states that section 13Q(1) allows the police commissioner or a respondent to apply to a court for a variation or revocation of an offender prohibition order. However, section 13Q(2) only allows a respondent to make an application to vary or revoke an offender prohibition with the courts leave, unless the order was made in the respondent's absence.

Section 13Q(3) allows a court to grant leave to a respondent to apply to vary or revoke an offender prohibition order if it is in the interests of justice, having regard to, changes in the respondent's circumstances, or circumstances affecting the respondent since the order was made or last varied; or the respondent's accommodation, employment, health, cultural or social needs; or it is appropriate on compassionate grounds, including having regard to the respondent's culturally specific needs.

Section 13Q(4) obliges the court have regard to the matters mentioned in sections 13C and 13D to the extent that these sections are relevant, and any changes in the respondent's circumstances since the offender prohibition order was made or last varied, when deciding an application from a respondent to vary or revoke an offender prohibition order.

Section 13Q(5) in clause 11 states that a variation of an offender prohibition order takes effect, if the respondent is present at the time when the order is made and if the respondent is not present at the time, when a copy of the order is served on the respondent under section 13S(2) (Giving the respondent a copy of an offender prohibition order dealt with in the respondent's absence).

Clause 11 also states that a revocation of an offender prohibition order takes effect when it is made.

Clause 11 – section 13R (Explaining and giving notice of offender prohibition order to respondent)

Clause 11 relocates section 23 (Explaining and giving notice of an offender prohibition order to the respondent) of the *Child Protection (Offender Prohibition Order) Act 2008*, which requires a respondent to be given a copy of an offender prohibition order and an explanation of the conditions of the prohibition order, into the *Child Protection (Offender Reporting) Act 2004,* as section 13R (Explaining and giving notice of offender prohibition order to respondent).

Clause 11 inserts section 23(1) of the *Child Protection (Offender Prohibition Order) Act 2008*, which applies the provisions of section 23(2), which requires a magistrate or court to explain the obligations and consequences or an offender prohibition order, if the respondent is present when a magistrates makes an offender prohibition order or a court varies and offender prohibition order, into the *Child Protection (Offender Reporting) Act 2004,* and renumbers section 23(1) as section 13R(1).

Clause 11 inserts section 23(2) of the *Child Protection (Offender Prohibition Order) Act 2008*, which requires a magistrate or a court to take all reasonable steps to explain the respondent's obligations under the offender prohibition order or variation and the consequences for failing to comply with those obligations into the *Child Protection (Offender Reporting) Act 2004,* and renumbers section 23(2) as section 13R(2).

Clause 11 inserts section 23(3) of the *Child Protection (Offender Prohibition Order) Act 2008*, which applies subsection (4), which requires a notice of reporting obligations to be given to the respondent, if the respondent was not a reportable offender before the offender prohibition

order was made into the *Child Protection (Offender Reporting) Act 2004,* and renumbers section 23(3) as section 13R(3).

Clause 11 inserts section 23(4) of the *Child Protection (Offender Prohibition Order) Act 2008*, which requires the police commissioner to give a respondent a notice of reporting obligations (section 54 notice) as soon as practicable after the offender prohibition order is made into the *Child Protection (Offender Reporting) Act 2004,* and renumbers section 23(4) as section 13R(4).

Clause 11 inserts section 23(5) of the *Child Protection (Offender Prohibition Order) Act 2008*, which states that subsection (4) applies regardless of whether a notice of reporting obligations has been given by another entity of the police commissioner under section 54(4) (Notice to be given to reportable offender) *Child Protection (Offender Reporting) Act 2004* into the *Child Protection (Offender Reporting) Act 2004,* and renumbers section 23(5) as section 13R(5).

Clause 11 inserts section 23(6) of the *Child Protection (Offender Prohibition Order) Act 2008*, which states that a failure to give a notice to a respondent and explain the obligations and consequences of failing to comply with the offender prohibition order under subsections (2) and (4), does not affect the validity of the order into the *Child Protection (Offender Reporting) Act 2004,* and renumbers section 23(5) as section 13R(6).

Clause 11 – section 13S (Giving respondent copy of offender prohibition order dealt with in respondent's absence)

Clause 11 inserts section 13S (Giving respondent copy of offender prohibition order dealt with in respondent's absence) which is based on section 24 (Giving the respondent a copy of an offender prohibition order dealt with in the respondent's absence) of the *Child Protection (Offender Prohibition Order) Act 2008.* This section requires a magistrate or court which makes, varies or revokes an offender prohibition order in the respondent's absence to ensure that a copy of the relevant documents are given to the respondent.

Section 13S(1) applies section 13S(2) so that a police officer must serve a respondent with the documents mentioned in sections 13S(3) and 13S(4) if the respondent is absent when a magistrate or court makes, varies or revokes an offender prohibition order.

Sections 13S(3) and 13S(4) outline the documents that must be served on the respondent. These include:

- a copy of the order, making, varying or revoking an offender prohibition order; and
- if the magistrate or court makes an offender prohibition order:
    - a notice stating that, if a law of another jurisdiction provides for registration of the offender prohibition order under corresponding provisions, the offender prohibition order may be registered in the other jurisdiction; and
    - if the respondent was not a reportable offender immediately before the offender prohibition notice, a notice in accordance with section 54 of this Act.

Section 13S(5) requires the police commissioner to give a copy of an order making, varying or revoking an offender prohibition order for a child respondent to the chief executive (child safety) if the order is likely to result in a need to change the respondent's residence and the parents of the child respondent if able to be reasonably found.

Section 13S(6) declares that failure to comply with the service provisions under subsections (2) to (5) do not affect the validity of the offender prohibition order.

Section 13S(7) defines ***corresponding provisions*** to mean provisions corresponding to division 2 (Corresponding orders).

Clause 11 – section 13T (Making disqualification order instead of temporary order)

Clause 11 inserts section 13T (Making disqualification order instead of temporary order) which is based on section 25 (Making disqualification order instead of temporary order) of the *Child*

Protection (Offender Prohibition Order) Act 2008. This section allows a magistrate or a court to make a disqualification order under the *Working with Children (Risk Management and Screening) Act 2000.*

Section 13T(1) provides that section 13T applies where a magistrate hearing an application for a temporary order decides not to make the temporary order or a court hearing an application for an offender prohibition order and the court has not made a final offender prohibition order and decides not to make a temporary order under section 13K.

Section 13T(2) obliges the court to consider whether to make a disqualification order in stating that the person, subject to the proceeding, cannot hold a positive notice or positive exemption notice or apply for a notice under the *Working with Children (Risk Management and Screening) Act 2000*.

Section 13T(3) provides that a magistrate or court may make a disqualification order only if it considers it would not be in the interests of children for a positive notice or positive exemption notice to be issued to the person.

Section 13T(4) provides that if the relevant application is made under section 13I, section 13J (Temporary order made by a magistrate), subsections (3) to (7) will apply to the making of a disqualification order. If the application is made under section 13K (Temporary order made by a court), subsections (4) and (5) will apply to the making of the disqualification order.

Section 13T(6) requires a police officer to serve a copy of the disqualification order on the person, who was the subject of the proceeding, if the person was not present when the disqualification order was made.

Clause 11 – section 13U (Term of disqualification order)

Clause 11 inserts section 26 (Term of disqualification order) of the *Child Protection (Offender Prohibition Order) Act 2008*, which provides when a disqualification order takes effect and the period for which it remains in force as section 13U (Term of disqualification order).

Section 13U(1) states that a disqualification order takes effect when the order is made, if the person, who is the subject of the proceeding, is present in court, or if the person, who is the subject of the proceeding is not present in court, when a copy of the order is served on the person under section 13T(6) (Making disqualification order instead of temporary order) as section 13U(1).

Clause 11 allows a disqualification order to remain in force until the following occurs:

(a) if the disqualification order is made by a magistrate hearing an application for a final offender prohibition order:
   - proceeding for a final order in section 13J(5) (Temporary order made by magistrate) is not started before the return time and date for a proceeding for a final order;

(b) the court does not extend the term of the disqualification order under section 13V (Extending a disqualification order if an application for a final order is adjourned) until the next mention date for a proceeding for a final order;

(c) the prescribed period for the disqualification order ends;

(d) the court decides the application for a final offender prohibition order;

(e) the commissioner discontinues the application for the final offender prohibition order;

(f) the disqualification order is revoked under section 13W (Revoking a disqualification order).

Clause 11 also defines terms for section 13U in subsection (3). ***Final order*** means a final order for the person and ***prescribed period*** means 28 days if the court does not extend the term of the disqualification order under section 13V or the period for which the disqualification order is extended under section 13V.

Clause 11 – section 13V (Extending disqualification order if application for final order adjourned).

Clause 11 inserts section 13V (Extending disqualification order if application for final order adjourned) which is based on section 27 (Extending a disqualification order if an application for a final order is adjourned) of the *Child Protection (Offender Prohibition Order) Act 2008.* This section applies section 13N to a disqualification order as if references in that section to a temporary order were a reference to the disqualification order; and references in that section to the respondent was a reference to the person subject to the disqualification order.

Clause 11 – section 13W (Revoking disqualification order)

Clause 11 inserts section 13W (Revoking disqualification order) which is based on section 28 (Revoking a disqualification order) of the *Child Protection (Offender Prohibition Order) Act 2008.* This section allows a court to revoke a disqualification order.

Section 13W(1) allows a person who is subject to a disqualification to apply to a court to revoke the order.

Section 13W(2) requires a person subject to a disqualification order to seek the courts leave to make an application to revoke a disqualification order, unless the disqualification was made in the person's absence.

Section 13W(3) provides that the court may grant leave to a person to apply for a revocation of a disqualification order if the court is satisfied that it is in the interests of justice to do so.

Section 13W(4) requires a court deciding the application to revoke the disqualification order to have regard as to whether it would be in the interests of children for the chief executive (justice) to issue a positive notice or positive exemption notice to the subject person.

Section 13V(5) declares that a revocation takes effect when it is made.

Clause 11 – section 13X (Costs)

Clause 11 inserts section 13X (Costs) which is based on section 29 (Costs) of the *Child Protection (Offender Prohibition Order) Act 2008.*This section states that a court must not award costs on an application for an offender prohibition order or for a variation or revocation of an offender prohibition order unless that application is dismissed by the court as frivolous, vexatious or an abuse of power.

Division 2 Corresponding order

Clause 11 inserts Part 3A, Division 2 (Corresponding order) of the *Child Protection (Offender Prohibition Order) Act 2008,* which details the process for registering and amending an offender prohibition order from a foreign jurisdiction.

Clause 11 – section 13Y (Application for registration of corresponding order in Queensland)

Clause 11 inserts the new section 13Y (Application for registration of corresponding order in Queensland) which is based on section 30 (Application for registration of a corresponding order in Queensland) of the *Child Protection (Offender Prohibition Order) Act 2008.* This section authorises the police commissioner to apply in the approved form to the registrar of a Magistrates Court (registrar) for the registration of a corresponding order.

Clause 11 – section 13Z (Registration of corresponding order)

Clause 11 inserts section 13Z (Registration of corresponding order) which is based on section 31 (Registration of a corresponding order) of the *Child Protection (Offender Prohibition Order) Act 2008.*

Sections 13Z(1) and (2) require a registrar, subject to subsections (3) to (10), to register a corresponding order if the registrar is satisfied:

- the corresponding order in in force; and
- the corresponding order was served or taken to be served on the person under the law of the jurisdiction it was made.

Section 13Z(3) requires the registrar to refer the corresponding order to the court to be adapted or modified if the registrar believes that it is necessary to do so or the police commissioner asks the registrar to do so.

Section 13Z(4) requires a police officer to serve a copy of an application for the registration of a corresponding offender prohibition order and an appearance notice on the applicant, if the corresponding order is referred to the court.

