Crime and Corruption Commission
QUEENSLAND

December 2014

Review of the operation of the *Child Protection (Offender Prohibition Order) Act 2008*

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Crime and Corruption Commission

QUEENSLAND

19 December 2014

The Honourable Fiona Simpson MP
Speaker of the Legislative Assembly
Parliament House
George Street
BRISBANE QLD 4000

Dear Madam Speaker

In accordance with Section 60(4) of the *Child Protection (Offender Prohibition Order) Act 2008*, the Crime and Corruption Commission hereby furnishes to you its report, *Review of the operation of the Child Protection (Offender Prohibition Order) Act 2008*.

The Commission has adopted the report.

Yours sincerely

Dr Ken Levy RFD
Acting Chairman

Contents

Acknowledgments

The Crime and Corruption Commission (CCC) acknowledges the valuable assistance provided to the review by the Queensland Police Service (the Child Protection Offender Registry team, Information Management Services and the Legal Division), Queensland Corrective Services (Statewide Operations and Operational Support Services) and the Department of Justice and Attorney-General (Courts Performance and Reporting Unit).

The CCC expresses its gratitude to all interview participants who contributed to this review, those who provided the five confidential submissions and those who provided the public submissions, namely, the former Commission for Children and Young People and Child Guardian (now the Queensland Family and Child Commission), Protect All Children Today Inc. and the Queensland Police Union.

The CCC's Policy and Research unit conducted this review. Its Human Research Ethics Advisory Panel provided ethical review and advice for the project.

Abbreviations

CCC	Crime and Corruption Commission
CCYPCG	Commission for Children and Young People and Child Guardian
CPIU	Child Protection and Investigation Unit
CPOPO Act	*Child Protection (Offender Prohibition Order) Act 2008* (Qld)
CPOR Act	*Child Protection (Offender Reporting) Act 2004* (Qld)
DFVP Act	*Domestic and Family Violence Protection Act 2012* (Qld)
DPSO Act	*Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld)
IOMS	Integrated Offender Management System
OPO	offender prohibition order
OPM	Operational Procedures Manual
NCOS	National Child Offender System
PPRA	*Police Powers and Responsibilities Act 2000* (Qld)
QCS	Queensland Corrective Services
QPS	Queensland Police Service
QPRIME	Queensland Police Records and Information Management Exchange
QPU	Queensland Police Union
QWIC	Queensland Wide Inter-linked Courts
s.	section
ss.	sections
Sch.	Schedule
SCAN	Suspected Child Abuse and Neglect
SCMG	State-wide Compliance Management Guidelines
UCPR	Uniform Civil Procedure Rules 1999

Summary and recommendations

The CCC's review (see Chapter 1)

Most people convicted of sexual or other serious crimes against children will at some stage return to live in the community. In response to public and government concerns about the risks to children posed by these offenders while living in the community, many Australian states and territories have introduced laws to monitor, control or limit their behaviour.

In Queensland there are several pieces of legislation that work together to regulate the conduct of those who have offended against children. Two key pieces of legislation within this framework are relevant to this review:

- The *Child Protection (Offender Reporting) Act 2004* (CPOR Act) requires such offenders to keep police informed of their personal details and whereabouts for a period of time, to reduce the likelihood of their reoffending. The CPOR Act established the child protection register, which helps police to monitor, investigate and prosecute offenders who reoffend against children.
- The *Child Protection (Offender Prohibition Order) Act 2008* (the CPOPO Act, the Act) gives police the power to intervene early in an attempt to prevent, rather than simply respond to, new offences against children by people with previous convictions. It enables police to apply to the court for an "offender prohibition order" (OPO) when they become aware that a previous offender[1] has recently engaged in conduct that poses a risk to children (this is described in the Act as "concerning conduct"). Once issued with an OPO, offenders are prohibited from specific behaviour or activities that are perceived as a potential precursor to the commission of a new offence.

Section 60 of the CPOPO Act requires the Crime and Corruption Commission (CCC) to review the operation of the Act and table its report in Parliament. The review was commenced in June 2013, five years after the commencement of the Act.

To conduct its review, the CCC examined legislation (including particular aspects of the CPOR Act), policy and training documents; analysed official data from the Queensland Police Service (QPS), Queensland Corrective Services (QCS) and Queensland courts; interviewed key stakeholders; and sought submissions from the public.

Synopsis and key elements of the Act (see Chapter 2)

Any number of individuals and agencies can become aware of "concerning conduct" committed by an offender. As the range of behaviour covered by this term is quite broad, police officers or QCS officers (or officials from other government agencies) can use their discretion to determine how best to respond to it. However, the QPS is the only agency that can apply for an OPO in response to concerning conduct, although this action is not mandatory.

The CPOPO Act applies to offenders who have previously been sentenced for a reportable offence as defined in the CPOR Act.[2] Where an OPO is made, the court is prohibiting previous offenders from

1 In the interests of brevity, on occasion this report refers to a person convicted of sexual or other serious crimes against children as "a previous offender".

2 Under the CPOPO Act, a relevant sexual offender is or has been a "reportable offender", or would be a reportable offender had they not completed their sentence for a reportable offence before the CPOR Act commenced (Sch. CPOPO Act, s. 5 CPOR Act). A reportable offender is an adult or child who is sentenced for a reportable offence under the CPOR Act.

engaging in certain activities that, for other citizens, would ordinarily be lawful behaviour such as going to an event or location frequented by children.

The duration of an OPO is five years, and a breach of an OPO has a maximum penalty of two years' imprisonment.

In seeking to protect children, the CPOPO Act includes features that could curtail the civil liberties of offenders, and so it includes legislative safeguards that seek to ensure it is not misused.

Key findings of the review

The CCC reviewed the extent to which the Act had been used by the QPS and the courts and whether there were factors inhibiting its use, and identified areas for potential improvement.

Use of the Act (see Chapter 3)

The CCC found that over the five years the Act has been in force:

- 48 OPOs were made in response to concerning conduct. This number of orders is comparable to that of similar orders in other Australian jurisdictions (see p. 15).
- Offenders who received OPOs engaged in a higher volume of, and more serious, concerning conduct than other reportable offenders. Collectively, these 21 offenders were convicted of over 100 sexual or other serious crimes against children in Queensland (see p. 16).
- Of those 21 offenders, 7 breached their OPO and were charged with failing to comply with at least one condition of their order; the penalty imposed was usually a term of imprisonment. One offender was known to have committed a new offence against a child while an OPO was in effect (see p. 19).
- The time taken to obtain an OPO varied from nine days to just under three years, with the police application process tending to take longer than the court process. Though such delays could have put children at risk, when there was an immediate risk to a child the process occurred far more quickly (see p. 15).
- Several applications for OPOs were based solely on legal concerning conduct (e.g. being at a place where children congregate), suggesting that police viewed such behaviour as possible precursor conduct. The remaining applications were based on both legal and illegal conduct indicating that even when an offender had committed a criminal offence, police would also apply for an OPO (alongside the criminal charges) to prohibit subsequent legal conduct that might be a precursor to a future offence (see p. 16).

Overall, the CCC found that police were using the Act to prohibit conduct that could be a precursor to the commission of a new offence, and that OPOs were being made for offenders with a high risk of reoffending. In numerical terms, the data obtained for this review showed that use of OPOs as a response tool was limited (21 offenders received an OPO); this might simply indicate that police were opting to use a tool other than an OPO to respond to concerning conduct (see discussion following).[3] The review also found that there were some substantial delays in the OPO process, particularly at the police application stage.

3 This review did not examine the use or relative effectiveness of the other tools that police may have preferred over OPOs.

Factors relevant to use of the Act (see Chapter 4)

Queensland's legal provisions that relate to reportable offenders (the CPOR Act) and those relating to OPOs (the CPOPO Act) are located in separate Acts, which contrasts with the approach taken in four other Australian jurisdictions where both sets of provisions are found in a single Act.[4] In effect, the CPOR Act provides the reporting regime to gain information about possible concerning conduct an offender engages in, and the CPOPO Act provides a response to prevent the offender from engaging in that behaviour. However, the review found that:

- in general, police seemed not to have sufficient understanding of the relationship between the two Acts, nor of the criteria for an OPO
- a disparity between the penalty for offenders who breach an OPO and those who breach their reporting obligations under the CPOR Act may have discouraged police from applying for an OPO.

The complex and impractical policy guidance (in section 7.19 of the QPS Operational Procedures Manual) and inadequate training also appeared to be failing to adequately equip police to perform their functions under the CPOPO Act (see pp. 26, 38).

Irrespective of whether police officers had a good understanding of the Act, their ability to identify concerning conduct before a new offence was committed was limited. Reasons for this included:

- QPS has limited resources to monitor offenders on the child protection register (reportable offenders).
- QPS and QCS systems do not identify all offenders who should be monitored for concerning conduct.
- Some intelligence captured by general duties police officers about reportable offenders (which may constitute concerning conduct) is insufficient to enable police to take appropriate action.
- Information-sharing provisions and practices about the operation of the Act are not suitably equipped to enable effective management and monitoring of offenders.
- Police lack powers to effectively monitor compliance with prohibitions (see p. 27).

In addition, some police indicated that they were electing not to use OPOs to respond to concerning conduct even though offenders met the requirements. A key factor discouraging police from applying was the complex and time-consuming application process.

In the CCC's view, all these factors may have had the effect of encouraging police to use options other than the OPO in responding to concerning conduct (see p. 36).

Finally, the review found that ambiguities in legal protections in the court process may affect both vulnerable (child) witnesses and offenders. Specifically, ambiguities in the provisions about OPOs made by consent appear to disadvantage the offender, and the CPOPO Act does not contain any provisions to protect child witnesses in the court hearing. While general protections under the *Evidence Act 1977* (Qld) apply, they will not adequately protect a child from being cross-examined by an unrepresented offender who wishes to contest an application for an OPO (see p. 40).

The CCC has made 17 recommendations to address the issues identified in the review, in particular:

- QPS officers' understanding of the CPOPO Act and how it aligns with the CPOR Act
- the resources, systems and powers required to identify and respond to concerning conduct.

4 Western Australia, the Australian Capital Territory, the Northern Territory and South Australia.

Recommendations

Recommendation 1 (pp. 21–22)

Combine the CPOPO Act and CPOR Act. The Responsible Minister might then consider undertaking a further review of the combined Act at some appropriate point, for example, after a further 3 to 5 years of operation.

Recommendation 2 (pp. 21–22)

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.

Recommendation 3 (pp. 22–23)

Amend the CPOPO Act to clarify the definition of concerning conduct.

Recommendation 4 (pp. 22–23)

Amend, as a matter of priority, section 7.19 of the Queensland Police Service Operational Procedures Manual to include a simple explanation of the statutory law in the CPOR and CPOPO Acts, and guidance on when to apply for an OPO relative to other options that can be used to respond to concerning conduct. It should be made as brief and practical as possible, kept in plain English, and include the statutory references in brackets.

Recommendation 5 (pp. 25–26)

Consider whether there is merit in developing guidelines for the Queensland Police Service and the courts about commonly occurring conditions, or prescribing a suite of conditions, some or all of which may be included in an OPO in any individual case.

Recommendation 6 (p. 26)

Review all Queensland Police Service training materials relevant to the CPOPO Act, paying particular attention to the issues raised in this review.

