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Reference: "SPRP DN56234"

Applied Research and Evaluation Unit
Crime and Misconduct Commission
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Dear Sir/Madam

Thank you for the opportunity to provide a submission in response to the legislative review of the *Child Protection (Offender Prohibition Order) Act 2008*.

You may be aware that the Commission for Children and Young People and Child Guardian (the Children's Commission) is an independent statutory body established under the *Commission for Children and Young People and Child Guardian Act 2000* (the Children's Commission Act).

The Children's Commission mandate is to promote and protect the rights, interests and wellbeing of all Queenslanders under 18, particularly those most vulnerable. We fulfil this mandate by:

- listening to children and advocating for improved outcomes for children
- advocating on changes required to address systemic issues facing children including, providing early alerts of potential systemic issues
- publishing evidence based reports and policy position papers to improve service delivery and influence policy development
- administering the blue card system, including daily monitoring of blue card holders for changes in criminal history and educating regulated service organisations to understand their obligations
- maintaining rigorous, independent and cost effective scrutiny of services provided to children known to the child safety and youth justice systems
- regularly visiting and speaking with children in care and detention to assess their wellbeing, and resolve and/or investigate their concerns
- working with stakeholders to share information and collaborate on key strategies for improvement.

The *Child Protection (Offender Prohibition Order) Act 2008* (CPOPO Act) is an essential part of the interrelated suite of laws in Queensland, including the *Child Protection (Offender Reporting) Act 2004* (CPOR Act), *Dangerous Prisoner (Sexual Offenders) Act 2003* and the Working With Children Check (known as the blue card system in Queensland) administered under the Children's Commission Act, which assist in protecting children from harm and safeguarding their wellbeing.

The purpose of the blue card system is to contribute to the creation of safe and supportive environments for children. The CPOPO Act is an important complement to the blue card system. While the CPOPO Act provides safeguards to children in all environments, the scope of screening under the blue card system is currently limited to screening people providing services to children in specified environments. This is underpinned by the rationale that Government has a role in assisting parents to create safe environments for children where they are receiving certain types of services:

- mandatory services - services that children are required by law to attend (e.g. school, foster care, youth detention)
- essential services - services that are regulated by law (e.g. child care centres), and
- developmentally focused services - where Government has indicated it wants to support and foster children's involvement in activities which are good for their development (e.g. sporting, spiritual, cultural and recreational activities).

These are often environments where because of the nature of the service being provided (e.g. school or child care) parents are unable to exercise parental responsibility to ensure the safety of their children. Other environments, such as amusement parks, where children receive services which are not essential and/or developmentally focused are not within the scope of the blue card system as they have been seen to be areas in which parents can and should exercise parental responsibility.

Prohibition orders fall within the blue card disqualification framework. The disqualification framework prohibits an individual from making an application for a blue card if they:

- have been convicted of a serious child-related sexual or pornography offence or child murder
- are subject to a child offender reporting order
- are subject to a child protection prohibition order, or
- are subject to a disqualification order made by a court.

The interrelation of the offender prohibition order and blue card frameworks assists to create safe service environments in which children can safely participate and enjoy positive experiences. The importance of the complementary nature of the CPOPO Act and the blue card system was acknowledged in the CPOPO Bill second reading debate.¹

The Children's Commission makes the following responses to some of the questions posed in the *Legislative Review of the Child Protection (Offender Prohibition Order) Act 2008 Consultation Paper*:

¹ Queensland Parliament Hansard 16/04/08 pages 1080-1081

Question 4

In your view, in what situations should an offender prohibition order be the preferred response?

As acknowledged by the Victorian Law Reform Commission in April 2012², it is impossible to predict all of the behaviour that may pose a risk to the lives or sexual safety of children. Therefore, the situations in which an offender prohibition order should be the preferred response should be decided on a case by case basis with guidance from the CPOPO Act.

Examples of situations where an offender prohibition order may be the preferred response for individuals who are defined as a relevant sexual offender under the CPOPO Act include:

- cases where the concerning conduct engaged in by the offender does not amount to a criminal offence, such as employment where they have incidental contact with children or working in an area close to where children frequent;
- cases where the concerning conduct does amount to a criminal offence such as sexually assaulting a child, but does not result in successful prosecution of the person. This may include situations where the child victim lacks competency to give evidence.

Question 6

Do you know of any incidents where the Queensland Police Service did not seek an offender prohibition order, but you believe that such an order was the most appropriate response?