Section 13Z(5) allows the application to register a corresponding offender prohibition order to be heard in the respondent's absence if the court is satisfied that a copy of the application and appearance notice were served on the respondent.

Section 13Z(6) allows the court to require the police commissioner to give the respondent a further appearance notice, before the court decides the application.

Section 13Z(7) applies section 13O (Who may be present at the hearing of an application) to the hearing for any variation of the corresponding order as if it were a hearing for an offender prohibition order.

Section 13Z(8) allows the court to vary the corresponding order for the purposes of its registration by adapting the order or modifying the order in a way the court considers necessary or desirable for its effective operation.

Section 13Z(9) obliges the court, before varying the corresponding order, to consider anything under sections 13C (Making prohibition order) and 13D (Matters court must consider before making prohibition order) on an application for an order under section 13C and any changes in the respondent's circumstances since the commencement of the corresponding order.

Sections 13C and 13D detail the matters a court must have regard to when considering an application for an offender prohibition order. These matters include:

- whether the respondent is a relevant sexual offender; and
- having regard to conduct engaged in, whether the respondent poses an unacceptable risk to the lives or sexual safety of children and the making of the order will reduce the risk;
- the seriousness of the reportable offences committed;
- whether the reportable offences were committed in Queensland or elsewhere;
- the period since the reportable offences were committed
- and for each reportable offence:
    - the age of the respondent,
    - and the age of the victim of the offence,
    - when the offence was committed;
    - the difference in age between the respondent and the victim of the offence;
    - the respondent's present age;
    - the seriousness of the respondent's criminal history;
- the effect of the order sought on the respondent in comparison with the level of risk of the respondent committing a reportable offence against a child;
- the respondent's circumstances, to the extent the circumstances relate to the conduct sought to be prohibited;
- a child respondent's educational needs;
- or anything else the court considers relevant.

Section 13Z(10) requires the registrar to register the corresponding order as varied by the court.

Section 13Z(11) states that a registered corresponding order is registered for the period the original corresponding order is in force.

Section 13Z(12) states that a regulation may prescribe the way the registrar is to register a corresponding order or a varied corresponding order and may also provide for the keeping of the register and access to it.

Section 13Z(13) provides a definition of ***appearance notice*** for this section. An *appearance notice* means a notice, in the approved form, stating that:

- an application for registration of a corresponding order has been referred to the court;
- when and where the application will be heard;
- that the respondent is required to attend the hearing;
- that the court may register the corresponding order or a varied version of the corresponding order in the absence of the respondent, if the respondent fails to appear for the hearing.

Clause 11 – section 13ZA (Action by registrar and police commissioner after registration of corresponding order)

Clause 11 inserts section 13ZA (Action by the registrar and commissioner after registration of corresponding order) which is based on section 32 (Action by the registrar and commissioner after registration of a corresponding order) of the *Child Protection (Offender Prohibition Order) Act 2008.* This section outlines the actions required by the registrar of the court and the police commissioner to facilitate service of a registered corresponding order.

Section 13ZA(1) requires the registrar to give a certificate of registration and a copy of a corresponding offender prohibition order not more than two business days after the order is registered to the police commissioner.

Section 13ZA(2) states that the registrar may not ask the commissioner for any fee or reimbursement for any expenses incurred under this division.

Section 13ZA(3) requires the commissioner to serve a copy of the registered corresponding order on the respondent and if the respondent for the registered corresponding order was not a reportable offender immediately prior to its registration, a copy of a notice of reporting obligations (section 54 notice).

This clause also inserts a note for that under section 13ZB(1)(a) the registered corresponding order has the same effect as a prohibition order.

Section 13ZA(4) requires the police commissioner to give a copy of the order, as soon as practicable, to:

- the chief executive (child safety) if the order is for a child respondent and it is likely to result in the child respondent needing to change their place of residence; and
- a parent of the child.

Section 13ZA(5) states that failure to comply with subsections (3) and (4) of this section does not affect the validity of the registration of the corresponding order.

Clause 11 – section 13ZB (Effect of registration of corresponding order)

Clause 11 inserts 13ZB (Effect of registration of corresponding order) which mirrors section 33 (Effect of registration of a corresponding order) of the *Child Protection (Offender Prohibition Order) Act 2008.*

Section 13ZB(1) states that a registered corresponding order has the same effect as a prohibition order and may be enforced against the respondent as if it were a prohibition order made under this part.

Section 13ZB(2) states that subsection (1) of this section has effect even if the corresponding order was registered in the respondent's absence.

Section 13ZB(3) applies section 13ZA(4) if the corresponding offender prohibition order was varied in the respondent's absence and the respondent has not been notified of the variation into the *Child Protection (Offender Reporting) Act 2004,* and renumbers section 33(3) as section 13ZB(3).

Section 13ZB(4) provides that despite subsection (2), until the respondent is notified of the variation, the registered corresponding order is enforceable as if it had not been varied.

Clause 11 – section 13ZC (Varying registered corresponding order)

Clause 11 inserts section 13ZC (Varying registered corresponding order) which is based on section 34 (Varying a registered corresponding order) of the *Child Protection (Offender Prohibition Order) Act 2008.* This section allows the police commissioner or the respondent to apply to the court to vary a registered corresponding order.

Section 13ZC(1) allows the police commissioner or the respondent to apply to the court under the relevant rules of the court for a variation of a registered corresponding order.

Section 13ZC(2) requires the court to consider anything under sections 13C (Making prohibition order) and 13D (Matters court must consider before making prohibition order) on an application to vary a registered corresponding order and any changes in the respondent's circumstances since the registration of the registered corresponding order.

Sections 13C and 13D detail the matters a court must have regard to when considering an application for an offender prohibition order. These matters include:

- whether the respondent is a relevant sexual offender; and
- having regard to conduct engaged in, whether the respondent poses an unacceptable risk to the lives or sexual safety of children and the making of the order will reduce the risk;
- the seriousness of the reportable offences committed;
- whether the reportable offences were committed in Queensland or elsewhere;
- the period since the reportable offences were committed
- and for each reportable offence:
    - the age of the respondent,
    - and the age of the victim of the offence,
    - when the offence was committed;
    - the difference in age between the respondent and the victim of the offence;
    - the respondent's present age;
    - the seriousness of the respondent's criminal history;
- the effect of the order sought on the respondent in comparison with the level of risk of the respondent committing a reportable offence against a child;
- the respondent's circumstances, to the extent the circumstances relate to the conduct sought to be prohibited;
- a child respondent's educational needs;
- or anything else the court considers relevant.

Section 13ZC(3) applies section 13Q(2), (3) and (5) to an application to vary a registered corresponding order as if a reference to an offender prohibition order were a reference to a registered corresponding order.

Clause 11 – section 13ZD (Cancelling registration of registered corresponding order)

Clause 11 inserts section 13ZD (Cancelling the registration of registered corresponding order) which is based on section 35 (Cancelling the registration of a registered corresponding order) of the *Child Protection (*Offender *Prohibition Order) Act 2008*. This section allows the police commissioner or the respondent to apply to the court for an order to cancel the registration of a registered corresponding order.

Section 13ZD(2) requires the court to consider anything under sections 13C (Making prohibition order) and 13D (Matters court must consider before making prohibition order) on an application to cancel a registered corresponding order and any changes in the respondent's circumstances since the registration of the registered corresponding order.

Sections 13C and 13D detail the matters a court must have regard to when considering an application for an offender prohibition order. These matters include:

- whether the respondent is a relevant sexual offender; and
- having regard to conduct engaged in, whether the respondent poses an unacceptable risk to the lives or sexual safety of children and the making of the order will reduce the risk;
- the seriousness of the reportable offences committed;
- whether the reportable offences were committed in Queensland or elsewhere;
- the period since the reportable offences were committed
- and for each reportable offence:
    - the age of the respondent,
    - and the age of the victim of the offence,
    - when the offence was committed;
    - the difference in age between the respondent and the victim of the offence;
    - the respondent's present age;
    - the seriousness of the respondent's criminal history;
- the effect of the order sought on the respondent in comparison with the level of risk of the respondent committing a reportable offence against a child;
- the respondent's circumstances, to the extent the circumstances relate to the conduct sought to be prohibited;
- a child respondent's educational needs;
- or anything else the court considers relevant.

Section 13ZD(3) applies section 13Q(2) and (3) to an application to cancel a registered corresponding order as if a reference to an offender prohibition order were a reference to a registered corresponding order.

Clause 11 inserts section 13ZD(4) which states that a corresponding order or varied corresponding order ceases to have effect if the court cancels the registration of the registered corresponding order.

Division 3 Reportable offender obligations

Clause 11 inserts Part 3A, Division 3 (Reportable offender obligations) which details the reporting obligations of a respondent to an offender prohibition order.

Clause 11 – section 13ZE (Offender reporting requirement after offender prohibition order made)

Clause 11 inserts section 13ZE (Offender reporting requirement after offender prohibition order made) which is based on section 36 (Offender reporting requirement after an offender prohibition order is made) of the *Child Protection (Offender Prohibition Order) Act 2008.* This

section states that a respondent to an offender prohibition order is taken to be a reportable offender.

Clause 11 states that if a court makes an offender prohibition order for a respondent who is not a reportable offender:

- the respondent becomes a reportable offender; and
- the period of reporting is taken to be the period for which the offender prohibition order has effect.

Section 13ZE(2) states that the length of the respondent's reporting period is not effected by sections 36 (Length of reporting period) and 37 (Reduced period applies for child reportable offenders).

Clause 11 – section 13ZF (Offender reporting requirement after registration of corresponding order)

Clause 11 inserts section 13ZF (Offender reporting requirement after the registration of corresponding order) which is based on section 37 (Offender reporting requirement after the registration of a corresponding order). This section states that a respondent for a registered corresponding order becomes a reportable offender when the corresponding order is registered.

Section 13ZF(1) states that if a respondent for a registered corresponding order is not a reportable offender before the registration of the corresponding order:

- the respondent is taken to be a reportable offender; and
- the registered corresponding offender prohibition order is taken to be an offender reporting order; and
- the period of reporting is taken to be:
    - five years or the period for which the registered corresponding order has effect, whichever is the shorter for an adult respondent; or
    - two years or the period for which the registered corresponding order has effect, whichever is the shorter for a child respondent.

Clause 11 inserts section 13ZF(2) which states that the length of a reporting period for a registered corresponding order has effect despite sections 36 (Length of reporting period) and 37 (Reduced period applies for child reportable offenders).

Division 4 Appeals

Clause 11 inserts Part 3A, Division 4 (Appeals) which sets out the appeals process for an offender prohibition order.

Clause 11 – section 13ZG (Who may appeal)

Clause 11 inserts section 13ZG (Who may appeal) which is based on section 52 (Who may appeal) of the *Child Protection (Offender Prohibition Order) Act 2008.* This section allows the commissioner or the respondent for an offender prohibition order or a registered corresponding order to appeal a decision made by a court in relation to the order. This section provides a respondent may appeal to the District Court unless the respondent is a child. In that case, the child respondent may appeal to a Childrens Court judge.

Clause 11 – section 13ZH (Starting appeal)

Clause 11 inserts section 53 (Starting appeal) of the *Child Protection (Offender Prohibition Order) Act 2008*, which requires an appeal to be started within 28 days of the relevant decision of the court is made or if the relevant decision of the court was made in the respondent's absence, the day a copy of the order resulting from the relevant decision of the court was served on the respondent as section 13ZH.

Clause 11 allows the appeal court to extend the appeal period upon application and states that the appeal may be started by filing a notice of appeal in writing with the registrar of the appeal court.

Section 13ZH(4) in clause 11 allows substituted service of a copy of the notice of appeal on the respondent if it appears to the appeal court that it is not reasonably practicable to serve a copy of the notice of the appeal on the respondent.