Recommendation 7 (pp. 27–28)

Amend the Queensland Police Service Commissioner's Guidelines to provide more guidance about the types of situations when authorised Queensland Police Service members may disclose personal information about a reportable offender to a member of the public.

Recommendation 8 (pp. 29–30)

Amend section 7.18 of the Queensland Police Service Operational Procedures Manual to ensure that police are identifying and monitoring offenders who may meet the requirements for an offender reporting order under section 13 of the CPOR Act.

Recommendation 9 (pp. 30–31)

Establish a joint working group to review the processes used by the Queensland Police Service and Queensland Corrective Services to manage reportable offenders. The review should aim to achieve full legislative and policy compliance and improve the efficiency and effectiveness of the management of reportable offenders.

Recommendation 10 (pp. 31–32)

Amend the wording of the flag linked to the records of reportable offenders in the Queensland Police Service information system (QPRIME) to improve the identification of reportable offenders and quality of information recorded, and provide guidance about appropriate action. The amendment should be guided by the Child Protection Offender Registry.

Recommendation 11 (pp. 32–34)

Amend the CPOPO Act to improve information sharing between the Queensland Police Service and relevant agencies, and between the Queensland Police Service and members of the public.

Recommendation 12 (pp. 32–34)

Amend section 7.19 of the Queensland Police Service Operational Procedures Manual to improve information sharing about OPOs under sections 43 and 47 of the CPOPO Act.

Recommendation 13 (pp. 34–36)

Consider amending the relevant legislation to:

(a) provide police with the power to search, seize and require access information without a warrant, when there is a reasonable suspicion of a breach of an OPO

(b) provide police with the power to require a person at the premises to provide access information for seized or detained computers or electronic equipment

(c) 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.

Recommendation 14 (p. 37)

Amend the CPOPO Act to align the offence provision with the penalty for failing to comply with CPOR Act reporting obligations.

Recommendation 15 (pp. 38–39)

Amend the CPOPO Act and section 7.19 of the Queensland Police Service Operational Procedures Manual to clarify aspects of the civil application process, standard of proof and rules of evidence, and allow concurrent hearings.

Recommendation 16 (pp. 40–41)

Amend section 21 of the CPOPO Act to clarify the ambiguities about OPOs made by consent.

Recommendation 17 (pp. 41–42)

Amend the CPOPO Act to provide adequate protection to child witnesses:

(a) by prohibiting a self-represented offender from cross-examining (in person) a child witness in any proceeding under the Act

(b) by providing that offenders must be given the opportunity to obtain legal representation (either publicly funded or not) in these circumstances

(c) by incorporating protections similar to those contained in the DFVP Act or the Evidence Act.

Chapter 1: Scope of the review

Introduction

In Queensland, a person charged with and convicted of sexual or other serious crimes against children may be sentenced in different ways. For instance, they may be sentenced to imprisonment, receive a suspended sentence of imprisonment, be subject to a community-based order, or be fined. Regardless of the sentence, almost all of them will live in the community at some stage after their offence. In response to public and government concerns about the risks posed by these offenders while living in the community, many Australian states and territories have introduced laws that seek to monitor, control or limit their conduct.

Under "dangerous prisoners" legislation in Queensland, the government may apply for a court order requiring the most serious offenders to be supervised on their release from prison.[5] Court orders under that legislation are very restrictive, and can include Global Positioning System monitoring, curfews and restrictions on where the offender can live. Others may be subject to less intensive monitoring in the community as part of their original sentence (e.g. probation order), or if they are released from prison on parole.[6] While both community-based approaches formed part of the overall framework governing these offenders, some offenders living in the community were not subject to any form of supervision.

Queensland's regime for more systematic community monitoring of persons convicted of sexual or other serious crimes against children began with the enactment of the *Child Protection (Offender Reporting) Act 2004* (CPOR Act). This Act requires all offenders convicted of sexual or other serious crimes against children ("reportable offenders") to keep police informed of their personal details and whereabouts for a period of time, in order to reduce the likelihood of their reoffending. This information is collated in a register — the child protection register — which helps police to monitor, investigate and prosecute offenders who may commit subsequent serious offences against children. This register, also referred to as the National Child Offender System (NCOS), forms part of a national scheme.

While the commencement of that Act in 2005 improved the state's ability to monitor reportable offenders in the community, in 2007 the Queensland Government argued further legislative reform was necessary to improve the state's ability to prevent, rather than respond to, new offences against children. It reasoned that reportable offenders living in the community represented an ongoing and unacceptable risk to children, and that the existing regime was not able to prevent these offenders from committing a further offence:

> [The existing regime does not] empower police to take steps to prevent a paedophile from engaging in concerning conduct ... that is the precursor to the commission of a further offence (QLA (Spence) 2007, p. 4345).

The CPOPO Bill was introduced to addressed this gap and the *Child Protection (Offender Prohibition Order) Act 2008* (CPOPO Act, the Act) commenced in June 2008.

5 *Dangerous Prisoners (Sexual Offenders) Act 2003*.

6 These mechanisms are outside the scope of this review.

The objectives of the CPOPO Act

The Act seeks to reduce the risk to children posed by these offenders via two mechanisms.

It provides the police with the power to intervene early, through an offender prohibition order or "OPO", to prohibit behaviour that is seen as a precursor to the commission of a new offence. OPOs specify the type of behaviour that the offender is prohibited from engaging in. This is ordinarily lawful behaviour, such as attending a location or an event frequented by children. If an offender with an OPO is convicted of failing to comply with the conditions of their order, this constitutes an offence that carries a maximum penalty of two years' imprisonment.

The CPOPO Act also requires offenders with an OPO to be added to the child protection register, which was established by the CPOR Act. This second mechanism was established on the basis that people on the register would be less likely to commit another offence and, if they did, it would be easier to prosecute these offences.

The review

Section 60 of the CPOPO Act requires the Crime and Corruption Commission (CCC) to review the operation of the Act and table its report in Parliament. This review began in June 2013,[7] five years after the commencement of the Act, to examine how the CPOPO Act has operated in practice between 2008 and 2013 and whether it was achieving its purpose of providing for the protection of the lives and sexual safety of children.

To undertake this review, some examination of the CPOR Act was also required because of the links between the CPOPO Act and the CPOR Act. However, this examination was limited to those areas of the CPOR Act that intersect with the operation of the CPOPO Act.

Key questions

The review aimed to answer two key questions.

(1) How has the CPOPO Act operated in practice between 2008 and 2013?

The review sought to determine:

- the role of the Queensland Police Service (QPS) and other agencies in supporting the operation of the Act
- how the CPOPO Act operates in practice
- the characteristics of OPOs that have been made, including information about offenders with an OPO, the behaviours relied on for OPO applications, the behaviours prohibited by OPOs and the proportion of OPOs breached.

(2) To what extent has the Act achieved its purpose of providing for the protection of the lives and sexual safety of children?

To determine whether the Act had achieved its purpose of protecting children from offenders who pose a risk to their lives or sexual safety, the review examined the extent to which it had provided the power to intervene early to prohibit behaviour seen as a precursor to the commission of a new offence.

7 Then the Crime and Misconduct Commission.

The review sought to determine whether any legislative or operational factors were adversely affecting the operation of the Act and, if so, what strategies should be recommended to address these deficits. Factors examined included:

- the clarity or wording of the Act
- the adequacy of the QPS Operational Procedures Manual (OPM) and QPS training about the Act
- barriers to the QPS learning of concerning conduct
- capacity of police officers to respond to concerning conduct
- the court process.

Method used to conduct the review

Information was sourced from the following:

- official data from the QPS, Queensland Corrective Services (QCS) and Queensland courts
- interviews with members of the QPS, QCS and one magistrate
- submissions from stakeholders
- legislation, policies and training materials.

Official data

Official data were required to determine how the CPOPO Act has been used. Electronic and hard copy data were extracted from:

- the Queensland Police Records and Information Management Exchange (QPRIME) system
- NCOS, accessed via the QPS (i.e. the child protection register)
- court files held by the Department of Justice and Attorney-General
- Queensland Wide Inter-linked Courts data (QWIC)
- Queensland Civil Information Management System data
- QCS Integrated Offender Management System (IOMS).

The nature of the review questions required the creation of two datasets:

- The first dataset included information about all offenders with an OPO (*n* = 21).
- The second dataset included information about offenders on the child protection register (*n* = 4326).[8] Most analyses related to offenders on the child protection register were conducted on a random sample (*n* = 547). The most resource-intensive data collection and analysis was conducted on a random 10 per cent sub-sample (*n* = 55).[9] Both the sample and sub-sample were comparable to the population in age and Indigenous status (see text box in Appendix 1, p. 44).

8 While there were 4696 offenders on the child protection register when the review data were extracted, the remaining 370 offenders were a combination of offenders who had been convicted of a sexual or other serious crime against a child but were not subject to CPOR reporting obligations (referred to as "persons of interest"), reportable offenders who were in prison awaiting full registration, and offenders who travelled or moved to Queensland after offending in other jurisdictions. These people were excluded from the second dataset.

9 It is well established that examining a randomly selected subset of a group, known as a sample, can accurately represent the characteristics of the entire population of interest (Maxfield & Babbie 2005).

Public submissions

The CCC (then the Crime and Misconduct Commission) published a consultation paper and invited submissions on 21 key questions relating to six key issue areas: identifying concerning conduct; responding to concerning conduct; determining risk and unacceptable risk; reporting obligations and monitoring; information sharing; and effectiveness (Crime and Misconduct Commission 2013). Eight written submissions and no oral submissions were received.

Interviews

Interviews were conducted with 46 QPS officers, 22 QCS officers and one magistrate. The interviews provided insight into participants' perceptions and experiences of the CPOPO Act, as well as providing an opportunity for these parties to make suggestions about ways to improve the Act.

Legislation, policy and training

The equivalents of Queensland's CPOPO and CPOR Acts in other Australian states and territories were analysed, as well as other Queensland, Australian and overseas legislation as required.

Policies relating to the CPOPO and CPOR Acts were obtained from the QPS, and policies relating to managing sex offenders in the probation and parole environment were obtained from QCS. Further, the QPS provided the following training materials relating to the CPOPO Act:

- Regional Coordinator Training on OPOs (PowerPoint presentation)
- Participants' Workbook QC0472 for the Child Protection Register Training (as at April 2012).

Additional information about the review methodology is included at Appendix 1, and interview schedules are included in Appendix 2.

Chapter 2: The CPOPO Act

The relationship between the CPOPO Act and the CPOR Act

The CPOPO Act and the CPOR Act are inherently linked. Therefore, to understand the CPOPO Act, it is necessary to have some basic understanding of the CPOR Act. This section highlights the relevant interdependencies of these two Acts.

In general terms, the Acts are both part of the framework for monitoring people who offend against children, and there are two specific connections.

First, elements of the CPOR Act must be met before the CPOPO Act can apply. Specifically, the only people who meet the requirements for an OPO are those who:

- are currently a reportable offender, as defined by the CPOR Act
- used to be but are no longer a reportable offender
- would have been a reportable offender, but for the fact that their sentence for sexual or other serious crimes against children completed before the CPOR Act commenced.

An offender who receives an OPO from the court and who was not a reportable offender when police applied for the OPO is taken to be a reportable offender (s. 36).