The Children's Commission is aware of one instance involving a reportable offender who was working at an amusement park and was allegedly charged with two counts of using the internet to procure a child under 16 years and one count of failing to comply with reporting obligations under the *Child Protection (Offender Reporting) Act 2004*. Amusement parks are not regulated service environments under the blue card system and therefore the person was not required to have a blue card. While the Commission is not aware of the police involvement in relation to this individual, including whether or not an offender prohibition was sought, an offender prohibition order may have assisted in managing the risks of harm to children by preventing this individual from working in an environment where children attend.

Question 8

From your perspective, what are the potential implications of (a) the Queensland Police Service and (b) Queensland Corrective Services electing to use responses other than an offender prohibition order to respond to concerning conduct?

The election of a response other than an offender prohibition order may result in the individual being permitted to participate in child-related service environments. While the blue card system is able to prevent child sex offenders from engaging in

² Victorian Law Reform Commission, *Sex offenders registration: Final report*, 18/04/12

regulated child-related environments, the blue card system does not operate in all child-related environments, such as amusement parks.

Offender prohibition orders are an essential complement to the blue card system in ensuring the safety of children in environments not covered by the blue card system or in which a blue card is not required.

Question 11

Is it appropriate that the court must be satisfied that the relevant sexual offender poses an unacceptable risk to the lives or sexual safety of children in order to consider issuing an offender prohibition order? Should this threshold be lowered to "a risk" to align with other legislation in other Australian states and territories? If so why?

The Children's Commission is of the view that safeguards for children and young people will be enhanced by reducing the threshold test to "a risk".

The main purpose of the CPOPO Act (as set out in section 3) is to provide for the protection of the lives of children and for their sexual safety. One of two ways in which this is achieved is by providing for the making of orders *prohibiting particular sexual offenders from engaging in conduct which poses a risk to the lives or sexual safety of children*. The "unacceptable risk" threshold appears to be at odds with this purpose in that it seems to impose a higher risk threshold.

As noted in the consultation paper, the threshold test in all other Australian jurisdictions administering child protection offender prohibition orders is that of "a risk". No other jurisdiction imposes the higher "unacceptable risk" threshold. The Children's Commission is not aware of any evidence which would support Queensland's continued differential treatment of child sex offenders.

The Children's Commission strongly supports any additional safeguards which will enhance the protection of Queensland's children from harm and is of the view that the threshold under the CPOPO Act for the imposition of an offender prohibition order should be reduced from "unacceptable risk" to "a risk".

Question 12

Are the reporting obligations under the CPOR Act adequate for an offender subject to an offender prohibition order, or should they have additional or different reporting requirements? Why?

There is justification for offenders subject to an offender prohibition to be subject to more frequent reporting obligations than those imposed on reportable offenders. The reporting obligations under the CPOR Act may be sufficient for reportable offenders in general, however an offender also subject to an offender prohibition order has engaged in further concerning conduct which indicates they would seem to pose a greater risk than other reportable offenders.

More frequent reporting obligations may assist police in their monitoring of compliance by offenders with the additional restrictions imposed on their conduct under the offender prohibition order and may allow breaches to be more readily identified, thereby contributing to safeguards for children.

Question 13

Is it appropriate that the CPOPO Act (a) does not require the Queensland Police Service to monitor compliance with an offender prohibition order and (b) does not give Queensland Police Service officers powers to monitor compliance with an offender prohibition order? Why?

The Children's Commission supports mechanisms to monitor compliance by an offender with an offender prohibition order. Conduct which may result in breach of an offender prohibition order may be otherwise lawful conduct. Therefore, it is suggested that monitoring powers would assist in the detection of such breaches and enhance safeguards to children.

Question 16

Should the definition of prescribed entities be amended (Sch. CPOPO Act)? If so, why?

The current definition of "prescribed entity" in the CPOPO Act includes the Children's Commission.

The Children's Commission supports the continued inclusion of the Commission as a "prescribed entity" to enable it to receive information about an offender prohibition order in order to contribute to the safety of children.

Question 19

How effective are the responses available to the Queensland Police Service and Queensland Corrective Services in protecting children? Do you believe that some responses are more effective than others?

The Children's Commission strongly supports any measures that strengthen protections and safeguards to children. As stated initially in this submission, the responses available to the Queensland Police Service and Queensland Corrective Services are a significant and essential part of the complementary suite of laws and safeguards in Queensland which assist to protect children from harm and safeguard their wellbeing.

If you have any queries in relation to this submission you may contact

[Redacted contact information]

Yours sincerely



Barry Salmon
Acting Commissioner for Children and Young People
and Child Guardian