Clause 11 requires the appeal to be held in the presence of the appellant, the respondent, any witness the appeal court allows, anyone else the appeal court considers appropriate and allows to be present, such as the parent of a child respondent, or a lawyer representing the appellant, the respondent or a witness.

Clause 11 – section 13ZI (Nature of appeal)

Clause 11 inserts section 13ZI (Nature of appeal) which is based on section 54 (Nature of an appeal) of the *Child Protection (Offender Prohibition Order) Act 2008.* This section outlines the rules of court which will apply to an appeal of an offender prohibition order or a registered corresponding order.

Clause 11, section 13ZI(1) states that an appeal is by way of rehearing and is subject to section 13ZH (Starting an appeal), under the *Uniform Civil Procedure Rules 1999,* or to the extent the rules cannot be applied to the appeal, in accordance with directions of the Childrens Court, for a child respondent or otherwise the District Court.

Section 13ZI(2) states that further evidence may not be admitted on the appeal, despite the provisions of subsection (1).

Section 13ZI(3) states that an appeal against a relevant decision does not stay the operation of the relevant order unless specified by the appeal court.

Clause 11 – section 13ZJ (Powers on appeal)

Clause 11 inserts section 13ZJ (Powers on appeal) which is based on section 55 (Powers on an appeal) of the *Child Protection (Offender Prohibition Order) Act 2008.* This section allows the appeal court to make, vary or revoke an offender prohibition order or make another order or decision as it sees fit.

Clause 11 inserts section 13ZJ(1) which allows the appeal court, on an appeal against a relevant decision, to make, vary or revoke an offender prohibition order as the court considers appropriate, or make another order or decision the appeal court considers should have been made.

Clause 11 also inserts section 13ZJ(2) which allows the appeal court to register or revoke the registration of a corresponding order or variation of the registered corresponding order or make another order or a decision the court considers should have been made.

Clause 11 inserts section 13ZK(3) which states that a decision made by the appeal court under subsections (1)(b) or (2)(b), takes effect when it is made.

Clause – section 13ZK (Court may not award costs unless application is frivolous or vexatious or another abuse of process)

Clause 11 inserts section 13ZK (Court may not award costs unless an application is frivolous or vexatious or another abuse of process) which states that an appeal court must not award costs on an appeal unless the appeal court dismisses the application as frivolous or vexatious or another abuse of process. This section is based on section 56 (Court may not award costs unless application is frivolous or vexatious or another abuse of process) of the *Child Protection (Offender Prohibition Order) Act 2008*.

Division 5 Miscellaneous

Clause 11 inserts Part 3A, Division 6 (Miscellaneous) which includes service of documents, the application of filing fees and the approval of forms relevant to an offender prohibition order.

Clause 11 – section 13ZL (Service of documents)

Clause 11 inserts section 13ZL (Service of documents) which is based on section 57 (Service of documents) of the *Child Protection (Offender Prohibition Order) Act 2008.* Section13ZL(1) applies if a provision of this part requires a police officer to serve a document on a respondent for a proposed offender prohibition order, an offender prohibition order, a corresponding order or a registered corresponding order.

This clause states that this section also applies for the purpose of serving a notice on a respondent in relation to an application for a temporary order.

Section 13ZL(3) requires the document to be served personally on the respondent. However, section 13ZL(4) authorises the police commissioner to apply to a court to authorise substituted service in circumstances where reasonable attempts have been made to personally serve a document on the respondent.

Section 13ZL(5) allows the court to authorise another way of serving a document, for example, personal service on a relative, if it appears to the court that it is not reasonably practicable to serve the document personally on the respondent.

Clause 11 inserts section 13ZL(6) which states that when an appearance notice is served personally on the respondent, the police officer must explain the contents of the appearance notice to the respondent in language likely to be understood by the respondent, having regard to the respondent's age, cultural, educational and social background.

Section 13ZL(7) states that a document served personally on a child respondent must be served as discreetly as possible and must not be served on the child at or near the child's place of employment or school unless there is no other place where the document may be reasonably served on the child.

Clause 11 – section 13ZM (No filing fee is payable)

Clause 11 inserts section 13ZM (No filing fee is payable) which is based on section 58 (No filing fee is payable) of the *Child Protection (Offender Prohibition Order) Act 2008.* This section states that a fee is not payable for making an application or filing another document under this Act.

Clause 11 – section 13ZN (Approval of forms)

Clause 11 inserts section 13ZN (Approval of forms) which is based on section 59 (Approval of forms) of the *Child Protection (Offender Prohibition Order) Act 2008.* This section states that the commissioner may approve forms for use under this Act.

Clause 12 - Amendment of section 19A (Reporting changes in personal details)

Clause 12 amends section 19A(2) of the *Child Protection (Offender Reporting) Act 2004* by removing the reference to 'within 7 days after entering and remaining in Queensland for 7 or more consecutive days not counting any days' and replacing it with '48 hours after entering and remaining in Queensland for 48 consecutive hours, not counting any time' as it applies to reporting a change in personal details which occurs while the reportable offender is outside of Queensland.

The reference to not counting any 'time' or 'day' refers to the time spent in government detention.

Clause 12 inserts a new subsection (5) which defines ***change*** for the purposes of section 19A to include a reportable offender's personal details, including the end of the personal details applying to the offender.

Clause 12 inserts an example for change in section 19A(5). The example refers to a reportable offender advising the police commissioner of the details of a car purchase by the reportable offender and states that the sale of the car is a change in the offender's reporting details which must be reported.

Clause 13 - Amendment of section 20 (Intended absence from Queensland to be reported)

Clause 13 amends section 20(1)(a) of the *Child Protection (Offender Reporting) Act 2004* by removing the reference to 'intends to leave Queensland for 7 or more consecutive days to travel elsewhere in Australia' and replaces it with 'intends to leave Queensland for 48 or more consecutive hours to travel elsewhere in Australia'.

Clause 13 inserts a note into section 20(1)(a) *Child Protection (Offender Reporting) Act 2004* which states that section 23 applies if a reportable offender intends to leave Queensland to travel elsewhere in Australia on an average of at least once a month (irrespective of the length of the absence).

Clause 13 amends section 20(2) *Child Protection (Offender Reporting) Act 2004* by inserting subsection (a) which requires a reportable offender to report the details of any child the reportable offender intends to leave Queensland with or intends to have reportable contact with while outside of Queensland.

Clause 14 - Amendment of section 21 (Change of travel plans while out of Queensland to be given)

Clause 14 amends section 21(1)(a) and 21(2) *Child Protection (Offender Reporting) Act 2004* by removing the reference to 7 days as it applies to a reportable offender's decision to extend a stay outside of Queensland. Clause 14 requires a reportable offender to report a stay outside of Queensland beyond 48 hours within 48 hours of making the decision.

Clause 15 - Amendment of section 22 (Reportable offender to report return to Queensland or decision not to leave)

Clause 15 amends section 22(2) of the *Child Protection (Offender Reporting) Act 2004* by removing the words '7 days after entering and remaining in Queensland for 7 or more consecutive days not counting any days' as they apply to a reportable offender's return to Queensland and replaces them with '48 hours after entering and remaining in Queensland for 48 consecutive hours, not counting any time'.

Clause 15 amends section 22(4) of the *Child Protection (Offender Reporting) Act 2004* by removing the words '7 days' as they apply to a requirement for a reportable offender to report a decision not to leave Queensland and replaces them with '48 hours'.

Clause 16 - Amendment of section 23 (Report of other absences from Queensland)

Clause 16 amends the heading in section 23 of *Child Protection (Offender Reporting) Act 2004* from 'other' to 'recurring' as it applies to frequently occurring travel outside of Queensland.

Clause 16 amends section 23(2)(b) of the *Child Protection (Offender Reporting) Act 2004* to require a reportable offender to report any travel with a child.

Clause 16 inserts a note into section 23(3) to state that a reportable offender is not required to make another report under section 23 unless the information that is required to be reported under subsection (2) changes.

Clause 16 amends section 23(4)(a)(i) by removing the reference to '7 days' as it applies to a change that happens outside of Queensland and replacing it with '48 hours'.

Clause 16 amends section 23(4)(b) by inserting 'travel with a child' as it applies to travel outside of Queensland.

Clause 17 - Amendment of section 28 (Receipt of information to be acknowledged)

Clause 17 amends section 28 of the *Child Protection (Offender Reporting) Act 2004* by removing subsection (2)(c)(i) which requires a receipt, given to a reportable offender at the conclusion of a report to include the name and signature of the person receiving the report.

Clause 18 - Amendment of section 30 (Power to take fingerprints)

Clause 18 amends section 30 of the *Child Protection (Offender Reporting) Act 2004* by replacing subsection (1) and inserting subsection (1)(a) to allow a police officer to take fingerprints from a reportable offender after receiving a notice of reporting obligations (section 54 notice).

Clause 18 relocates section 30(1) of the *Child Protection (Offender Reporting) Act 2004* to section 30(1)(b).

Clause 19 - Amendment of section 31 (Power to take photographs)

Clause 19 amends section 31 of the *Child Protection (Offender Reporting) Act 2004* by removing the words 'receiving a report made in person under this part may require the reportable offender' and replacing them with the words 'may require a reportable offender' as it applies to taking photographs of a reportable offender. The amendment removes the obligation for photographs to be taken when a reportable offender makes a report in person at a police station.

Clause 19 inserts a new subsection (3) into section 31 of the *Child Protection (Offender Reporting) Act 2004* which states that 'a police officer may photograph any documents or other information that a reportable offender is required to report under this part'.

Clause 19 inserts an example into section 31(3) to state that a police officer may photograph a car that a reportable offender has reported as just having been bought by the reportable offender.

Clause 20 - Amendment of section 35 (When reporting obligations begin)

Clause 20 extends section 35(1)(b)(ii) of the *Child Protection (Offender Reporting) Act 2004* to include an offender prohibition order. Accordingly, a respondent subject to an offender prohibition order will commence their reporting obligations when the offender prohibition order is imposed.

Clause 21 - Amendment of section 36 (Length of reporting period)

Clause 21 replaces section 36(4) of the *Child Protection (Offender Reporting) Act 2004* which states that 2 or more offences that arise from the same incident are to be treated as a single offence; and 2 or more offences that arise from the same incident are to be treated as a single class 1 offence if at least 1 of those offences is a class 1 offence.

The new section 36(4) states that 2 or more offences that arise from the same incident are to be treated as a single offence.

The references to classes of offences is no longer relevant under the *Child Protection (Offender Reporting) Act 2004*. The amendment ensures that the information in the *Child Protection (Offender Reporting) Act 2004* is relevant.

Clause 22 – new sections 51A to 51C

Clauses 22 inserts new sections 51A (Failing to comply with offender prohibition order), 51B (Access information for storage devices) and 51C (Prohibition on disclosing protected information) into the *Child Protection (Offender Reporting) Act 2004*. Sections 51A to 51C include sections 38 (Failing to comply with an offender prohibition order) and 41 (Prohibition on disclosing protected information) of the *Child Protection (Offender Prohibition Order) Act 2008* and a new provision, section 51B to require access information.

Clause 22 – section 51A (Failing to comply with offender prohibition order)

Clause 22 inserts a new section 51A (Failing to comply with offender prohibition order) which is based on section 38 of the *Child Protection (Offender Prohibition Order) Act 2008.* This section states that a respondent for an offender prohibition order must not contravene the offender prohibition order without a reasonable excuse.

The penalty associated with failing to comply with an offender prohibition order has been increased in the new section 51A to a maximum penalty of 300 penalty units or 5 years imprisonment. The offence has also been elevated to an indictable offence.