Second, both Acts relate to police monitoring of these offenders. One of the key ways that the police monitor offenders to identify concerning conduct is by assessing the information that reportable offenders provide in order to comply with their child protection register reporting obligations required by the CPOR Act. For instance, reportable offenders are required to inform police of the names and ages of children with whom the offender generally resides [s. 16(1)]. In assessing such information, police might have reason to believe that an offender posed a risk to the lives and sexual safety of these children (e.g. if they fitted the offender's victim profile, and the offender had previously offended against children he or she lived with). Police could then apply for an OPO under the CPOPO Act.

In effect, the CPOR Act provides the reporting regime to gain information about possible concerning conduct the offender engages in, and the CPOPO Act provides a response to prevent the offender from engaging in that behaviour.

Synopsis of the CPOPO Act

Police can apply to the court for an OPO after learning that a person convicted of sexual or other serious offences against children has recently engaged in concerning conduct. The Act defines this as:

> 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 [s. 6(3)].

If the court is satisfied on the balance of probabilities that the offender poses an unacceptable risk to the lives or sexual safety of children, it can make an order that prohibits them from engaging in specific activities. The risk to children may be general, or targeted at one or more specific children.

The Act provides for four types of orders — temporary, final, corresponding and disqualification — and a breach of any of these is a criminal offence. Orders may be varied, revoked or extended, and any decision may be appealed. Breaches of temporary, final and corresponding orders are dealt with under

the CPOPO Act, and the maximum penalty is two years' imprisonment. Breaches of disqualification orders are dealt with under the *Working with Children (Risk Management and Screening) Act 2000*, and the maximum penalty is five years' imprisonment.

Requirements for an OPO

Before an OPO can be made, the offender must:

1. be a "relevant sexual offender" [s. 6(1)]; and
2. have recently engaged in "concerning conduct" [s. 6(1)]; and
3. present an "unacceptable risk to the lives or sexual safety of children" [s. 8(1)].

Relevant sexual offenders

Under the CPOPO Act, a relevant sexual offender is or has been a reportable offender, or would be a reportable offender had they not completed their sentence for a reportable offence before the CPOR Act commenced (Sch. CPOPO Act, s. 5 CPOR Act). A reportable offender is an adult or child who is sentenced for a reportable offence under the CPOR Act.

Most reportable offences are child sex offences, but non-contact offences such as possession of child exploitation material and some serious non-sexual offending against children — including murder — are also captured. A reportable offence can also be any offence that results in the court making an "offender reporting order" [s. 9(c) CPOR Act]. Before making one of these orders, the court must be satisfied that the person poses a risk to the lives or sexual safety of one or more children. The offence of torture [s. 320A *Criminal Code Act 1899* (Qld)], for example, is not listed as a reportable offence under the CPOR Act. However, if a person is convicted of torturing a child, and the court makes an offender reporting order, the convicted offender will be taken to be a reportable offender (s. 13 CPOR Act).

Because they are subject to alternative control and monitoring mechanisms, reportable offenders are not considered relevant sexual offenders when they are subject to a supervision or an interim supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSO Act), or when subject to a forensic order made under the *Mental Health Act 2000* or the Criminal Code Act (Sch. CPOPO Act).[10]

Recent concerning conduct

Concerning conduct is conduct that poses a risk to the lives or sexual safety of one or more children, or of children generally [s. 6(3)]. It may be the nature or the pattern of the conduct that makes it concerning. Section 6(3) of the CPOPO Act provides the following examples of concerning conduct:

- loitering at or near a park fitted with playground equipment regularly used by children (legal conduct)
- residing near a school or child care centre (legal conduct)
- residing in a household with children under 16 years (legal conduct)
- seeking work that will involve the employee (including a volunteer) coming into contact with children (usually illegal conduct).

As the definition is very broad, what constitutes concerning conduct varies substantially. This presented challenges for the review. The text box on page 7 describes what the review considered concerning conduct.

10 An example of a forensic order is an order that a person found to be of unsound mind when they committed an offence be detained for involuntary treatment or care.

Identifying and measuring concerning conduct

To define concerning conduct, the CCC drew on information in the Act, the Explanatory Notes and the second reading speech for the CPOPO Bill to determine that it included both legal and illegal conduct including reportable offences.[11]

In our review, concerning conduct was defined as:

- having contact with one or more children in a public or private setting
- being at or near a place where children congregate (e.g. school, child care facility, another event or venue frequented by children)
- grooming-type behaviours (e.g. befriending or lying to parents to gain access to a child)
- displaying an interest in children (e.g. photographing, watching, collecting images of children)
- living with a child
- being in possession of child-related items (as this may indicate contact with a child or grooming-type behaviours)
- committing a new offence that constitutes concerning conduct (e.g. indecent treatment of children)
- breaching (including a possible breach of) a CPOR Act reporting obligation.

Concerning conduct is not systematically recorded by the police. To obtain information about concerning conduct, the CCC reviewed QPS street checks, QPS offence histories, QCS case conference summaries and contact summaries and QCS incident reports.

Unacceptable risk

Before making an OPO, the court must be satisfied that the offender poses an unacceptable risk to the lives or sexual safety of one or more children. In considering this, it will take into account the conduct the offender has recently engaged in [s. 8(1)] and other factors about the offender's circumstances (s. 9).

Types of orders

The CPOPO Act provides for different orders in different circumstances:

- **Where an offender's recent conduct poses a risk to the lives or sexual safety of one or more children:** A court may make a ***final order*** (s. 8). For adult offenders, a final order is in effect for five years. For child offenders, it is in effect for two years (s. 12). Where the hearing of a final order is adjourned, the court must consider making a temporary order in the interim (s. 16). This temporary order, if made, is in effect for a maximum of 28 days (s. 18) or longer if the offender consents (s. 19). A court may make multiple extensions to a temporary order.
- **Where an offender's recent conduct poses an immediate risk to the lives or sexual safety of one or more children:** The police may apply for a ***temporary order*** (s. 14). If a court makes a temporary order in this circumstance, it is required to set a hearing date for a final order and the police are required to commence proceedings for a final order immediately [ss. 15(5), (6)]. A temporary order is in effect for a maximum of 28 days, but may lapse earlier if the police do not commence proceedings for a final order by the set hearing date [s. 18(2)(a)]. Once proceedings for a final order have commenced, a court may extend the temporary order on one or more occasion for 28 days, or longer if the offender consents (s. 19).

11 Even though the second reading speech refers to the intent being to intervene when offenders are taking preparatory steps to reoffend, the Act does not limit the use in this way.

- **When an offender subject to a comparable order from another jurisdiction moves to Queensland:** A court, or registrar of the court, may make a ***corresponding order*** (s. 31). The wording of the corresponding order may be identical to the original order, or be amended to suit the Queensland context [ss. 31(3), (8)]. Corresponding orders are in effect for the duration that the original order is in effect [s. 31(11)].
- **When a court does not make an OPO, but some risk remains:** Where an application for a temporary order is unsuccessful, or where a hearing for a final order is adjourned and no temporary order is made, a court must consider making a ***disqualification order*** [ss. 25(1), (2)]. A disqualification order prohibits the offender from holding or applying for a notice that authorises them to work with children [s. 25(2)]. The order is in effect for a maximum of 28 days (s. 26), except where an application for a final order is adjourned (s. 27). In these cases, a court may extend the disqualification order for a maximum of 28 days, or longer if the offender consents (ss. 19, 27). A court may make multiple extensions to a disqualification order.

Conduct that can be prohibited

OPOs contain conditions that prohibit the offender from engaging in certain conduct. The conditions may relate to who they can contact or where they can live, work or visit. It may also prohibit other activities such as photographing children or using the internet (s. 11). The conditions may be general or specific, and may prohibit conduct absolutely (e.g. no contact with children), or prohibit it subject to specific conditions (e.g. no unsupervised contact with children) (s. 11).

As the name of the order implies, the conditions in these orders can only prohibit conduct — they cannot require an offender to take positive action. This means that an OPO cannot require an offender to attend a treatment program, or take medication prescribed by their doctor.

The CPOPO Act and offender rights

In introducing the CPOPO Bill to Parliament, the Minister, the Honourable Judy Spence, acknowledged the restrictions on offender rights encapsulated in the Bill but argued that they were justified and necessary to provide for the protection of children:

> [The] despicable ongoing criminal conduct [of paedophiles] warrants the state intervening with **measures that, although they may restrict the freedom of movement and residence of a sexual offender, will provide for the protection of our children** [QLA (Spence) 2007, p. 4345, emphasis added].

To that end, the CPOPO Act enables police to impinge on the rights and liberties of offenders. In particular, police do not have to be certain that an offender has committed a new offence, or even that they will commit one in the future. To apply for an OPO, they need only be satisfied that the offender has engaged in conduct that (in light of their criminal history and personal circumstances) poses a risk to the lives or sexual safety of one or more children.

Further, police can apply for an OPO in response to ordinary, lawful behaviour, where that behaviour is sufficient to raise concerns that the person may commit a future offence. Thus, an OPO can restrict the fundamental right of freedom of movement. In some applications, the making of an OPO may also be inconsistent with the fundamental legislative principle of natural justice — for example, a magistrate may make a temporary OPO even though an offender has no notice of the application.

In recognition of these restrictions and to ensure that the Act would not be open to abuse, a number of safeguards were included in the legislation:

- clear criteria for the making of an OPO (ss. 8, 15, 16)
- criteria that address both individual and community interests (s. 9)
- a prescribed duration for an order (s. 12)
- a process to vary or to revoke orders (s. 22)
- a review process via appeal (s. 52).

Given the scale of the consequences for children who are potential victims of these offences and the possible curtailing of the rights and liberties for offenders who receive an OPO, there is a clear public interest in determining whether these laws are working well.

Chapter 3: Operation of the Act

Agencies that contribute to the operation of the Act

The CPOPO Act is only one of a range of statutes that provide powers to manage the risks posed by offenders who have been convicted of sexual or other serious crimes against children. In addition, many government agencies are involved in efforts to manage the risks presented by these offenders.

The QPS has primary responsibility for administering the CPOPO Act, and only the QPS can apply for an OPO. However, it is not mandatory that the QPS use the CPOPO Act to respond to concerning conduct. Police officers can draw from a range of other lawful responses (e.g. increasing their monitoring of the offender, giving a direction designed to stop the concerning conduct, charging the offender with a breach of an order or with a new offence).

QCS also plays an important role in supervising some relevant sexual offenders who are living in the community. QCS monitors reportable offenders who are subject to probation or parole conditions, and can thus identify behaviour that may be a precursor to the commission of a new offence.[12] In recognition of the importance of their role in monitoring these relevant sexual offenders, QCS officers are also subject to legislative and policy obligations to advise the QPS about certain incidents, including those that may constitute concerning conduct (s. 58 CPOR Act, Child Protection — Reportable Offenders policy). However, it is important to note that, like police officers, QCS officers can draw from a range of options to respond to behaviour that may present a risk to a child (e.g. increasing their monitoring of the offender or applying to add conditions to the offender's parole order).

Other government departments may also have a role in monitoring relevant sexual offenders. For instance, disability services officers, child safety officers or housing officers may learn from police or corrections officers that a person under their care has a conviction for child sex offences. In response, officers from these other departments may use their own powers to respond to the risk to children. However, the role of other government departments, while important, is more incidental than the direct roles of the QPS and the QCS in monitoring and responding to the risks posed by relevant sexual offenders.