Clause 22 also states that if an issue is raised regarding knowledge of the offender prohibition order, it is enough to prove that the respondent was present in court when the order was made, or the respondent was served personally with a copy of the order, or a police officer told the respondent about the existence of the order.

Clause 22 inserts a new subsection (2) for section 51A, which states that an offence against subsection (1), which is failing to comply with an offender prohibition order, is a crime.

Section 51A(4) provides that a respondent for a registered corresponding order must not contravene that order without a reasonable excuse.

The penalty associated with failing to comply with an offender prohibition order has been increased in the new section 51A to a maximum penalty of 300 penalty units or 5 years imprisonment. The offence has also been elevated to an indictable offence.

Clause 22 inserts a new section (5) into section 51A which states that an offence against section 51A(4) which states that an offence against subsection (4), which is failing to comply with a registered corresponding offender prohibition order, is a crime.

If an issue is raised regarding knowledge of the registered corresponding offender prohibition order, clause 22, section 51A(6) states it is enough to prove that the respondent was present in court when the order was made and the corresponding order stated that it could be registered in another jurisdiction, or the respondent was served personally with a copy of the order and the corresponding order stated that it could be registered in another jurisdiction, or a police officer told the respondent about the existence of the order including that the that the order was registered in this jurisdiction, or that the respondent out to have known that the corresponding order was registered in this jurisdiction.

Clause 22 inserts a definition for ***police officer*** which for subsection (6)(c) includes a member of the police force of the jurisdiction where the registered corresponding order was made into the *Child Protection (Offender Reporting) Act 2004* in section 51A(7).

Clause 22 – section 51B (Access information for storage device)

Clause 22 inserts a new section 51B (Access information to storage device) to require a reportable offender to provide access information to a storage device that is in the possession of the reportable offender or to which the reportable offender has access.

Clause 22 inserts section 51B(1) which applies if an authorised police officer suspects, on reasonable grounds, that a reportable offender has committed an indictable offence under this Act.

Clause 22 inserts section 51B(2) which allows the authorised police officer to require the reportable offender to give a police officer access to a storage device that is in the offender's possession; or to which the offender has access; or give an authorised police officer access information, and any other information or help, necessary for the police officer to gain access to information stored on the device; or allow the police officer to use the access information to gain access to the information stored on the device; or examine the information stored on the device, including by using a software program on the device, to find out whether the information may be relevant evidence; or make a copy of information stored on the device that

may be relevant evidence, including by using another storage device; or convert information stored on the device that may be relevant evidence into documentary form, or another form, that enables the information to be understood by a person.

Clause 22 inserts section 51B(3) which requires a reportable offender to comply with the requirement for access information unless the reportable offender has a reasonable excuse. The maximum penalty for failing to comply with a requirement for access information is up to 300 penalty units or 5 years imprisonment.

Clause 22 states that an offence under section 51B(3) is a crime.

Clause 22 inserts section 51B(5) which makes it clear that it is not a reasonable excuse to fail to comply with the requirement on the basis that complying might tend to incriminate the reportable offender or expose the reportable offender to a penalty.

Clause 22 inserts section 51B(6) which applies sections 160 (Search to prevent loss of evidence), 161 (Post-search approval), 162 (Making of post-search approval order) and 163 (Appeal) of the *Police Powers and Responsibilities Act 2000* to a police officer exercising powers under section 51B(2).

Clause 22 inserts section 51B(7) to state that the reportable offender does not commit an offence unless a magistrate has made a post-search approval order under the *Police Powers and Responsibilities Act 2000.*

Clause 22 inserts section 51B(8) which requires the police officer to inform the reportable offender, in a way that is reasonable in the circumstances, that the offender must comply with the requirement even though complying might tend to incriminate the offender or expose the offender to a penalty.

Clause 22 inserts section 51B(9) which states that if a court convicts a reportable offender of an offence against subsection (3), the court may, as well as imposing a penalty for the offence, order the offender to comply with the requirement.

Clause 22 inserts section 51B(10) which defines terms used in section 51B. For section 51B ***access information*** means information that is necessary for a person to access and read and is information that is stored electronically on a storage device; or may be accessed through a storage device;

authorised police officer means a police officer authorised in writing by the police commissioner to exercise a power under this Act;

relevant evidence means evidence of the commission of a reportable offence; or an offence against this Act.

storage device means a device on which information may be stored electronically (like a smart phone, for example); or through which information may be accessed (from the cloud, for example);

stored, in relation to information, means the information is stored on, or accessible through, a storage device.

Clause 22 – section 51C (Prohibition on disclosing protected information)

Clause 22 inserts a new section 51C (Prohibition on disclosing protected information) which is based on section 41 (Prohibition on disclosing particular matter) of the *Child Protection (Offender Prohibition Order) Act 2008*. Section 51C prohibits a person who obtains protected information because of their involvement with the administration of part 3A disclosing that information unless the following circumstances apply:

(a) a disclosure authorised by a magistrate or court in a proceeding under this Act;
(b) a disclosure authorised under an offender prohibition order or registered corresponding order;

(c) the disclosure by a person identifying himself or herself as a person mentioned in relation to any matter under this Act;
(d) a disclosure made in a proceeding before a court or tribunal;
(e) a disclosure to a respondent made for the purposes of the administration of this Act or the operation of the relevant offender prohibition order or registered corresponding order;
(f) a disclosure to a police officer, or someone else who is a member of a law enforcement agency of the State or of the Commonwealth or another State, for the purpose of the performance of the police officer's or other person's functions;
(g) a disclosure made for the purpose of an Act the operation of which requires the disclosure;
(h) a disclosure to a person involved in the respondent's assessment and management under an Act;
Example—
a corrective services officer under the Corrective Services Act 2006
(i) a disclosure to a lawyer representing a person who is or was a party to a proceeding under this Act;
(j) a disclosure to anyone else to whom the disclosure is required or permitted to be made under an Act.
Example—
a person to whom the disclosure may be made under part 6.

Clause 22 inserts a maximum penalty of 2 years imprisonment where a person discloses information unlawfully.

Clause 22 inserts section 41(2) of the *Child Protection (Offender Prohibition Order) Act 2008*, which advises when subsection (1), which prohibits the disclosure of information, does not apply into the *Child Protection (Offender Reporting) Act 2004* and renumbers section 41(2) as section 51C(2).

Clause 22 also states that a person must not disclose protected information to another person with the intention to incite anyone to intimidate or harass a respondent. Protected information includes anything which is likely to identify a respondent or a victim in a proceeding or another person at risk because of concerning conduct prohibited or proposed to be prohibited by an offender prohibition order or a registered corresponding order. The maximum penalty for disclosing protected information is provided in section 51C(3) is 300 penalty units or 5 years imprisonment. This offence is a crime.

Clause 22 inserts definitions for section 51C in subsection (5).

Act in subsection (2)(g) and (h), includes an Act of the Commonwealth or another State.

intimidate or harass includes intimidate or harass whether on one or more than one occasion and also vilify, persecute, victimise and engage in any act of vigilantism.

proceeding includes an application under part 3A and any prosecution for an offence against this Act.

protected information means any of the following –
(a) the name of a respondent;
(b) the name of any victim of a reportable offence committed by a respondent;
(c) the name of any particular person referred to as a person at risk because of the conduct prohibited or proposed to be prohibited by an offender prohibition order or registered corresponding order;
(d) anything else reasonably likely to enable a person mentioned in paragraph (a), (b) or (c) to be identified.

respondent means a respondent for a proposed offender prohibition order, an offender prohibition order, a corresponding order or a registered corresponding order.

Clause 23 - Amendment of section 52A (Proceedings for an indictable offence)

All offences under the *Child Protection (Offender Reporting) Act 2004* are indictable offences. Section 52A (Proceedings for an indictable offence) of that Act allows indictable offences to be heard summarily before a magistrate or on indictment.

Clause 24 extends section 52A(1) by removing the word 'or' before 51(1) (False or misleading information) and inserting 51A (Failing to comply with offender prohibition order) subsections (1) or (4), 51B(3) (Access information for storage devices) or 51C(3) (Prohibition on disclosing protected information). The amendment reflects new offence provisions, which have been relocated from the *Child Protection (Offender Prohibition Order) Act 2008*. The amendment also reflects changed numbering of existing offences in the *Child Protection (Offender Reporting) Act 2004* which has occurred due to the amalgamation of the two Acts.

Clause 24 - Amendment of section 52B (Limitation on who may summarily hear a proceeding for an indictable offence and the level of penalty)

All offences under the *Child Protection (Offender Reporting) Act 2004* are indictable offences. Section 52B (Limitation on who may summarily hear a proceeding for an indictable offence and the level of penalty) of the *Child Protection (Offender Reporting) Act 2004*, clarifies who can hear a proceeding for an indictable offence under the Act, which the prosecution has elected to be heard summarily and the penalty which can be imposed at a summary hearing.

Clause 24 amends section 52B(1) of the *Child Protection (Offender Reporting) Act 2004* by removing the word 'or' before 51(1) (False or misleading information) and inserting 51A (Failing to comply with offender prohibition order) subsections (1) or (4), 51B(3) (Access information for storage devices) or 51C(3) (Prohibition on disclosing protected information). The amendment reflects new offence provisions, which have been relocated from the *Child Protection (Offender Prohibition Order) Act 2008*. The amendment also reflects changed numbering of existing offences in the *Child Protection (Offender Reporting) Act 2004* which has occurred due to the amalgamation of the two Acts.

Clause 25 - Amendment of section 54 (Notice to be given to reportable offender)

Section 54 (Notice to be given to reportable offender) of the *Child Protection (Offender Reporting) Act 2004* requires a written notice of reporting obligations to be given to an offender as soon as practicable after the offender is sentenced for a reportable offence or made subject to an offender reporting order; the offender is released from government detention (whether in government detention for a reportable offence or otherwise); the offender enters Queensland, if the offender has not previously been given notice of his or her reporting obligations in Queensland or the offender becomes a corresponding reportable offender, if the person is in Queensland at that time.

Clause 25 amends *section* 54(2)(a)(ii) by inserting an offender prohibition order. The amendment will require a notice of reporting obligations to be given to a respondent to an offender prohibition order as soon as practicable after the order is made.

Clause 26 - Amendment of section 56 (Notice to be given when reporting period changes)

Section 56 (Notice to be given when reporting period changes) of the *Child Protection (Offender Reporting) Act 2004,* requires the police commissioner to give a reportable offender a notice of a change to the length of his or her reporting period before the next mandated report.

Clause 26 amends section 56(2) of the *Child Protection (Offender Reporting) Act 2004* by removing the words 'but no later than the time that the offender next reports under this Act'. The amendment removes the obligation on the police commissioner to give a reportable offender a notice of a change in reporting period before the next mandated report. The notice must now be given as soon as practicable after the change occurs.

Clause 27 - Amendment of section 67A (Application of this division)

Section 67A (Application of this division) *Child Protection (Offender Reporting) Act 2004* applies part 4 (Reporting obligations) division 10 (Police commissioner may suspend reporting obligations for particular reportable offenders), allows the police commissioner to suspend the reporting obligations of a reportable offender who was a child when he or she committed the offence that makes the person a reportable offender or has a cognitive or physical impairment. The suspension can only occur if the reportable offender is unable to comply with his or her reporting obligations and does not pose a risk to the lives or sexual safety of children.

Clause 27 amends section 67A of the *Child Protection (Offender Reporting) Act 2004* by inserting a new (c) has a mental illness.

Clause 28 - Amendment of section 67C (Suspension of reporting obligations of reportable offender on police commissioner's own initiative)

Section 67C (Suspension of reporting obligations of reportable offender on police commissioner's own initiative) of the *Child Protection (Offender Reporting) Act 2004* allows the police commissioner to automatically suspend the reporting obligations of a reportable offender if the police commissioner is satisfied that the offender has cognitive or physical impairment, does not pose a risk to the lives or sexual safety of children and the cognitive or physical impairment is significant.