How the QPS supports the use of the Act

Within the QPS, the responsibility for administering the CPOPO Act lies primarily with two areas — Child Protection and Investigation Units (CPIUs) around the state and the Child Protection Offender Registry (the Registry), situated within State Crime Command. As well as these child protection specialists, intelligence officers perform a critical support role for CPIUs and the Registry.

The QPS has issued the following policy guidance and training in relation to OPOs.

- **Policy guidance:** The standards governing the operation of the Act are contained in two documents — section 7.19 of the QPS OPM and the QPS State-wide Compliance Management Guidelines (SCMG). Figure 1 on page 12 summarises the process of the operation stipulated in these documents (as well as in the CPOPO Act).

12 While reportable offenders are identified in QCS systems, any other relevant sexual offenders are not similarly identified. Therefore, QCS does not monitor the behaviour of all relevant sexual offenders that are under their supervision.

- **Training:** Child protection specialists in CPIUs receive training in the CPOPO Act during the one-day, face-to-face Child Protection Register Training course delivered by regional or district CPOR coordinators. They also attend a 10-day CPIU course administered by the Education and Training Command, where the CPOPO Act is one topic covered.

The QPS has no regime to monitor the behaviour of all relevant sexual offenders for possible concerning conduct, but monitors all *current* reportable offenders living in or visiting Queensland, as required by the section of the OPM that relates to the CPOR Act (s. 7.18) and the SCMG (summarised in Figure 1, p. 12).

CPOPO Act process

Preliminary stages

Before police apply for an OPO, there are two preliminary stages. First they must learn of possible concerning conduct and determine whether it constitutes concerning conduct. Then they must consider a range of response options from which they may choose to apply for an OPO.

Information about possible concerning conduct

Police find out about possible concerning conduct from multiple sources. They may be people who have directly witnessed or heard of the behaviour, and include:

- police officers
- corrections officers
- representatives of government agencies with a role in supervising or protecting children (e.g. child safety officers, school teachers)
- representatives of other government agencies who may come into contact with reportable offenders (e.g. disability services officers, housing officers)
- other members of the public (e.g. parents, medical professionals)
- the offender (by intentionally or unintentionally disclosing behaviour).

It is important to note that when police are informed about possible concerning conduct, the behaviour may not actually constitute concerning conduct. Police will determine that as they review the information. Police will also determine if a course of action is necessary and, if so, what course of action is most appropriate in the circumstances.

Responses to concerning conduct

If police believe on reasonable grounds that the relevant sexual offender has recently engaged in concerning conduct, they will use their discretion to determine the most appropriate course of action. The officer may determine that an OPO is most appropriate in the circumstances. However, other options are available to police, including:

- talking to the offender about the concerning conduct
- increasing their monitoring of the offender (e.g. surveillance, home visits, telephoning the offender at home)
- giving a move-on direction designed to stop the concerning conduct
- charging the offender for breaching an order (e.g. probation, parole, non-contact, OPO) or with another offence (e.g. breach of CPOR Act reporting obligations, stalking, wilful exposure, indecent treatment of children)
- requesting specific conditions under the *Bail Act 1980* (Qld) designed to stop the conduct (when an offender has been charged with a new offence against a child)
- sharing information about the conduct with another agency for their action (e.g. QCS; Department of Communities, Child Safety and Disability Services; Department of Housing).

Figure 1: A summary of the CPOPO Act in operation, from application to order

Police application and court process

If police determine that an OPO is the most appropriate response to the concerning conduct, they will prepare the OPO application and serve the offender with the application and the notice to appear at court for the OPO hearing.

A magistrate then hears the application and, if the necessary criteria are satisfied, will make the OPO. Police then serve the offender with the OPO in person, and commence (or resume) monitoring the offender according to a compliance management plan. In the future, if required and circumstances justify it, a magistrate may vary or revoke the OPO. This process is described in more detail in Figure 1 on page 12.[13]

The next section reports key information about the use of OPOs during the review period.

Use of OPOs between 2008 and 2013

The review examined official QPS, QCS and court data to examine the characteristics of OPOs made. Supplementary data on the use of OPOs are provided in Appendix 3.

Number of OPOs

In total, courts made 48 orders under the CPOPO Act between 2008 and 2013 (see Table 1).

Police filed 31 applications for OPOs in the Magistrates Court, and one offender appealed to the District Court. These 32 applications resulted in 26 orders. Most of the successful applications (*n* = 17) were for final orders. Three temporary orders, which are used when there is an immediate risk to a child (s. 15), were also made. A small number (*n* = 2) of variations were made to existing orders, and one variation was appealed. Three corresponding orders — used where an offender on a comparable order from another jurisdiction moves to Queensland — were registered in Queensland.

The remaining 22 temporary orders were made in situations where police applied for a final order but the magistrate adjourned the hearing of the application. These temporary orders are intended to address the risk to children while the magistrate is determining whether a final order is justified.

13 The process is based on policy documents. The QPS advised the CCC that current practice does not align with policy documents in every respect.

Table 1: Types of OPOs applied for and made, by applicant

Applicant	Type of order	Orders applied for	Orders made
Police	Final order	22	17[a]
	Temporary order — to respond to immediate risk (s. 15)	3	3
	Variation to an order	3	2[b]
	Corresponding order	3	3
	Total applications filed by police	31	25
Offenders	Appeal	1	1
	Sub total	32	26
Unknown[c]	Temporary order — due to court adjournment (s. 16)[d]	Unknown	22
	Total orders under the CPOPO Act	**>32**	**48**

Source: QPS, QWIC and court file data

a Two were dismissed, two were "adjourned to the Registrar", and one was not finalised by 2 June 2013.

b One was not finalised by 2 June 2013.

c A section 16 temporary order can be made on the magistrate's own initiative or can be applied for by police in a written application or orally during the OPO hearing. The CCC does not know how many were made on application by police.

d Where subsequent analyses are based on applications for OPOs, these section 16 temporary orders are not included as they did not have an associated application.

Fourteen of the 26 applications were made either in the Far North or Wide Bay Burnett police districts and the remainder were made in other parts of Queensland.[14]

While the number of OPOs served in this period may appear low, in light of the following findings it is difficult to say either that the Act has been underused, or that it has been used *as often as it could have been*.

- **Not all offenders on the child protection register meet the requirements for an OPO:** About half of the sample of offenders from the child protection register (52%, *n* = 283)[15] did not have any instances of concerning conduct recorded after they were added to the register, and therefore did not meet the requirements for an OPO.
- **QPS officers have access to several options to respond to concerning conduct:** The existing data showed that officers responded in the following ways: arrest; talking to the offender about concerning conduct that had come to their attention; using multiple responses; and sharing information with other agencies. These are likely to be only some of the responses used.

14 In the other six applications, the district was not recorded.

15 For information on dataset and sample size, see page 3 and footnote 9.

- **The level of use in Queensland is comparable to that of similar orders in other Australian jurisdictions:** The number of orders per 100 reportable offenders was as follows: Australian Capital Territory 0; Queensland 0.6; Western Australia 0.7; Northern Territory 1.1; New South Wales 1.6.[16]

In Chapter 4, we discuss factors identified by the review that have discouraged police officers from using the Act.

Duration of application and court process

The process of making an OPO — from the earliest concerning conduct to the final court outcome — varied from nine days to 35 months. Seven applications took between one and six months to complete, and another seven took between seven months and one year to complete.

In particular, there was substantial variation in the time taken to progress the police part of the application. The time between the first concerning conduct and police considering an OPO[17] varied from five days to 26 months, and the time between considering the OPO to filing the application in court varied from less than a day to 22 months.

The following are possible explanations for these delays, but the lack of available data for the period reviewed precluded a definitive assessment:

- Police officers developing an OPO application based on more recent concerning conduct were searching QPRIME to identify past instances of concerning conduct to support their application, or the investigation into the more recent concerning conduct had identified older concerning conduct of which the QPS was previously unaware.
- Some police did not have a good understanding of the criteria to apply for an OPO (e.g. some believed there must be a pattern of concerning conduct), which might be leading them to wait until they could cite multiple instances of concerning conduct in the application.

The time taken for an OPO application to progress through the court process also varied considerably, though this tended to be less than that for the police process. The time from filing the application to the first court appearance varied from less than a day to just under three months, while that from the appearance at court to the final court outcome varied from less than a day to almost seven months. However, for the three temporary orders, which represented the most immediate risk to a child, the court process took less than one week from the date the application was filed (less than 1 day, less than 1 day, 5 days).

Importantly, any risk that an offender might reoffend is not addressed by an OPO in the period from when police learn of concerning conduct and the first court appearance. It is therefore critical that any unreasonable barriers to a quick process be addressed. Police interviewed for this review were able to identify some of the causes for these delays, which are discussed in Chapter 4.

16 These data were obtained via communications with senior officers from the Child Protection Offender Registries in these jurisdictions. Note that Victoria and Tasmania do not have any OPO provisions in their legislation on reportable offenders or in any stand-alone legislation. The *Child Sex Offenders Registration (Control Orders and Other Measures) Amendment Act 2014*, which inserts OPO provisions into South Australia's legislation on reportable offenders, commenced on 30 November 2014.

17 As measured by the creation of the OPO occurrence on the QPS information system, QPRIME.

Offenders who received an OPO

In the period reviewed, 21 offenders received an OPO. All were male, with the most common age bracket being 40 to 44 years (*n* = 6).[18] Two offenders identified as Indigenous Australians.

Offending histories

Offending histories varied substantially, with the number of offences ranging from two to 61. Nine offenders committed more than 12 offences, indicating a fairly extensive offending history. Fourteen offenders committed offences against children exclusively (i.e. did not commit other offence types, such as property crime).

Together, the 21 offenders were responsible for 102 reportable offences against children in Queensland. Nine offenders had committed between two and five reportable offences and four had committed 10 or more offences.[19] Half of these reportable offences (51%, *n* = 52) were for indecent treatment of children, and the other half included carnal knowledge with or of children under 16 (an offence that involves penetration) (12%, *n* = 12), rape or attempted rape of a child (8%, *n* = 8) and other offences (29%, *n* = 30).

As not all offences that pose a risk to the lives or sexual safety of children are reportable offences (e.g. torture of a child, as described in Chapter 2), the review examined the criminal histories of these offenders for other offences with the potential to put a child's life or sexual safety at risk.[20] Five of them had at some stage committed such an offence.[21] The offences included child stealing, fraudulently taking a child under the age of 14 with the intent to deprive liberty, and supplying dangerous drugs to a minor.

Nature and frequency of concerning conduct

When compared to a sample of other reportable offenders, those with an OPO:

- were significantly more likely to have concerning conduct recorded (67%, *n* = 14 compared to 42%, *n* = 134)[22]
- had significantly more instances of concerning conduct recorded (*Mean* = 6.36, *SD* = 6.45 compared to *Mean* = 1.94, *SD* = 1.56)[23]
- most frequently engaged in concerning conduct that constituted a new offence against a child (53%, *n* = 47). (The most frequent concerning conduct engaged in by other reportable offenders was a breach of CPOR Act reporting obligations (73%, *n* = 190).)
- were more likely to commit contact sexual offences against a child (85%, *n* = 28 compared to 33%, *n* = 3).