Clause 28 amends section 67C(1)(a) of the *Child Protection (Offender Reporting) Act 2004* by replacing the word 'children' as it applies to the risk posed to the lives and sexual safety of children with the words '1 or more children, or of children generally'. This amendment reflects a consistent approach across the offender reporting legislation.

Clause 28 amends section 67C(1) of the of the *Child Protection (Offender Reporting) Act 2004* by inserting a new (c) which states that if the reportable offender has a mental illness, the illness is a significant illness.

Clause 29 - Amendment of section 67D (Reportable offenders may apply for suspension of reporting obligations)

Section 67D (Reportable offenders may apply for suspension of reporting obligations) of the *Child Protection (Offender Reporting) Act 2004* allows a reportable offender to apply for a suspension of reporting obligations to the police commissioner. A reportable offender can apply for a suspension if the offender has a significant physical or cognitive impairment and is unable to comply with the reporting obligations or was a child when convicted of a reportable offence and does not present a risk to the lives or sexual safety of children.

Clause 29 amends section 67D(5)(a) (by replacing the word 'children' as it applies to the risk a reportable offender poses to the lives and sexual safety of children with the words '1 or more children, or of children generally'. The amendment reflects a consistent approach across the offender reporting legislation.

Clause 29 amends section 67D(5) of the *Child Protection (Offender Reporting) Act 2004* by inserting a new (c) which states that if the reportable offender has a mental illness, the illness is a significant illness.

Clause 30 - Amendment of s 67F (Revocation of suspension)

Section 67F (Revocation of suspension) of the *Child Protection (Offender Reporting) Act 2004*, allows the police commissioner to revoke a suspension of reporting obligations given because a reportable offender had a significant cognitive or physical impairment or was a child when convicted of a reportable offence and at the time the suspension was granted did not pose a risk to the lives and sexual safety of one or more children or children generally.

Clause 30 amends section 67F(1)(a) by replacing the word 'children' as it applies to the risk a reportable offender poses to the lives and sexual safety of children with the words '1 or more children, or of children generally'. The amendment reflects a consistent approach across the offender reporting legislation.

Clause 30 amends section 67F(1) of the *Child Protection (Offender Reporting) Act 2004* by inserting a new subsection (c) which states that if the reportable offender has a mental illness, the illness is not or is no longer a significant illness.

Clause 31 - Amendment of section 68 (Child protection register)

Clause 31 amends section 68(2) (Child protection register) of the *Child Protection (Offender Reporting) Act 2004*, by replacing the word 'must' with 'may' as it applies to information which must be included on the child protection register. The amendment allows the police commissioner to determine the most appropriate information to be entered onto the child protection register.

Clause 31 amends section 68(3)(d) of the *Child Protection (Offender Reporting) Act 2004* by replacing the reference to the Australian Crime Commission established under the Australian Crime Commission Act 2002 (Cwlth), section 7 with 'the Australian Criminal Intelligence Commission'.

Clause 32 - Amendment of section 73 (Reportable offender's rights in relation to register)

Clause 32 amends section 73 (Reportable offender's rights in relation to register) by inserting a new subsection (4A). Subsection (4A) allows a request to the police commissioner made under subsections (1) and (3) of the *Child Protection (Offender Reporting) Act 2004* to be made by another person who is authorised in writing by the reportable offender to make the request.

A request under subsection (1) applies to a request by the reportable offender for a copy of all information about the reportable offence that is held on the child protection register and subsection (3) applies to a request by the reportable offender to amend incorrect information held on the child protection register.

Clause 33 - Amendment of section 74 (Review about entry on register)

Clause 33 amends section 74 (Review about entry on register) of the *Child Protection (Offender Reporting) Act 2004* by inserting a new subsection (3A). Subsection (3A) allows a person, to review an entry on the child protection register and/or the length of a reporting period on behalf of a person who is a reportable offender. The person who acts on behalf of a reportable offender is referred to in subsection (3A) as an agent. The agent must be authorised in writing by the reportable offender to act on the offender's behalf.

Clause 34 - Insertion of new sections 74C–74J

Clause 34 inserts new sections 74C – 74J which requires the Crime and Corruption Commission to undertake a review of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (74C), allows information about a reportable offender to be given to and received by the police commissioner, and other entities (74D and 74G) and to protect a person from liability for giving information honestly to the police commissioner (74H).

Clause 34 - section 74C (Review of Act)

Clause 34 relocates section 60 (Review of Act) of the *Child Protection (Offender Prohibition Order) Act 2008* as section 74C (Review of Act). Section 74C requires the Crime and Corruption Commission to commence a review of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* after five years of operation and give a copy of the report to the Speaker for tabling in the Legislative Assembly. This provision is a machinery

amendment which allows the existing review provision under the *Child Protection (Offender Prohibition Order) Act 2008* to be replicated in the amalgamated legislation.

Clause 34 – section 74D (Commissioner to be given information about relevant sexual offender)

Clause 34 inserts a new section 74D (Commissioner to be given information about relevant sexual offender) which is based on section 42 (Commissioner to be given information about relevant sexual offender) of the *Child Protection (Offender Prohibition Order) Act 2008*. This section allows the police commissioner to direct an entity, with the exception of Queensland Health to provide information relevant to the assessment of whether a relevant sexual offender poses a risk to the lives or sexual safety of children.

Clause 34 extends the application of section 74D to include all processes under the amalgamated legislation which allows the police commissioner to seek information about all reportable offenders.

The words 'prescribed entity' have been replaced with 'entity' in 74D(1) which will allow the police commissioner to require information about an offender prohibition order from any government or non-government entity or individual who may have information which is relevant to:

(a) deciding whether an application for an order under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* should be made; or
(b) the making of an order under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*; or
(c) amending or revoking an order under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*; or
(d) serving an application or order under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*; or
(e) investigating an alleged breach or a breach an order under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

Entity in section 74D has the same meaning as entity under the *Acts Interpretation Act 1954* and includes a person or unincorporated body. This is a broad definition which allows the police commissioner to determine who is best placed to provide information about all offenders who come under the auspices of the offender reporting legislation.

Clause 34 requires a direction for information from the police commissioner to be given in writing and state the day on or before which the information must be given.

Section 74D applies despite any other Act, in regards to an entity providing information to the police commissioner, with the exception of information which is subject to legal professional privilege.

Section 74D(3) precludes the chief executive of the department in which the *Hospital and Health Boards Act 2011* is administered or a Hospital and Health Service under that Act from giving information under this section. The amendment recognises the confidential nature of patient information. Queensland Health, as a core member of the Suspected Child Abuse Network system is able to give information for the protection of the lives and sexual safety of children through the provisions of the *Child Protection Act 1999*.

Clause 34 inserts a new subsection (6) which defines ***entity*** to include a government entity.

Clause 34 - section 74E (Commissioner may give information to government and other entities)

Clause 34 inserts a new section 74E (Police commissioner may give information to government and other entities) which is based on section 43 (Commissioner may give information about an offender prohibition order to prescribed entities) of the *Child Protection (Offender Prohibition Order) Act 2008*. Section 74E allows the police commissioner

to give an entity information about a reportable offender for a purpose of the Act, including, the offender's name and date or birth, the term of the order, the conduct prohibited by the order or anything else the police commissioner reasonable considers necessary to allow the entity to identify the offender to ensure the safety of a child or children in the entity's care or the safety of the offender. An example of other information is a photo of the offender.

An entity in section 74E has the same meaning as entity under the *Acts Interpretation Act 1954* and includes a person or unincorporated body. This is a broad definition which allows the police commissioner to determine who is best placed to receive information about reportable offenders.

Clause 34 requires the police commissioner to give a written notice of any variation or revocation of an order, to entity if the police commissioner has given information about an order and the order is later varied or revoked.

Clause 34 inserts a new subsection (3) for section 74E which precludes the chief executive of the department in which the *Hospital and Health Boards Act 2011* is administered or a Hospital and Health Service under that Act from receiving information under this section. The amendment recognises the confidential nature of patient information. Queensland Health, as a core member of the Suspected Child Abuse Network system is able to give information for the protection of the lives and sexual safety of children through the provisions of the *Child Protection Act 1999*.

Clause 34 inserts a new subsection (4) for section 74E which defines ***entity*** to include a government entity and ***order*** to mean a registered corresponding order.

Clause 34 - section 74F (Disclosure of information by particular officials)

Clause 34 inserts a new section 74F (Disclosure of information by particular officials) which is based on section 44 of the *Child Protection (Offender Prohibition Order) Act 2008* and renumbers section 44 as section 74F (Disclosing information about offender prohibition orders).

Clause 34 replaces the reference in 74F(1) to section 43(1)(Commissioner may give information about an offender prohibition order to prescribed entities) with section 74E (1) as it applies to an entity given information by the police commissioner about an offender prohibition order.

Clause 34 allows a prescribed entity to give information received from the police commissioner to another person for the purposes of the person performing a function under a relevant Act or for the purposes of an approved teacher, protecting the life or sexual safety of a student of a school.

Subsection (3) of section 74F applies in circumstances where a prescribed entity has given information about an offender prohibition order under subsection (2) and the prescribed entity has been given a notice under 74E(2) the order has been varied or revoked. Clause 34, section 74F(4) requires the prescribed entity must give a written notice of any variation or revocation of an offender prohibition order to a person who received that information for the purposes of performing a function under a relevant Act or for the purposes of an approved teacher, protecting the life or sexual safety of a student of a school.

Section 74F(5) of clause 34 prohibits the disclosure of information given about an offender prohibition order or variation or revocation of the order unless they are authorised to do so under section 51C or a relevant Act.

Clause 34 inserts the definitions for section 74F.
Approved teacher means an approved teacher within the meaning of the *Education (Queensland College of Teachers) Act 2005.*

Offender prohibition order includes a registered corresponding order.

Prescribed entity means:
(a) the chief executive (child safety), or
(b) the chief executive (communities),
(c) the chief executive (corrective services),
(d) the chief executive (education) or
(e) the chief executive (justice).

Relevant Act means,
(a) for the chief executive (child safety) – the *Child Protection Act 1999;*
(b) for the chief executive (education) – the *Education (General Provisions) Act 2006*; or
(c) for the chief executive (justice) – the *Youth Justice Act 1992* or the Working with Children Act.

Clause 34 - section 74G (Chief executive (communities)

Clause 34 relocates section 45 (Chief executive (communities) to be given information about a child respondent) of the *Child Protection (Offender Prohibition Order) Act 2008* as section 74G (Chief executive (communities) to be given information about child respondent).

Clause 34 allows the chief executive (communities) to ask a government entity to give the chief executive information held by the government entity which is relevant for the report to allow a court to make an assessment about a child respondent or the child's family or any other matter, as section 74G(1).

Clause 34 requires a request from the chief executive (communities) to a government entity to be in writing, and to state the day on or before the information is to be given.

Section 74F(3) in clause 11 authorises the government entity, despite any other Act, to give the information requested by the chief executive (communities).

Clause 34 - section 74H (Duty of officials obtaining information)

Clause 34 inserts a new section 74H (Duty of officials obtaining information) which is based on section 46 (Duty of officials obtaining information) of the *Child Protection (Offender Prohibition Order) Act 2008*. This section applies to a person who obtains information under sections 74D - 74G.

Clause 34 states that it is the duty of a person to take all reasonable steps to ensure the information is only used or disclosed for the purpose it was obtained.

Clause 34 - section 74I (Commissioner may give information about an offender prohibition order to other particular persons)

Clause 34 inserts a new section 74I (Commissioner may give information about an offender prohibition order to other particular persons) which is based on section 47 (Commissioner may give information about an offender prohibition order to other particular persons) of the *Child Protection (Offender Prohibition Order) Act 2008*. This section extends the application of section 47 by allowing the police commissioner to give information about a reportable offender to any person, where the police commissioner reasonably considered it is necessary and appropriate to reduce the risk to the lives or sexual safety of one or more children, or of children generally.

Clause 34 inserts an example of who may be given information by the police commissioner and includes, a parent or guardian of a respondent child or a parent or guardian of any child protected by the order.

Clause 34 - section 74J (Protection from liability for giving information)

Clause 34 relocates section 48 (Protection from liability for giving information) of the *Child Protection (Offender Prohibition Order) Act 2008*, as section 74J (Protection from liability for giving information).

Clause 34 protects a person from criminal, civil and administrative liability for giving information under the Act.

Clause 34 also provides a defence of absolute privilege in a defamation proceeding and clarifies, that if a person would otherwise be required to maintain confidentiality about information under an Act, the person does not contravene the Act by giving the information.

Clause 35 Amendment of s 77 (Evidentiary provisions)

Section 77 of the *Child Protection (Offender Reporting) Act 2004* states that in a proceeding under this Act, a statement by the prosecution about the following matters is evidence of the matter:

(a) a stated person was served with a copy of a stated offender prohibition order or registered corresponding order by a stated process server on a stated date;
(b) a stated process server was authorised to serve a stated corresponding order;
(c) the respondent for an offender prohibition order, or corresponding order, was present in the court when the order was made;
(d) the respondent for a registered corresponding order was present in court when the order was registered.

The words 'in a complaint' at the commencement of section 77(1) has been omitted. Accordingly section 77(1) will simply state, 'in a proceeding under this Act, a statement by the prosecution'.

Clause 35 inserts a new subsection (4) into section 77 which states that in a proceeding under this Act, an affidavit by a stated process server stating the date, time and way the process server served an offender prohibition order on a person is evidence of those matters.

Clause 35 also inserts a new subsection (5) for section 77 which states that if a defendant intends to challenge a statement or affidavit about the service of an order or their presence in court when an order was made, the defendant must give written notice of the challenge to the prosecution at least 3 business days before the day fixed for the hearing.

Clause 35 inserts a new subsection (6) which defines the following terms for section 77:

court, in relation to the making of a corresponding order, means any court or judicial officer of *another jurisdiction that made the corresponding order.*

process server *means—*
(a) a police officer; or
(b) in relation to a registered corresponding order,
(i) a member of the police force of the jurisdiction where the corresponding order was made; or
(ii) another person authorised under the law of that jurisdiction to serve the corresponding order.

Clause 36 - Insertion of new sections 77A–77F

Clause 36 relocates sections 39 (Proof of knowledge of a particular condition in a particular circumstance), 40 (Matters relevant to the reasonable excuse defence) and 50 (Application of the *Evidence Act 1977*) of the *Child Protection (Offender Prohibition Order) Act 2008* as sections 77D (Proof of knowledge of order conditions), 77E (Reasonable excuse defence) and 77C (Application of *Evidence Act 1977*, s.53) respectively. New sections 77A (Legal proceedings for part 3A), 77B (Cross-examining protected witnesses) and 77F (Concurrent criminal proceeding) are also inserted by clause 36.

Clause 36 – section 77A (Legal proceedings for part 3A)

Clause 36 inserts section 77A (Legal proceedings for part 3A) which details the manner in which the civil proceedings for offender prohibition orders under part 3A will be conducted.

Clause 36 inserts a new 77A(1) which allows a civil application under part 3A (Offender prohibition orders) to be considered and dealt with by a court even if the person named in the application has been charged with an offence arising out of the conduct on which the application is based.

Clause 36 also inserts a new 77A(2) which states that the *Uniform Civil Procedure Rules 1999* apply to a proceeding under part 3A, other than a proceeding for a temporary order; or an offence against part 3A. Offences under part 3A are crimes and cannot be dealt with under civil processes.

Clause 36 inserts a new 77A(3) which states that a question of fact in a proceeding under part 3A, is to be decided on the balance of probabilities. The balance of probabilities is the standard of proof in civil proceedings.

Clause 36 – section 77B (Cross-examining protected witnesses)

Clause 36 inserts a new section 77B (Cross-examining protected witnesses), which applies part 2, division 6 (Cross-examination of protected witnesses) of the *Evidence Act 1977* to a proceeding under this Act.

Part 2, division 6 of the *Evidence Act 1997* only applies to proceedings under the *Justices Act 1886.* It allows a court to deem certain witnesses, including children under 16 years, as protected witnesses for a number of prescribed offences. These prescribed offences are not prescribed offences under the offender reporting legislation.

The application of part 2, division 6 of the *Evidence Act 1977* will prevent self-represented respondents and reportable offender from cross-examining witnesses who are under the age of 16 years in a proceeding under this Act.

Clause 36 – section 77C (Application of Evidence Act 1977)

Clause 36 relocates section 50 (Application of *Evidence Act 1977*) of the *Child Protection (Offender Prohibition Order) Act 2008* as section 77C (Application of *Evidence Act 1977*, s 53).

Section 53 of the *Evidence Act 1977* provides the parameters for proving judicial documents that are to be tendered as evidence in Queensland courts. For example, a person can tender an original of the document if required or a copy endorsed by the court or certificate under the hand of the registrar of the court. Section 50 of the *Child Protection (Offender Prohibition Order) Act 2008* allows section 53 to apply to offender prohibition order processes.

Clause 36 applies section 53 (Proof of judicial proceedings) of the *Evidence Act 1977* to a proceeding under Part 3A (Offender prohibition orders) for the purposes of proving an offender prohibition order or another order made under part 3A, or a corresponding order, or the registration of a corresponding order under part 3A.

Clause 36 also allows a reference to a judgment, decree, rule, conviction, acquittal, sentence or other order, process, act or decision court in section 53(1)(a)-(f) of the *Evidence Act 1977* to include a reference to a magistrate and to allow a reference to a court in section 53(1)(g) of the *Evidence Act 1977* to include a reference to the court where the magistrate usually constitutes the court for a proceeding under part 3A.

Clause 36 states that a reference to a judgment, decree, rule, conviction, acquittal, sentence or other order, process, act of decision of a court under section 53(1)(a) of the *Evidence Act 1977* applies to a judicial officer or magistrate of a court of another jurisdiction for the purposes of proving a corresponding offender prohibition order or the registration of a corresponding offender prohibition order.

Section 77C(4) in clause 36 defines the term ***relevant provision*** to mean section 53 of the *Evidence Act 1977*.

Clause 36 inserts the note after the definition of ***relevant provision*** which refers to sections 5, 157 and 158 of the *Evidence Act 1995* (Cwlth) for proof of corresponding orders.

Clause 36 - section 77D (Proof of knowledge of order conditions)

Clause 36 inserts a new section 77D (Proof of knowledge of order conditions) which is based on section 39 (Proof of knowledge of a particular condition in a particular circumstance) of the *Child Protection (Offender Prohibition Order) Act 2008*. This section states that if an issue is raised in a proceeding of whether a respondent for an offender prohibition order or a registered offender prohibition order knew about a particular condition of the order the respondent is alleged to have contravened and there is evidence that the respondent only knew of the existence of the order because a police officer told the respondent of the order, the respondent cannot be convicted unless it is proved that a police officer told a respondent about the particular condition.

Clause 36 inserts subsection (3) for section 77D which defines ***police officer*** in relation to a registered corresponding order includes a member of the police force of the jurisdiction where the corresponding order was made.

Clause 36 - section 77E (Matters relevant to the reasonable excuse defence)

Clause 36 relocates section 40 (Matters relevant to the reasonable excuse defence) of the *Child Protection (Offender Prohibition Order) Act 2008* as section 77E. This section is a safeguarding provision which requires a court, when deciding whether a respondent had a reasonable excuse for failing to comply with an offender prohibition order or corresponding offender prohibition order under section 51A(1) or (4), to have regard to, the respondent's age and whether the respondent had a disability that affected the respondent's ability to understand or comply with the order, or whether the notice given to the respondent about the order was adequate having regard to the respondent's circumstances. The court may also consider any other matter that is appropriate to the hearing.

Clause 36 – section 77F (Concurrent criminal proceedings)

Clause 36 inserts new section 77F (Concurrent criminal proceedings) which allows the civil application for an offender prohibition order to be dealt with by a court concurrent to any criminal proceedings arising out of conduct on which the application is based.

Section 77F(1) provides that an application under this Act may be made and dealt with by a court even if the respondent has been charged with an offence arising out of conduct on which the application is based.

Clause 36 inserts 77F(2) which states that if a person is charged with an offence arising out of conduct on which an application under this Act is based, a reference to any of the following is admissible in the trial of a person for the offence only with the leave of the court:

- the existence of an application for an offender prohibition order;
- the existence of any proceeding relating to the application;
- the making of, or refusal to make, any order relating to the application for an offender prohibition order;
- the making of, or refusal to make, any variation of any offender prohibition order relating to the application;
- the fact that evidence of a particular nature or content was given in any proceeding relating to the application.

Clause 36 inserts 77F(3) which provides that an offender prohibition application, proceeding or order under this Act does not affect any proceeding for an offence arising out of the same conduct, or the civil liability of the person.

Clause 36 inserts 77F(4) which allows the person to be punished for the offence mentioned in 77F(3)(a) despite any order made against the person under this Act.

Clause 37 - Insertion of part 7, division 5 (Transitional provisions for the Child Protection (Offender Reporting) and Other Legislation Amendment Act 2016)

Clause 37 – section 89 (References to Child Protection (Offender Prohibition Order) Act 2008)

Clause 37 inserts a new section 89 (References to *Child Protection (Offender Prohibition Order) Act 2008)* which states that if the context allows, a reference in an Act or other document refers to the *Child Protection (Offender Prohibition Order) Act 2008* (***repealed Act***) is taken to be a reference to the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004.*

Clause 37 – section 90 (Documents under Child Protection (Offender Prohibition Order) Act 2008)

Clause 37 inserts a new section 90 (Documents under *Child Protection (Offender Prohibition Order) Act 2008*) which applies to a document under the repealed Act that is in effect immediately before the Act is repealed.

Clause 37 states that the document continues to have effect according to its terms and conditions.

Clause 37 also states that this Act applies to the document as if the document had been made under this Act.

Section 90(4) in clause 11 declares that the document took effect or was made, given or received when the document took effect or was made, given or received under the repealed Act.

In section 90 a document includes:
(a) an offender prohibition order or any other order; and
(b) a direction; and
(c) a delegation; and
(d) a notice.

Clause 37 – section 91 (Taking fingerprints)

Clause 37 inserts a new section 91 (Taking fingerprints) which requires the police commissioner to give a written notice requiring reportable offenders, who before the commencement:

- made an initial report of the offender's personal details to the police commissioner after receiving a notice under section 54(5); and
- when making the initial report, was not required to allow a police officer to take, or cause a person authorised by the officer to take, the offender's fingerprints.

The written notice by the police commissioner must require the reportable offender to allow a police officer to take, or cause a person authorised by the officer to take, the offender's fingerprints when the offender is next required under this Act to make a report.

Clause 38 - Amendment of schedule 3 (When reportable offender must make initial report)

Clause 38 amends schedule 3 (When a reportable offender must make initial report) of the *Child Protection (Offender Reporting) Act 2004* by inserting a new reference to state that a person who is a reportable offender because of an offender prohibition order must make an initial report within 7 days after the prohibition order is made.

Clause 39 - Amendment of schedule 5 (Dictionary)

Clause 39 inserts definitions from the *Child Protection (Offender Prohibition Order) Act 2008* into schedule 5 (Dictionary) of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004.* New definitions for the purposes of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* have also been included in clause 39.