Concerning conduct used in OPO applications

To determine the nature of the concerning conduct that gave rise to OPO applications, and the extent to which the applications relied upon legal and illegal conduct, the review examined those applications that were successful in court.[24]

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18 Age was calculated as at 2 June 2013.

19 Four of the 21 offenders have no reportable offences listed against them in Queensland.

20 These offences were identified by the offence label on the criminal history.

21 Two of the 21 offenders had no offences listed against them in Queensland.

22 $\chi^2(1) = 4.99$, $p < .05$.

23 $t(13.2) = 2.55$, $p < .05$.

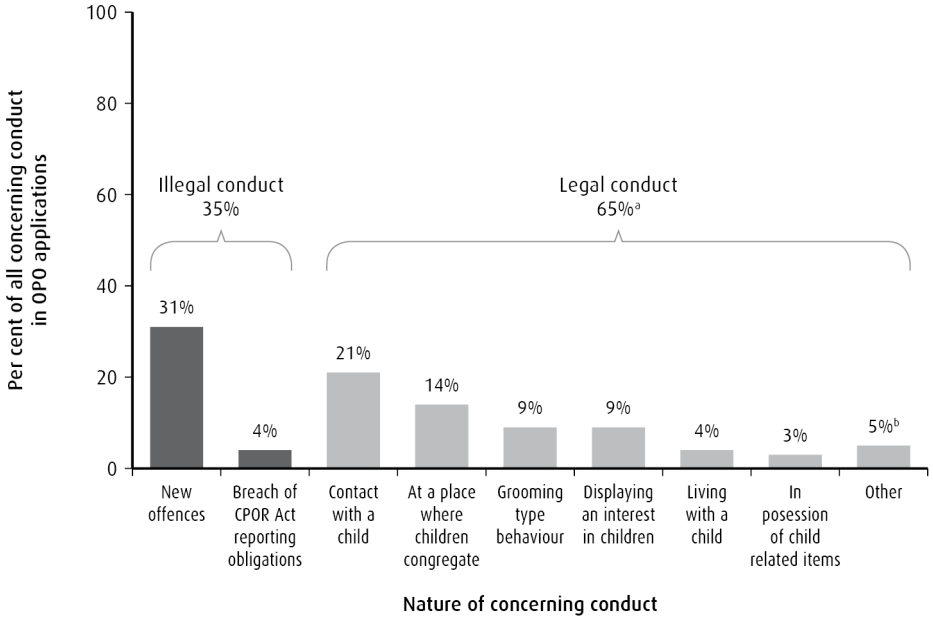
24 The CCC obtained this information from court files.

These applications included a total of 239 instances of concerning conduct, equating to an average of 13 instances per offender (range 1–59 instances).[25] Thirteen applications relied on a combination of legal and illegal concerning conduct. The remainder (*n* = 5) relied on legal concerning conduct only. No applications relied on illegal conduct only.

For applications that cited illegal concerning conduct, in most cases (*n* = 8) the police applied for the OPO within three months of charging the offender with at least one child-related criminal offence. This indicates that OPOs have been used in addition to, rather than to replace, criminal charges.[26]

Figure 2 shows concerning conduct across all applications (*n* = 239 instances). Most instances (*n* = 156) were legal acts, such as having contact with a child, being in a place where children congregate or displaying an interest in children. As expected, most illegal conduct consisted of new offences against children, and was the most prevalent type of concerning conduct across all applications.

Figure 2: Nature of concerning conduct in OPO applications



Source: Court file data

a Anything that was not clearly illegal conduct was classified as legal conduct.

b "Other" includes conduct such as lying to authorities, residing next door to children and allegations of public nudity (excluding public urination).

25 The CCC looked at concerning conduct by *offender* rather than by *application*, because where there were multiple applications per offender (e.g. temporary, final, variation to the final), the concerning conduct was often duplicated. As a consequence, the results in this section relate to 18 offenders. The other three offenders with an OPO had corresponding orders, so were excluded on the basis that they had no concerning conduct listed in their OPO application.

26 Two of the 13 OPO applications were excluded from this analysis, as the date of the decision to apply for the OPO was not available on QPRIME.

Timing of concerning conduct

OPOs that were successful in court were examined to determine when the concerning conduct in the application commenced, relative to the offender's last reportable offence.[27] Of the 12 offenders for which these data were available, six engaged in concerning conduct within nine months of their last reportable offence.[28] Of note:

- Offenders with an OPO took between 19 days and more than 32 years after their last known reportable offence to engage in concerning conduct — six offenders took less than nine months and the other six took between two and a half years and 32 years to engage in concerning conduct (*Mean* = 92.25 months, *SD* = 139.25 months).
- Some offenders engaged in a substantial amount of concerning conduct in a short period of time (e.g. 26 instances in approximately two weeks).

Nature of behaviour prohibited

Prohibitions can be classified as general or specific. General prohibitions typically reflect the nature of the risk presented by the offender to the broader community. Specific prohibitions reflect the nature of the risk presented by the offender to a particular person, or by the offender visiting a specific place or engaging in a particular activity.

The majority of OPOs (*n* = 19) contained prohibitions of a general nature only.[29] Common examples include conditions prohibiting the offender from:

- having direct or indirect contact with any child
- living with any child
- having employment (i.e. paid or unpaid employment, or volunteer work) that may involve contact with children
- visiting locations frequented by children (e.g. school, day care centre, public swimming pool, library, playground, sports complex)
- performing particular actions (e.g. photographing and video recording a child or children)
- possessing devices that may facilitate an offence (e.g. possessing a modem or wireless device, mobile phone with camera capabilities).

Only three orders contained prohibitions that were specific in nature only. These orders prohibited contact with a specific child, employment with a specific employer, or attending named locations or events.

In the remaining seven cases, the OPO conditions included both general and specific prohibitions.

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27 This information was obtained from court files. In this analysis, only those offences that resulted in a conviction or were still being determined were counted. For offences that resulted in a conviction, the last known reportable offence is measured by the date of the conviction. For offences that were still being determined, it is measured by the last date the offence was considered by a court.

28 Of those OPOs that were successful in court, there was only sufficient information within the available court files to make these calculations for 12 offenders.

29 This section contains the results of 29 orders. Excluded were OPOs that duplicated a previous OPO (i.e. where temporary orders were extended while considering a final order), or OPOs whose conditions were successfully appealed on the basis that they were requirements rather than prohibitions (*n* = 19).

Alignment of concerning conduct and behaviour prohibited

A comparison of the concerning conduct described in police applications for OPOs generally aligned with that prohibited in OPOs made by the court.[30] There were only three cases where the conditions varied. In two of these cases, the conditions imposed by the court were more restrictive than those proposed by police (e.g. prohibiting contact with children in a wider age bracket than the police proposed). In the other case, the conditions imposed were less restrictive.

Breaches of OPOs

Seven of the 21 offenders with an OPO were charged with failing to comply with at least one condition of their order (25 offence counts included in 10 charges). The breaches included:

- having unapproved contact with a child
- living with a child
- being within a prohibited distance of a school or playground
- being within a shopping centre precinct outside allowable hours
- being in possession of images of children
- being in possession of a mobile phone capable of taking photographs.

Most court matters for a breach of an OPO resulted in a conviction.[31] Of the breaches successfully prosecuted, the sentence for five matters was a term of imprisonment, while a fine was imposed for the other two.

In another more serious beach, one offender with an OPO was charged with indecent treatment of children under 16 (alongside a failure to comply with their OPO) while their OPO was in effect.[32]

Summary of the use of OPOs

Police have used the CPOPO Act on 48 occasions since the Act's inception in 2008. The review was unable to determine if the Act has been underused, but Queensland's level of use appeared to be comparable to that of similar orders in other Australian jurisdictions. Nonetheless, the data suggest that in responding to occurrences of concerning conduct, police often opted to use tools other than an OPO.

Where OPOs were used, it appears that the Act was being applied to offenders and situations in a way that Parliament intended. It was used against offenders with a high risk of reoffending (as indicated by their serious and extensive offending histories), and police used the Act to respond to any behaviour that presented a risk to children. Police have used an OPO to respond to legal behaviour that may be the precursor to the commission of a new offence against children. Even in instances where offenders came to police attention after committing a criminal offence, police have used an OPO (together with criminal charges) to prohibit subsequent legal activities that may be precursor conduct.

30 This section contains the results of 29 orders. Excluded were OPOs that duplicated a previous OPO (i.e. where temporary orders were extended while considering a final order), or was a corresponding order (i.e. no information about concerning conduct that led to the application was available) (*n* = 19).

31 Of the 10 charges, seven had resulted in a conviction, one had been struck out (as the order was successfully appealed), and two were not finalised in the study period.

32 As at 2 June 2013, this matter had not been finalised in court.

Other results indicated that the operation of the Act could be improved. It appears that there were substantial delays in the process to obtain an OPO, mainly associated with the process used by police to prepare the application. However, it is encouraging that, where there was an immediate risk to a child, the process to obtain an OPO occurred far more quickly. Finally, one-third of offenders breached their OPO. The review was unable to determine if this breach rate is high or low. Notwithstanding, any breach that creates a risk to a child is cause for concern.

Chapter 4: Key issues and recommendations

Chapter 3 provided an analysis of official data that describes the way that the Act has been used by the police and the courts. Using other data sources (interviews; submissions; analysis of legal, policy and training documents), the review sought to identify legislative or operational factors that were adversely affecting the operation of the Act to better understand how the operation and effectiveness of the Act could be improved.

The factors identified fell into four categories: police officers' understanding of the CPOPO Act; identification of concerning conduct prior to a new offence; police officers electing to use an OPO to respond to concerning conduct; and legal protections in the court process.

Understanding of the Act

The review found that in some key areas police officers' awareness and understanding of the CPOPO Act was not optimal. Police lacked sufficient understanding of the linkages between the CPOPO Act and the CPOR Act, and questioned the clarity and appropriateness of the criteria for applying for an OPO.

These questions related to the definition of "concerning conduct"; the meaning and suitability of the term "recent" conduct; and the meaning and suitability of the term "unacceptable risk". In addition, there was some question about the suitability of tailoring OPO conditions to individual risk, and a review of the QPS training package indicated that the training had not adequately equipped police to perform their functions under the Act. Poor understanding of the CPOPO Act on the part of police officers may have reduced their confidence in using the Act to respond to concerning conduct.

Consequences of linked but separate Acts

Despite being inherently linked, the legal provisions relating to reportable offenders (the CPOR Act) and those relating to OPOs (the CPOPO Act) are located in separate Acts. This differs from the approach taken in Western Australia, the Australian Capital Territory, the Northern Territory and South Australia, which includes both sets of provisions in a single Act.

Queensland's approach, on the face of it, is not necessarily problematic. It is not uncommon for one piece of legislation to refer to or incorporate another piece of legislation for its full force and effect. Further, police officers are used to working in a law enforcement environment made up of multiple laws — Queensland's criminal statutory law is a good example.[33] Nevertheless, this review identified that, in this instance, having separate CPOR and CPOPO Acts does appear to have created some difficulties.

For example, some police did not understand the links between the two Acts. Several interviewed for this review referred to the CPOR Act as "a toothless tiger", on the basis that it simply serves to collect information about reportable offenders and offers no basis to act upon identified concerning conduct. In fact, the CPOPO Act provides police with a tool to respond to concerning conduct identified through the CPOR Act reporting regime, but few police interviewed made this connection.