The definitions for schedule 5 are:

adult respondent which means a respondent who is not a child respondent.

appeal court part 3A, division 4, see 13ZG.

appearance notice which for a proceeding for an offender prohibition order means a notice in the approved form stating the following in relation to the order—

(a) that an application for the order will be made against the respondent;
(b) when and where the application is to be heard;
(c) that the respondent is required to appear at the hearing to be heard on the application;
(d) that the court may make the order in the respondent's absence if the respondent fails to appear at the hearing;
(e) that on the making of the order—
    (i) the respondent becomes a reportable offender; and
    (ii) the respondent is prohibited from applying for a prescribed notice or exemption notice; and
    (iii) any positive notice, positive blue card or positive exemption notice held by the respondent is—
        (A) if the order is a temporary order—suspended; or
        (B) if the order is a final order—cancelled;
(f) that the order may be registered in a jurisdiction other than Queensland, including a jurisdiction outside Australia, if a law of the other jurisdiction provides for the registration.

application documents for an offender prohibition order, see section 13B(3).

approved form which means a form approved under section section13ZN.

***Australian Criminal Intelligence* Commission** to mean the Australian Criminal Intelligence Commission established under the *Australian Crime Commission Act 2002* (Cwlth).

chief executive (child safety) which means the chief executive of the department in which the *Child Protection Act 1999* is administered.

chief executive (communities) which means the chief executive of the department in which the *Youth Justice Act 1992* is administered.

chief executive (corrective services) which means the chief executive of the department in which the *Corrective Services Act 2006* is administered.

chief executive (education) which means the chief executive of the department in which the *Education (General Provisions) Act 2006* is administered.

chief executive (justice) which means the chief executive of the department in which the *Attorney-General Act 1999* is administered.

child respondent which means:

(a) for a temporary order - a respondent who is a child when the application for the temporary order is made; or
(b) for a corresponding order or registered corresponding order, a respondent who is a child when the corresponding order is registered under this Act; or
(c) otherwise, a respondent who is a child when the application for the offender prohibition order is made.

committed against a child includes committed in relation to a child.

conduct which includes an act, omission and course of conduct.

conviction which includes a finding of guilt, and the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

corresponding order which means an order made under a law or jurisdiction other than Queensland, including a jurisdiction outside Australia that closely corresponds to an offender prohibition order.

court:
(a) for an offender prohibition order for a child respondent - the Childrens Court constituted by a Childrens Court magistrate; or
(b) for any other offender prohibition order - means a Magistrates Court, other than a Magistrates Court constituted by justices who are not magistrates; or
(c) otherwise, includes a court of a foreign jurisdiction however described.

disqualification order see section 13T(2).

exemption notice which means an exemption notice under the Working with Children Act.

final order see section 13H.

Clause 39 amends the definition of *final order* by replacing the reference to section 13 with section 13H (Definition for subdivision).

government detention includes detention under the *Mental Health Act 2000* or detention under the *Migration Act 1958* (Cwlth).

lawyer means an Australian lawyer within the meaning of the *Legal Profession Act 2007* who, under that Act, may engage in legal practice in this State.

magistrate which for a child respondent, means a Childrens Court magistrate.

offender prohibition order means:
(a) a prohibition order;
(b) a temporary order.

parent of a person which means a parent or guardian of the person and includes—
(a) for an Aboriginal person—a person who, under Aboriginal tradition, is regarded as a parent of the person; or
(b) for a Torres Strait Islander person—a person who, under Island custom, is regarded as a parent of the person;
but does not include an approved carer of the person under the *Child Protection Act 1999*.

positive exemption notice which means a positive exemption notice under the Working with Children Act.

positive notice which means a positive notice under the Working with Children Act.

positive notice blue card which means a notice under the Working with Children Act.

prescribed notice means a prescribed notice under the Working with Children Act.

prohibition order means an order under section 13C.

registered corresponding order means a corresponding order registered under section 13Z.

registrar has the meaning under part 3A, division2, see section 13Y.

relevant decision for part 3A, division 4, see section 13ZG.

relevant order for part 3A, division 4, see section 13ZG.

relevant sexual offender means a following person who is not subject to a supervision order or interim supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003* or a forensic order—

(a) a person who is a reportable offender;
(b) a person who would be a reportable offender if the person's sentence for a reportable offence had not ended before the commencement of section 5 (Reportable offender defined);
(c) a person who would be a reportable offender if all the reporting periods under the Offender Reporting Act for the person had not ended, as mentioned in section 8(d) (When a person stops being a reportable offender).

repealed Act see section 89.

respondent means:
(a) for a proposed offender prohibition order— the person who is the respondent to the application for the proposed offender prohibition order; or
(b) for an offender prohibition order—the person against whom the offender prohibition order is made; or
(c) for a corresponding order or a registered corresponding order—the person against whom the corresponding order is made.

section 54 notice see section 13R(4).

significant mental illness for a reportable means a mental illness that:
(a) seriously impedes the offender's ability to comply with the offender's reporting obligations under part 4; or
(b) makes the offender incapable of complying with the offender's reporting obligations under part 4.

temporary order means an order under section 13J or 13K.

Working with Children Act means the *Working with Children (Risk Management and Screening) Act 2000.*

Part 3 Amendment of Police Powers and Responsibilities Act 2000

Clause - 40 Act amended

Clause 40 amends the *Police Powers and Responsibilities Act 2000*.

Clause - 41 Amendment of section 21A (Power to enter for Child Protection (Offender Reporting) Act 2004)

Clause 41 replaces the reference to the *Child Protection (Offender Reporting) Act 2004* with the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* in the heading and subsections (1) and (2) of the existing section 21A (Power to enter for Child Protection (Offender Reporting) Act 2004).

Section 21A allows police to enter premises where a reportable offender generally resides to verify the offender's personal details which are required to be reported under the offender reporting legislation.

Clause - 42 Insertion of new section 21B (Power to inspect devices for the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*)

Clause 42 inserts section 21B (Power to inspect devices for the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004) which allows a police officer to inspect an electronic device in the possession of the offender which is capable of accessing or storing information.

Clause 42 inserts a new section 21B(1) which sets the parameters for the inspection provision. In this regard, section 21B(1) allows police to inspect a storage device in the possession of a reportable offender if the offender -
(a) has been released from government detention or sentenced to a supervision order in the preceding three months; or

(b) has been convicted of a prescribed internet offence; or
(c) is the subject of a device inspection order made by a magistrate.

Clause 42 inserts section 21B(2) which limits the number of times police can inspect a device in the possession of a reportable offender who has been convicted of a prescribed internet offence, to four times in a twelve month period.

Clause 42 inserts section 21B(3) which allows an authorised police officer to apply to a magistrate for a device inspection order if police are not authorised to carry out an inspection of a storage device in the possession of a reportable offender due to:

- police previously conducting 4 inspections with the previous 12 months of a storage device possessed by a reportable offender convicted of a prescribed internet offence; or
- three months passing since the reportable offender was released from government detention or sentenced to a supervision order.

Clause 42 inserts section 21B(4) which allows a magistrate to make a device inspection order if the magistrate is satisfied that there is an elevated risk the reportable offender will engage in conduct that may constitute a reportable offence against or in relation to a child or children.

Clause 42 inserts section 21B(5) to clarify that each occasion on which a police officer inspects one or more storage devices will only count as one inspection. This amendment recognises that many reportable offenders have more than one storage device in their possession and that each inspection of a number of storage devices on one occasion should not be considered to be multiple inspections.

Clause 42 inserts section 21B(6) which defines the following terms for the section:

device inspection order for a reportable offender means an order authorising a police officer on a stated day or one day during a stated period to inspect any storage devices in the possession of the reportable offender.

inspect, a device, includes inspect the device using software. Commercially available software is used to scan a device and inspect any information on the device.

government detention see the Offender Reporting Act, schedule 5.
Schedule 5 (Dictionary) of the Offender Reporting Act states that government detention means: detention, other than under a supervision order, of a prisoner under the *Corrective Services Act 2006*; or a child detainee under the *Youth Justice Act 1992*; including, if the prisoner or child detainee is on unescorted leave of absence; or detention under a law of a foreign jurisdiction other than detention under a supervision order under the *Corrective Services Act 2006* or the *Youth Justice Act 1992.*

Schedule 5 is amended in clause 39 to extend the definition of *government detention* to include detention under the *Mental Health Act 2000* and detention under the *Migration Act 1958* (Cwlth).

Offender Reporting Act means the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004.* The amendment recognises the amalgamation of the *Child Protection (Offender Reporting) Act 2004* and the *Child Protection (Offender Prohibition Order) Act 2008*.

prescribed internet offence means an offence against-
(a) the Criminal Code, section 218A (Using internet etc. to procure children under 16);
(b) any of the following provisions of the Criminal Code (Cwlth)—
    - section 474.19 (Using a carriage service for child pornography material);
    - section 474.20 (Possession, controlling, producing, supplying or obtaining child pornography material for use through a carriage service);
    - section 474.22 (Using a carriage service for child abuse material);
    - section 474.23 (Possession, controlling, producing, supplying or obtaining child abuse material for use through a carriage service);

- section 474.25A (Using a carriage service for sexual activity with person under 16 years of age);
- section 474.26 (Using a carriage service to procure persons under 16 years of age);
- section 474.27 (Using a carriage service to "groom" persons under 16 years of age);
- section 474.27A (Using a carriage service to transmit indecent communication to person under 16 years of age); or

(c) an offence under a law of a foreign jurisdiction that, if it had been committed in Queensland, would have constituted an offence of a kind mentioned in (a) and (b).

prescribed offence see the Offender Reporting Act, schedule 5.
Schedule 5 (Dictionary), refers to section 9 (Reportable offence defined). A prescribed offence for section 9 is an offence mentioned in schedule 1 (Prescribed offences), item 9 of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* if the offence is committed in respect of a child or the police commissioner reasonably believes the reportable offender committed the offence in the belief that the victim for the offence was a child or another offence under schedule 1.

The definition of prescribed offence allows the offender reporting legislation to encompass circumstances where an offender believes the intended victim or victim is a child, regardless of the intended or actual victim's age, other schedule 1 offences, which are not specific to child sexual offending, for example, procuring sexual acts by coercion etc.

reportable offence see the Offender Reporting Act, schedule 5.
Schedule 5 (Dictionary), refers to section 9 (Reportable offence defined). A reportable offence is an offence which is mentioned in schedule 1 (Prescribed offences), item 9 if it is committed in respect of a child or the police commissioner reasonably believes the reportable offence committed the offence in the belief that the person against whom the offence was committed was a child or another offence under schedule 1, or it is another offence that is also a prescribed offence mentioned in schedule 1 or another offence which results in an offender reporting order being made under section 13 of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

reportable offender see the Offender Reporting Act, schedule 5.
Schedule 5 (Dictionary), refers to section 5 (Reportable offender defined). A reportable offender under section 5 is a person who has been sentenced for a reportable offence (schedule1 offence); or is an existing reportable offender (serving a period of imprisonment or subject to a supervision order for a schedule 1 offence prior to the commencement of the *Child Protection (Offender Reporting) Act 2004*); or subject to an order under the then section 19 of the *Criminal Law Amendment Act 1945;* or is a corresponding reportable offender (other Australian jurisdictions); or is subject to an offender reporting order made by a court or is subject to an offender prohibition order.

storage device means a device—
(a) on which information may be stored electronically, including, for example, a smart phone; or
(b) through which information may be accessed, including, for example from the cloud.

supervision order see the Offender Reporting Act, schedule 5.
Schedule 5 (Dictionary) defines supervision order as a community service order, a probation order, an intensive correction order, or an order that a term of imprisonment be suspended, under the *Penalties and Sentences Act 1992*; or a community service order, probation order, intensive supervision order, conditional release order, or supervised release order, under the *Youth Justice Act 1992*; or a parole order; or a continuing detention order or supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*; or an order equivalent to any of the aforementioned orders made under the laws of a foreign jurisdiction.

Clause 43 - Amendment of section 284 (Form of authority)

Clause 43 amends section 284 (Form of authority) of the *Police Powers and Responsibilities Act 2000* which outlines the information that must be contained in a written authority to acquire or use an assumed identity by omitting the period the authority for an authorised civilian. The amendment is made as a consequence of an amendment in this Bill that allows an authorised civilian to retain an assumed identity until such time as the identity is cancelled. An example of where an identity may be cancelled includes the authorised civilian no longer works in an area which requires the retention of an assumed identity.

Clause 44 - Amendment of section 285 (Period of authority)

Clause 44 extends the parameters of section 285 (Period of authority) of the *Police Powers and Responsibilities Act 2000* to allow an authority to acquire or use an assumed identity for an authorised civilian to remain in force until the end of any term stated in the authority or such time as it is cancelled. The amendment mirrors the period of authority for authorised police officers.

Clause 44 makes a consequential amendment by removing subsection (2) of the existing section 285 as it applies to the stated period of authority (not more than three months) for an assumed identity for an authorised civilian under section 284(2)(h)(iii).

Clause 45 - Amendment of section 488A (taking DNA sample from reportable offender for Child Protection (Offender Reporting) Act 2004)

Clause 45 replaces the reference to the *Child Protection (Offender Reporting) Act 2004* with *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* in the heading and in (b) of section 488A(b).

Section 488A of the *Police Powers and Responsibilities Act 2000* allows a DNA sample to be taken from a reportable offender as required under section 40A(2) (Allowing DNA sample to be taken) of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, in circumstances where DNA has not previously been taken from a reportable offender.

Clause - 46 Insertion of new section 808A (Annual report about use of device inspection powers)

Clause 46 inserts a new section 808A (Annual report about use of device inspection powers) of the *Police Powers and Responsibilities Act 2000*.

Device inspection powers are provided under section 21B. These powers allow authorised police to inspect a storage device in the possession of a reportable offender if the offender has been released from government detention or sentenced to a supervision order in the preceding three months, or has been convicted of a prescribed internet offence or is the subject of an order made by a magistrate authorising the inspection of a storage device.

Clause 46 inserts subsection (1) of section 808A which requires the police commissioner to prepare and give the Minister a report about the use of powers under section 21B as soon as practicable after the end of each financial year.

Clause 46 inserts subsection (2) of section 808A which requires an annual report about the use of device inspection powers to include:

(a) the number of inspections carried out for each reportable offender under section 21B; and
(b) for each inspection—
    (i) whether it was carried out under section 21B(1)(a), (b) or (c); and
    (ii) the date and time it was carried out; and
    (iii) the action taken in relation to the reportable offender as a result of the inspection.

Clause 46 inserts subsection (3) of section 808A. Subsection (3) clarifies that each time an inspection is undertaken of one or more storage devices under subsection 2(a) (the number

of inspections carried out under section 21B), that is counted as one inspection. For example, an inspection of six storage devices on one occasion is counted as one inspection, not six inspections.

Clause 46 inserts subsection (4) of section 808A which provides that information leading to the identity of a reportable offender must not be included in the report to the Minister. Such information may include for example, the offender's name, address, vehicle registration number etc.

Clause 46 inserts subsection (5) of section 808A which requires the Minister to table a copy of an annual report about the use of device inspection powers in the Legislative Assembly within 14 days of receiving the report.

Clause - 47 schedule 3 (Relevant offences for chapter 13 disclosure of information provisions)

Clause 47 replaces references to the *Child Protection (Offender Reporting) Act 2004* with *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* in the heading and the second dot point in item 1 of schedule 3 (Relevant offences for chapter 13 disclosure of information provisions) of the *Police Powers and Responsibilities Act 2000.*

Clause 48 - Amendment of schedule 6 (Dictionary)

Clause 48 replaces the reference to the *Child Protection (Offender Reporting) Act 2004* with *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* in the definition of ***reportable offender*** in Schedule 6 (Dictionary).

Part 4 Repeal

Clause 49 Repeal

Clause 49 repeals the *Child Protection (Offender Prohibition Order) Act 2008*, No. 17.

Part 5 Amendment of other Acts

Clause 50 Acts amended

Clause 50 inserts schedule 1 which amends other Acts as a consequence of the commencement of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

Schedule 1 Amendment of other Acts

Clause 50 amends the following Acts:

Adoption Act 2009

The following three amendments are required to the *Adoption Act 2009* as a consequence of the enactment of the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016. The amendments do not impact on the operation or administration of the *Adoption Act 2009*:

- section 121(Unacceptable risk of harm), subsection (3)(b)(i).
    - replace '*Child Protection (Offender Prohibition Order) Act 2008*' with *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004.*
- schedule 3 (Dictionary):
    - replace the reference to '*Child Protection (Offender Prohibition Order) Act 2008*, section 25' with '*Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, section13T' in paragraph (b) of the definition of ***disqualification order***.

- replace the reference to '*Child Protection (Offender Prohibition Order) Act 2008*' with '*Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*' in the definition of ***offender prohibition order***.

Births, Deaths and Marriages Registration Act 2003

An amendment to section 42(1)(c) (Correcting the register) of the *Births, Deaths and Marriages Registration Act 2003* replaces the reference to the '*Child Protection (Offender Reporting) Act 2004*' with *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

Child Protection Act 1999

An amendment to schedule 3 (Dictionary) of the *Child Protection Act 1999* replaces the reference to the '*Child Protection (Offender Prohibition Order) Act 2008*' with the '*Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*' in paragraph (d) in the definition of ***criminal history****.*

Disability Services Act 2006

The following twelve amendments are made to the *Disability Services Act 2006*. The amendments are machinery amendments only and do not change the manner in which the provisions operate or are administered.

- Section 47(1)(f) (What is a serious offence).
  - replace the reference to the '*Child Protection (Offender Reporting) Act 2004'* with *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* in the definition of ***serious offence*** under section 47(f) of the *Disability Services Act 2006*.
- Section 117(8)(d) (Chief executive may obtain information from police commissioner).
  - replace the reference to a 'CPOPOA' 'an offender prohibition'.
  - replace the reference to 'the CPOPOA' with 'the offender prohibition'.
- Schedule 8 (Dictionary)
  - remove the definition of ***CPOPOA disqualification order***.
  - replace the reference to 'a CPOPOA' with 'offender prohibition' in paragraph (b) of the definition of ***disqualification order***.
  - replace the reference to '*Child Protection (Offender Prohibition Order) Act 2008*' with '*Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*' in the definition of ***final offender prohibition***.
  - insert a definition for ***offender prohibition disqualification order*** which means a disqualification order made under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, section 13T.
  - replace the reference to the '*Child Protection (Offender Prohibition Order) Act 2008*' with '*Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*' in the definition of ***offender prohibition order****.*
  - replace the reference to '*Child Protection (Offender Reporting) Act 2004*' with '*Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*' in the definition of ***offender reporting obligations****.*
  - replace the reference to 'CPOPOA' with 'offender prohibition' in paragraph (c)(iii) in the definition of ***police information.***
  - replace the reference to 'CPOPOA' with 'offender prohibition' in paragraph (b)(iii) with the definition of ***relevant disqualified person***

- replace the reference to '*Child Protection (Offender Prohibition Order) Act 2008*' with *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*' in the definition of ***temporary offender prohibition order***.

Education (Queensland College of Teachers) Act 2005

Fourteen amendments are required to the *Education (Queensland College of Teachers) Act 2005*. Twelve of the amendments are name changes only and do not impact on the operation or administration of the *Education (Queensland College of Teachers) Act 2005*. Two additional amendments relate to a change to the 'CPOPOA' disqualification order.

The amendments which reflect a change in name only occur in the following sections of the *Education (Queensland College of Teachers) Act 2005*:

- section 15 (Obtaining police information about applicant), subsections (6A)(c) and (6B).
  - replace 'a CPOPOA' with 'an offender prohibition'.
  - replace 'the CPOPOA' with 'the offender prohibition'.
- section 69 (Requirements for disclosure of changes in police information), subsections (3)(c), (4) and (4)(d).
  - replace 'CPOPOA' with 'an offender prohibition'*.*
  - replace 'the CPOPOA' with 'the offender prohibition'.
- section 75 (Commissioner of police must notify changes in police information) (1)(iv) and (3)(c)(iii) and (d).
  - replace 'CPOPOA' with 'an offender prohibition'*.*
  - replace 'the CPOPOA' with 'the offender prohibition'.
- Schedule 3 (Dictionary)
  - remove the definition of '*CPOPOA'* ***disqualification order***.
  - replace the reference to '*Child Protection (Offender Prohibition Order) Act 2008*' with *'Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*' in the definition of ***final offender prohibition order****.*
  - insert a definition ***offender prohibition disqualification order*** means a disqualification order made under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.
  - replace the reference to the '*Child Protection (Offender Prohibition Order) Act 2008*' with '*Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*' in the definition of ***offender prohibition order***.
  - replace the reference to the '*Child Protection (Offender Reporting) Act 2004'* with the '*Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*' in the definition of ***offender reporting obligations****.*
  - replace the reference to a 'CPOPOA' with 'an offender prohibition' in (b)(iii) of the definition of ***police information***.
  - replace the reference to a 'CPOPOA' with 'an offender prohibition' in paragraph (c) in the definition of ***relevant excluded person.***
  - Replace the reference to '*Child Protection (Offender Prohibition Order) Act 2008'* with '*Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*' in the definition of ***temporary offender prohibition****.*

Mental Health Act 2000

The Bill replaces the reference to '*Child Protection (Offender Reporting) Act 2004'* with '*Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*' in section 205(1)(f).

Right to Information Act 2009

The Bill amends the *Right to Information Act 2009.* These are machinery amendments which do not change the manner in which each section operates or is administered.
Replace the reference to *'Child Protection (Offender Reporting) Act 2004*' in dot points 6 and 7 with '*Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*'.

Working with Children (Risk Management and Screening) Act 2000

The Bill amends the *Working with Children (Risk Management and Screening) Act 2000* to reflect the changes which have been made to the offender reporting legislation. These are machinery provisions which do not change the manner in which each provision operates or is administered. In particular, the Bill amends the following provisions:

- section 314(d) (Information to be given about a person subject of application for disqualification order or offender prohibition order).
  - replace 'a CPOPOA' with 'an offender reporting'.
  - replace 'the CPOPOA' with 'the offender reporting'.
- remove section 341(1)(b) (Giving other information to police commissioner).
- schedule 7 (Dictionary)

  The Bill makes the following seven amendments to schedule 7 (Dictionary) of the *Working with Children (Risk Management and Screening) Act 2000*.
  - remove the definition of *CPOPOA* ***disqualification order***.
  - replace the 'a CPOPOA*'* with 'an offender reporting' in paragraph (b) of the definition of ***disqualification order***.
  - replace the reference to 'Offender Prohibition Order Act' with 'Offender Reporting Act' in the definition of ***final offender prohibition order***.
  - insert a new definition for ***offender prohibition disqualification order*** means a disqualification order made under the Offender Reporting Act, section 13T.
  - replace the reference to 'Offender Prohibition Order Act' with 'Offender Reporting Act' in the definition of ***offender prohibition order***.
  - remove the definition of ***Offender Prohibition Order Act*** as reference to this Act has now become redundant through its repeal.
  - replace the reference to '*Child Protection (Offender Reporting) Act 2004'* with '*Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*' in the definition of ***Offender Reporting Act***.
  - replace the reference to 'Offender Prohibition Order Act' with 'Offender Reporting Act' in the definition of ***temporary offender prohibition order***.