33 The Criminal Code *Act*, *Drugs Misuse Act 1986*, *Weapons Act 1990, Liquor Act 1992, Prostitution Act 1999.*

In addition, two inconsistencies between the CPOPO and CPOR Act appear to be oversights that are, in part, caused by having separate Acts. Specifically:

- In cases where the duration of an OPO (fixed at five years) would extend beyond a reportable offender's reporting period, it is unclear whether CPOR Act reporting obligations cease at the end of the original reporting period or are extended until the OPO ceases. Both the CPOR Act and the CPOPO Act are silent in this regard. It is considered consistent with the purposes of the Act — protecting children from offenders who pose a risk to their lives or sexual safety — to extend CPOR Act reporting obligations for the duration of the OPO. This is also similar to the approach taken in some other jurisdictions (New South Wales, the Northern Territory and the United Kingdom (see Recommendation 2, below).
- The maximum penalties differ for failing to comply with an OPO (two years' imprisonment) and failing to comply with CPOR Act reporting obligations (five years' imprisonment). The penalty for the latter offence was increased in 2011, but the penalty for the former was not also increased. This disparity appears counter-intuitive given that offenders who receive an OPO, unlike other reportable offenders, are known to demonstrate an ongoing and unacceptable risk to the lives or sexual safety of children (see Recommendation 14, p. 37).

The CCC proposes that combining the legal provisions relating to reportable offenders and OPOs will:

- strengthen the connections between monitoring reportable offenders and the OPO
- help to prevent the development of legislative inconsistencies over time
- align with the Queensland Government's commitment to reduce red tape by streamlining legislative frameworks (Queensland Government 2014).

The importance of examining the effectiveness of this recommendation and the others contained in this report should not be underestimated. The CCC believes it is important that Queensland continue its commitment to assess whether its legislative framework is operating well.

Recommendation 1

Combine the CPOPO Act and CPOR Act. The Responsible Minister might then consider undertaking a further review of the combined Act at some appropriate point, for example, after a further 3 to 5 years of operation.

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.

The definition of "concerning conduct"

Some police suggested that the statutory definition of "concerning conduct" was broad and difficult to interpret. This statutory definition is replicated in the QPS OPM. Specific concerns related to perceived lack of clarity about whether:

- one incident of concerning conduct is sufficient grounds to apply for an OPO
- an application for an OPO can be based on any one of the following: (a) legal conduct only, (b) illegal conduct only, or (c) legal and illegal conduct
- the police prosecutor must demonstrate risk to any one of the following: (a) one or more identified children, (b) children generally, or (c) one or more identified children and children generally.

Despite these concerns, other police and stakeholders believed it was important to maintain the current definition, given the wide range of behaviours that can constitute concerning conduct.

> We need to be careful how prescriptive we become. It's about the information in the case. Personally I think the definition should stay wide. Sometimes examples in legislation result in people thinking it's narrower… It's like, how do you define "risk of harm" in the Child Protection Act … very difficult to define. At the end of the day this is why you need experienced operators so they know what is concerning conduct and they know when to apply for an OPO (QPS participant).
>
> … it is impossible to predict all of the behaviour that may pose a risk to the lives and sexual safety of children [Commission for Children and Young People and Child Guardian (CCYPCG) submission 2013, p. 3].
>
> Narrowing the conduct which can be considered may have the unintended consequence of preventing the making of an order and thus exposing a child to harm. The QPU (Queensland Police Union) believes the court hearing the application is best placed to determine the relevance of the conduct alleged by the Commissioner to be concerning conduct (QPU submission 2013, p. 2).

The QPU's view on this issue has considerable merit and it is appropriate that the definition of concerning conduct remain broad. Nonetheless, more legislative guidance is needed to address the concerns raised by police. It may be useful to consider the following legislative amendments to the CPOPO Act:

- to add the following to the definition of "concerning conduct" in section 6(3) — "To remove any doubt, it is declared that concerning conduct: (i) includes conduct which may constitute a criminal offence; (ii) may be a single act"
- to change the words in section 8(1)(b) from "the nature and pattern of conduct" to "the nature or pattern of conduct"
- to replace all references to "lives or sexual safety of children" with "lives or sexual safety of one or more children, or of children generally"
- to replace the reference to "risk of committing a reportable offence against a child" in section 42 with "risk to the lives or sexual safety of one or more children, or of children generally".

The QPS should translate the CPOPO and relevant CPOR statutory provisions into succinct, digestible information for inclusion in the OPM. This will serve to make the statutory law more digestible for operational police.

Recommendation 3

Amend the CPOPO Act to clarify the definition of concerning conduct.

Recommendation 4

Amend, as a matter of priority, section 7.19 of the Queensland Police Service Operational Procedures Manual to include a simple explanation of the statutory law in the CPOR and CPOPO Acts, and guidance on when to apply for an OPO relative to other options that can be used to respond to concerning conduct. It should be made as brief and practical as possible, kept in plain English, and include the statutory references in brackets.

The meaning and suitability of "recent" concerning conduct

Queensland is the only Australian jurisdiction to require that concerning conduct be "recent" for police to apply for an OPO.[34] During this review, concerns were raised about the suitability and meaning of "recent".

Many interviewees believed that "recent" should be removed from the definition to extend the time in which police can apply for an OPO after commencement of the concerning conduct. This change would make the Act more flexible and therefore applicable to a broader range of circumstances. For instance, removing "recent" might allow police to apply for an OPO on or before an offender's release from prison, based on the conduct that led to the imprisonment. Officers who supported this argument pointed out that under the existing legislation they could not apply for an OPO for an offender who had been imprisoned for a reportable offence until that offender had engaged in concerning conduct. However, the review concluded that a range of other strategies, such as applying for an OPO after the offender was sentenced for the offence for which they were imprisoned, or increased monitoring of the offender after their release from prison, would be more appropriate.

The requirement that the instance of concerning conduct be "recent" is one of the key limits on the scope of the Act. At present, an offender must have a conviction for a reportable offence, and must have, after that offence, engaged in more conduct that poses a risk to the lives or sexual safety of children. Considering that OPOs can restrict freedom of movement on the basis of legal conduct, the review concluded that the need to demonstrate that the offender is posing a risk to children (evidenced by recent concerning conduct) is an important protection.

Other issues that might underlie police officers' interest in amending this criterion are addressed in other areas of this report. For instance, excessive delays in hearing some applications (e.g. where there are related criminal proceedings) have made it more difficult for some prosecutors to argue that the conduct occurred recently (see Recommendation 15). Further, some OPO applications did not progress to court because by the time the applicant officer could allocate time to preparing the application, they believed the conduct was no longer recent (resourcing issue addressed in Recommendation 9).

In addition to these recommendations, the QPS may wish to consider creating a reporting or accountability structure when they are revising their OPM (see Recommendations 4, 12 and 15), to ensure that applications are dealt with as quickly as possible (e.g. setting a maximum time period).

The meaning and suitability of "unacceptable risk"

Queensland is the only Australian jurisdiction to require that the offender pose an "unacceptable risk" to children (s. 8) before the court can make an OPO. All other jurisdictions that provide for similar orders have the threshold of "a risk".[35] Despite four submissions recommending that the threshold be lowered to make it consistent across Australia,[36] prosecutors indicated that changing the threshold may not affect magistrates' decisions anyway, because it is accepted that any risk to a child's life or sexual

34 ACT: s.132B *Crimes (Child Sex Offenders) Act 2005*; NSW: s. 4 *Child Protection (Offenders Prohibition Orders) Act 2004*; NT: s. 71 *Child Protection (Offender Reporting and Registration) Act*; WA: s. 87 *Community Protection (Offender Reporting) Act 2004*.

35 ACT: s. 132D(1)(c), 132H(1)(b) Crimes (Child Sex Offenders) Act; NSW: s. 5(1) Child Protection (Offenders Prohibition Orders) Act; NT: s. 72(1) Child Protection (Offender Reporting and Registration) Act; WA: s. 90(1) Community Protection (Offender Reporting) Act.

36 Submissions from the CCYPCG, the QPU, and two confidential submissions (Confidential submission B 2013; Confidential submission D 2013).

safety is by its nature unacceptable. Further, the term "unacceptable risk" is a common threshold in Queensland,[37] and there is substantial case law that provides guidance on its meaning.[38] Overall, the review found no compelling reason to lower the threshold from "an unacceptable risk" to "a risk".

The suitability of tailoring OPO conditions to individual risk

The CPOPO Act requires that an OPO be individually tailored to the circumstances of each case. Prohibitions are matched to the offender's previous offending history, current circumstances, and the nature of the risk the offender poses to a child or children [ss. 8(1), 9].

Nonetheless, as reported in Chapter 3, the analysis of OPO conditions revealed a number of commonly occurring general prohibitions, including:

- direct or indirect contact with any child
- living with any child
- having employment that may involve contact with children
- visiting locations frequented by children.

The review therefore considered whether OPOs should continue to be individually tailored to circumstances by each magistrate or whether some "standard" conditions should be available (for guidance only, or even to be regarded as mandatory).

Police who argued for the development of a suite of "standard" OPO conditions cited similar approaches taken in the *Domestic and Family Violence Protection Act 2012* (Qld) (DFVP Act) and the Bail Act. It was suggested that standard conditions that reflect the range of general risks presented by reportable offenders living in the community may better protect children than the current customised approach, which may only provide partial coverage of the full array of risks.

Those who did not support the development of standardised conditions (which includes some police) argued that the circumstances of each offender and nature of the risk they pose is so varied that some standard conditions could be extraneous. It was recognised that there may be merit in developing a suite of standard conditions, but that there should be flexibility to only include conditions that would be likely to reduce the offenders' risk to children, thus resulting in OPOs with conditions tailored to the offender.

In light of the divergence of views, the CCC believes that further consideration should be given to this issue. It may be that, as more OPOs are issued by the courts, a clearer pattern of frequently occurring conditions may emerge that can guide this deliberation. If standard conditions are to be considered, whether any of them should be regarded as mandatory (as in the Bail Act) or whether they should be included in a Regulation to the CPOPO Act and regarded as discretionary in every case, would be a further matter for determination if Recommendation 5 is adopted.

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37 For example, s. 10 Bail Act; ss. 10, 51AE *Child Protection Act 1999*; definition of "criminal organisation" (Sch. 2) *Crime and Corruption Act 2001*; definition of "criminal organisation" s. 1 Criminal Code Act; ss. 85, 98, 99, 201, 205, 211 *Corrective Services Act 2006*; ss. 10, 13 *Criminal Organisation Act 2009*; s. 13 DPSO Act; s. 188 (in wording of example) DFVP Act; ss. 156, 158, 159, 161, 162 *Education (General Provisions) Act 2006*; ss. 129, 204, 228B Mental Health Act; ss. 43C, 43J *Penalties and Sentences Act 1992*.

38 The term requires "that the likelihood of the relevant future conduct or event is not trivial or transient" [*Condon v. Pompano* Pty Ltd (2013) HCA 7 at 23]. "Even a low risk of re-offending can be rendered unacceptable by the seriousness of the potential adverse consequences that might flow if it eventuated" [*Fountain v. DPP* (2001) QCA 522]. "Similar broadly stated standards are common place in statutes... the technique of judicial interpretation is to give it content and more detailed meaning on a case to case basis" [*Thomas v. Mowbray* (2007) 233 CLR 307 at 351].

Recommendation 5

Consider whether there is merit in developing guidelines for the Queensland Police Service and the courts about commonly occurring conditions, or prescribing a suite of conditions, some or all of which may be included in an OPO in any individual case.

QPS training

Based on some officers' lack of understanding of the Act identified during the review, it is evident that the current training package (together with the legislation and policy) is not sufficiently equipping CPIU officers to perform their functions under the Act. For instance, police find the application process unclear and are tending not to share information about OPOs when they could. Some police are also confused about the criteria to apply for an OPO, and some have difficulty wording prohibitions. These examples could be both a result and a driver of how infrequently the Act is used, and highlight the importance of having suitable training materials for police officers to rely on when they wish to use the Act.

In addition to this, a review of the training materials obtained for the review showed that:[39]

- the description of how to apply for an OPO differs from the process described in the OPM
- the process set out in the OPM for applying for an OPO (with the Registry approving OPOs before they can be served and filed in court) is approximately two years out of date
- there is no mention of the powers to obtain information from other agencies or share information about an OPO with other agencies
- they include large excerpts from the CPOPO Act, but with minimal explanation of key terms, and how and in what circumstances the Act should be applied.

Many of the recommendations in this report will also have implications for the training materials that support the CPOPO and CPOR Acts. They include:

- any changes flowing from combining the CPOPO and CPOR Acts (see Recommendation 1)
- any changes flowing from updating the OPM (see Recommendations 4, 8, 12 and 15)
- the respective roles of government agencies in managing reportable offenders (see Recommendation 9)
- recommendations about information sharing (see Recommendation 11)
- police powers to monitor compliance with OPOs (see Recommendation 13).

Recommendation 6

Review all Queensland Police Service training materials relevant to the CPOPO Act, paying particular attention to the issues raised in this review.

39 Specifically, *Regional Coordinator Training on OPOs* (PowerPoint presentation) and *Participants' Workbook QC0472 for the Child Protection Register Training* (as at April 2012).

Identification of concerning conduct prior to a new offence

Before police officers can take steps to prohibit behaviour seen as a precursor to the commission of a new offence, they must first become aware of it. The review found that the following deficiencies in the OPO monitoring and information-sharing framework may be adversely affecting the early identification of concerning conduct:

- The QPS has limited resources to monitor reportable offenders to identify concerning conduct (see p. 27).
- Some offenders who should be monitored for concerning conduct are not identified in QPS and QCS systems (i.e. those who are not "routine" reportable offenders and those who are managed concurrently by the QPS and QCS) (see p. 28).
- Some intelligence captured by general duties police officers about reportable offenders is of poor quality (see p. 31).
- Some information-sharing provisions and practices are deficient (see p. 32).
- Police lack powers to monitor compliance with prohibitions (see p. 34).

QPS resources for monitoring reportable offenders

Police indicated that it has become increasingly difficult to meet the QPS monitoring guidelines (see p. 12). Analysis of the management notes of a random sample (*n* = 55) of offender files on the child protection register confirmed poor compliance with the monitoring guidelines.[40] Only:

- 5 of the offenders had a risk assessment conducted at least annually[41]
- 14 had an annual report or compliance check at least annually[42]
- 3 had a compliance management plan.

Police point out that immediate child protection matters must be given priority, sometimes leaving little time to monitor the 4696 offenders listed on Queensland's child protection register (as at June 2013).

> It always comes back to capacity — CPIUs have to prioritise their work, you might have to drop work on an OPO application if there are higher priorities. You've got offences against children, you've got a child death — that'll always take priority over someone who has failed to comply [with CPOR Act reporting obligations] or who you need to make an OPO against (QPS participant).

Additional pressure on police resources is likely to result from recent amendments to the CPOR Act, which require offenders to report a far wider range of contact with a child to police than previously (s. 9A CPOR Act). These pressures may be mitigated somewhat by:

- **The cessation of reporting obligations for some offenders:** At the beginning of 2013, offenders who had the shortest reporting period (8 years) would have completed their registry reporting obligations.[43]
- **Offenders being on the register for a shorter period of time:** Recent amendments to the CPOR Act limit reportable offenders' time on the register to five years (unless, after they become a reportable offender, they commit another reportable offence) (see s. 36).

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40 While this is a small sample and its results should be interpreted with caution, consultations with the QPS revealed that it had recently identified similar levels of non-compliance with risk assessments. The review also learned that this was, in part, the basis for the *Child Protection (Offender Reporting) and Other Legislation Amendment Act 2014*, which contains provisions to reduce the administrative burden involved in monitoring reportable offenders.

41 Three cases with missing risk assessment data were excluded from this analysis.

42 Two cases with missing annual report or compliance check data were excluded from this analysis.

43 Prior to the recent amendments to the CPOR Act, the duration of the reporting period was 8 years, 15 years or life, depending on the number and type of reportable offence (previous s. 36 CPOR Act).

The QPS is also working on several initiatives to manage the resourcing issue, including creating operational rules to follow up on reportable offenders' reports on a risk basis (e.g. reports relating to contact with children will have priority follow up); having more flexible reporting arrangements; and transferring the responsibility to conduct risk assessments from CPIUs around the state to intelligence officers within the Registry. The review has not evaluated the effectiveness of these initiatives, and police are encouraged to develop a more efficient and effective system to manage reportable offenders. This is discussed on pages 30–31.

The involvement of members of the public in monitoring the behaviour of reportable offenders who live in the community is often seen as a way of supplementing limited police resources. An examination of current mechanisms for involving the public found that the existing framework allows members of the public to provide information, and for the police to act on it.

Over half (*n* = 17) of the 32 OPO applications that proceeded to court contained information about concerning conduct that had been provided by members of the public. Further, the QPS has the power to proactively release information about reportable offenders to members of the public under the Commissioner's Guidelines. However, this review identified that some police are not aware of, or are not using, this power.

These Guidelines are issued under section 69(2) of the CPOR Act, and in some circumstances allow the QPS to release information about reportable offenders to members of the public.[44] The power allows certain QPS members to disclose personal information about a reportable offender "to prevent a child being exposed to an increased risk of harm because of contact with, or exposure to, a reportable offender" (paragraph (iv) under the heading "Disclosure of Personal Information").[45, 46]

The responses of police officers in interviews indicated that knowledge of this power is not widespread. The QPS should explore ways to improve police officers' understanding of how this power can be used to protect children. Given this review has also found that use of the CPOPO Act has been influenced by a lack of information guiding its use, it may be beneficial to review the Guidelines to ensure that they include appropriate guidance on the circumstances in which information can be released to the public.

Recommendation 7

Amend the Queensland Police Service Commissioner's Guidelines to provide more guidance about the types of situations when authorised Queensland Police Service members may disclose personal information about a reportable offender to a member of the public.

QPS and QCS systems to monitor offenders for concerning conduct

Some offenders who should be monitored for concerning conduct are not identified in QPS and QCS systems. The review identified gaps in the existing processes where individuals are not "routine" reportable offenders, and where offenders are managed concurrently by the QPS and QCS.

44 Provisions in other Queensland legislation also allow for information about risks posed by reportable offenders to be released to the public, either by police officers directly (e.g. s. 10.2 *Police Service Administration Act 1990*) or via another agency (e.g. via Child Safety using s. 187 Child Protection Act, via QCS using s. 341 Corrective Services Act).

45 The Commissioner's Guidelines need to be read alongside the delegations issued under the CPOR Act (*Authority to disclose personal information in the child protection register on behalf of the Queensland Police Service*, D51.31, as at 15 April 2013).

46 The range of QPS members includes executive-level officers within State Crime Command, all police officers and staff members attached to the Registry, Officers in Charge of CPIUs and police officers performing the role of NCOS local manager.

"Non-routine" reportable offenders

The QPS QPRIME system flags any individual who may be a "reportable offender". This prompts the officer to examine the situation where they have come across the offender (e.g. a traffic stop) for any child protection concerns, and requires them to submit an intelligence submission based on the contact. However, the review identified two groups of these offenders who are not flagged:

- Those who would have been reportable offenders had they not completed their sentence for a reportable offence before the CPOR Act commenced in 2005, and have not committed another reportable offence since then.
- Those who could fit the definition of a reportable offender (s. 5 CPOR Act) because, though they had not committed a reportable offence, they had committed one (such as torture) that could result in the court making an "offender reporting order" (s. 13 CPOR Act).[47, 48]

When interviewed, senior child protection officers said that they did not regard failure to flag the first category of offenders in QPRIME a significant issue for child protection in Queensland, on the basis that they have not been known to reoffend in nearly 10 years. Research on sex offenders supports this and shows that the majority of reconvictions for any sexual offence (whether against an adult or child) occur within the first 10 years of the offender's last offence (Ackerley, Soothill & Francis 1998; Soothill & Francis 1999; Soothill, Sanderson & Ackerley 2000), and the longer the time since the last offence, the less likely these offenders are to reoffend (Harris & Hanson 2004; Tewksbury & Jennings 2010). Further, monitoring this group of offenders, who are far less likely to reoffend, would place more strain on CPIUs around the state. So though this initially appeared to be a significant gap in the monitoring framework, the review found that there was no compelling reason for the QPS to identify, register and monitor this group of offenders. However, this is a matter for the Queensland Government to direct public policy in this regard.

Failure to flag the second group of offenders in QPRIME is more significant. According to its OPM, the QPS have set up systems to identify offenders who have been convicted of reportable offences. Specifically, the Operations Leader within the CPOR Registry is responsible for monitoring the prosecutions of offences that may result in a person becoming a reportable offender. However, the OPM does not specify that this includes any offence that may result in the making of an offender reporting order [s. 7.18.4(xi)]. Police interviewed for this review confirmed that the QPS:

- does not have a process to identify offenders who have been charged with offences against a child that are not reportable offences, but may result in an offender reporting order
- has not yet applied for an offender reporting order.

To more effectively capture this group of offenders, it may be appropriate to amend section 7.18 of the OPM to specify:

- the process for identifying offenders whose offence could result in the making of an offender reporting order
- the process for bringing an application for an offender reporting order.

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47 Since the recent amendments to the CPOR Act, the prosecution may apply for an offender reporting order at any time within six months of the offender being sentenced for the offence. Previously, a court could make such an order only at the time of sentencing the offender. This change gives police more time in which to identify these offenders, but has no bearing on Recommendation 8.

48 In October 2014, the Act was amended so that a person who is no longer a reportable offender will continue to be a relevant sexual offender — and so eligible for an OPO — for the rest of their life (Sch.). This may mean that police are expected to have some visibility of the behaviour of all previous reportable offenders for the rest of their lives.

Recommendation 8

Amend section 7.18 of the Queensland Police Service Operational Procedures Manual to ensure that police are identifying and monitoring offenders who may meet the requirements for an offender reporting order under section 13 of the CPOR Act.

Offenders managed concurrently by the QPS and QCS

The QPS monitors reportable offenders, but at any one time many of these offenders are also subject to community supervision orders (e.g. probation or parole orders) and are monitored by QCS. The review showed that almost half (41%, *n* = 222) of the sample were under QCS supervision at some stage for an average of about 19 months (*Mean* = 592.02 days; *SD* = 407.68 days). QCS officers who are supervising reportable offenders regularly remind them about their CPOR Act reporting obligations, and periodically meet with QPS officers to discuss the management of those under concurrent agency supervision. Because QCS officers have more frequent contact with offenders than QPS officers do, they are a vital source of information on CPOR Act breaches and concerning conduct.

> Probation and parole are an excellent source of information. They aren't as restricted as QPS in information sharing, they develop a good rapport with reportable offenders, so find out more information about their social life, contact with children (QPS participant).

The review identified the following deficiencies in how offenders are concurrently managed by the QPS and QCS:

- **QCS may be unaware that offenders in custody or subject to a QCS supervision order are reportable offenders:** Each week, the QPS provides QCS with a list of the names of new reportable offenders who will be under QCS supervision. Because this approach captures only new reportable offenders, and the arrangement has not been in effect for long, QCS is concerned that they may not be aware of reportable offenders who:
  - are currently under their supervision, but their reportable offender status was not disclosed to QCS under the previous QPS–QCS information-sharing arrangement
  - are reportable offenders currently not under QCS supervision but may come under their supervision in the future for another type of offence (e.g. a property offence).
- **The information-sharing process is inefficient:** The current reporting process requires staff to prepare and exchange reports on a weekly basis. There is no ability to view or interrogate the other agency's system.
- **The information-sharing process is inconsistent:** Many QPS and QCS officers reported very productive interagency relationships regarding information sharing about reportable offenders. However, less developed relationships in some areas appear to have resulted in less frequent and effective communication.[49]

If QCS officers are unaware that a person is a reportable offender, they may not report concerning conduct to the QPS (e.g. at local level meetings between probation and parole officers and CPIU officers). It also means that QCS will not meet their legal obligations to inform the QPS of incidents relevant to the management of the reportable offender (s. 58 CPOR Act).

49 The QPS–QCS relationship exists for a number of purposes. The scope of the interview questions related to information sharing about reportable offenders only, so the review does not judge or remark on the nature or effectiveness of QPS–QCS relationships established for other purposes.

As QPS and QCS are concurrently supervising a substantial number of reportable offenders, it is worth considering whether a more formalised or streamlined approach could result in a more efficient system with fewer gaps in information sharing. The following suggestions to achieve this were made during the review:

- allowing offenders to register a change of detail or do their annual reports (required by the CPOR Act) during their routine contacts with their QCS probation and parole officer, rather than having to contact this officer for routine contact, and the QPS if they have to register a change of detail (Confidential submission A 2013)
- suspending reportable offenders' reporting obligations while they are being supervised by QCS probation and parole officers[50]
- having an interface between the child protection register (held by QPS) and IOMS (held by QCS) so that both agencies can see all the conditions to which the offender is subject
- moving the responsibility for monitoring or managing reportable offenders to QCS, which may be better situated than the QPS to identify concerning conduct and balance the risk and protective factors relating to the offender (Confidential submission A 2013; Confidential submission B 2013; Protect All Children Today Inc. 2013)
- establishing a multi-agency information-sharing network for reportable offenders, based on the Suspected Child Abuse and Neglect (SCAN) team system (Confidential submission A 2013; Confidential submission C 2013).[51]

Because these suggestions relate to the management of reportable offenders generally, and so are more aligned to the operation of the CPOR Act than the CPOPO Act, examining them fully was outside the scope of this review. However, the CCC believes the concerns raised by stakeholders were sufficient to justify a review of the process to manage reportable offenders. The review should have input from all agencies involved in the process.

Recommendation 9

Establish a joint working group to review the processes used by the Queensland Police Service and Queensland Corrective Services to manage reportable offenders. The review should aim to achieve full legislative and policy compliance and improve the efficiency and effectiveness of the management of reportable offenders.

Intelligence captured about reportable offenders

General duties police officers encounter reportable offenders in the normal course of their duties (e.g. traffic stop, attending a call for service) and become aware of behaviour that amounts to concerning conduct. The QPRIME flag (see p. 29) prompts these officers to examine each situation for any child protection concerns, and requires them to submit an intelligence submission based on the contact.

50 When these suggestions were made, an offender's reporting obligations were suspended only if they were in custody, or outside Queensland, or if they successfully applied for a Supreme Court suspension order under section 42 (s. 34 CPOR Act). Since the recent amendments to the CPOR Act, additionally, an offender who is subject to a supervision order under the DPSO Act has their reporting obligations automatically suspended (s. 4), and the Commissioner of Police can suspend the reporting obligations of offenders who commit a reportable offence when they are a child and of offenders who have a cognitive or physical impairment (ss. 67C, 67D).

51 Note that other multi-agency approaches to monitoring reportable offenders (similar to the SCAN team system) operate in other jurisdictions, including the UK (ss. 325–327 Criminal Justice Act 2003) and NSW [(New South Wales Legislative Council (Sharpe) 2008)].

CPIU and intelligence officers, who are users of the information, indicated that the information gathered as a result of the flag sometimes does not allow them to take appropriate action:

> Young uniforms [uniformed officers, as opposed to plain clothes officers] will see the "possible reportable offender" flag, and they don't ask them the questions we want them to ask, because they don't know what they can and can't let on to the offender.[52] This really inhibits our ability to get the intelligence we need. We should be able to say "this person is a reportable offender, these are their reporting obligations, this is how we want you to deal with them" (QPS participant).
>
> About 20 per cent of intelligence submissions need to go back for clarification or extra information … generally it's because of a lack of information (QPS participant).

Reviewing the QPRIME flag highlighted that it does not:

- identify non-routine reportable offenders (see p. 29)
- give guidance about the kind of conduct that may pose a risk to children
- provide adequate guidance about the course of action that officers should take (e.g. what questions to ask, what to look for, what to do with the information)
- explain how the information they provide may be used by CPIU officers, including the relevance of the CPOPO Act (e.g. "The information you provide is critical intelligence in the QPS's monitoring of reportable offenders. It may be used as the basis for an OPO, which can prohibit an offender from engaging in legal activities that pose a risk to children.").

Recommendation 10

Amend the wording of the flag linked to the records of reportable offenders in the Queensland Police Service information system (QPRIME) to improve the identification of reportable offenders and quality of information recorded, and provide guidance about appropriate action. The amendment should be guided by the Child Protection Offender Registry.

Information-sharing provisions and practices

To be effective, the information-sharing framework must include entities associated with the management and monitoring of offenders, and those with a direct role in protecting children at risk. The QPS must be able to share information with these entities, and vice versa. The review identified the following deficiencies in information-sharing provisions and practices:

- **Information-sharing provisions in the CPOPO Act relate only to QPS assessment of whether to apply for an OPO:** At present, police can direct government agencies to provide information "relevant to an assessment of whether the [offender] for the proposed [OPO] poses an unacceptable risk of committing a reportable offence against a child" (s. 42), but this provision does not apply when police are taking other steps under the Act, including collecting evidence of a breach of an order or applying to vary the terms of an existing OPO. As a consequence, other agencies may not share information about an offender with an OPO with police in all circumstances. Expanding section 42 of the Act to allow the Commissioner of Police to direct government agencies to provide information that could be used for all court proceedings under the Act would address this issue.

52 Review interviews revealed that when the CPOR Act commenced in 2005, the legal advice was that it would not be appropriate for all police to be aware of an offender's status as a reportable offender, citing section 70 of the CPOR Act. This led to the QPRIME flag being worded "may be a reportable offender" rather than "reportable offender". However, legal advice obtained by the QPS during the review indicated there is no breach of section 70 if a flag states a person is a reportable offender.

- **Protections from liability for disclosing confidential information are inadequate:** Individuals or agencies who wish to volunteer information to police about concerning conduct may elect not to do so because the Act does not protect them from liability for disclosing confidential information. Currently, those who provide this kind of information would need to rely on section 22 of the Child Protection Act.[53] As this section applies to information about harm or risk of harm to identified children rather than a more general risk to the lives or sexual safety of children, it may not be broad enough to cover the range of circumstances relevant to the operation of the CPOPO Act. It may be appropriate to insert a section in the Act that provides appropriate protection to individuals and agencies that give information to police officers about conduct that may pose a risk to the lives or sexual safety of one or more children, or of children generally.
- **Police are not sharing information about OPOs with agencies outside the QPS when they could:** When an OPO is made, police may share information about it (such as the offender's name, date of birth and photograph, the term of the order and the conduct prohibited) with various parties. These include certain government agencies, referred to in the Act as "prescribed entities" (s. 43, Sch. CPOPO Act), the parent or guardian of a child protected by an order [s. 47(b) CPOPO Act], and the parent or guardian of a child offender [s. 47(a) CPOPO Act].[54] While information sharing may not be necessary in all cases, such as where the OPO is targeting a general type of conduct (e.g. being in a park with playground equipment), there are circumstances where the safety of a child or children would be enhanced through better information-sharing practices. However, most officers with experience in developing an OPO application indicated that they had shared information about the order only within the QPS, which may mean that risk is not being appropriately managed in the community. A possible reason for this is that as the QPS OPM provides no guidance on these information-sharing provisions, police may be unaware of one or more of the following:
  - the importance of sharing information about OPOs where doing so would reduce the risk to the lives or sexual safety of children
  - the relevant powers that provide for the sharing of this information
  - the internal QPS processes to gain the appropriate approvals to release this sensitive information.
- **Information-sharing provisions about OPOs are too restrictive:** The information-sharing provisions may not be broad enough to cover the range of circumstances relevant to the operation of the CPOPO Act, which may be detrimental to child protection. Specifically, they do not allow police to share information about an OPO with QCS, which, as described earlier, plays an important complementary role in managing reportable offenders (see p. 30). The provisions also do not include other relevant agencies mentioned in interviews as potentially holding information that may be useful in monitoring or managing reportable offenders (e.g. the departments responsible for disability services and housing). The review was unable to identify a rationale for limiting information sharing in this way. An expanded definition of "prescribed entity" in the Schedule of the CPOPO Act to include a broader range of agencies that may hold information relevant to the monitoring or management of reportable offenders would address this issue. Section 159M of the Child Protection Act may serve as a useful guide.[55]

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53 Recent amendments to section 22 that had not been proclaimed into operation at the time of publishing. The amendments include renumbering section 22.

54 The extent of information that can be shared depends on "what is reasonably necessary and appropriate to reduce a risk to the lives or sexual safety of one or more children, or of children generally" (s. 47 CPOPO Act).

55 It is important that the Public Safety Business Agency — which is not included in the definition of prescribed entities provided in section 159M of the Child Protection Act— remain a prescribed entity under the CPOPO Act because it is responsible for determining a person's eligibility to work with children in Queensland.

Recommendation 11

Amend the CPOPO Act to improve information sharing between the Queensland Police Service and relevant agencies, and between the Queensland Police Service and members of the public.

Recommendation 12

Amend section 7.19 of the Queensland Police Service Operational Procedures Manual to improve information sharing about OPOs under sections 43 and 47 of the Act.

Police powers to monitor compliance with prohibitions

Breaches of OPOs that occur in public places can be readily dealt with by police using their existing powers to search, detain and arrest.[56] But it is also quite possible, perhaps even likely, that offenders will engage in prohibited conduct inside their homes. Police powers to monitor compliance inside the home are limited.

In interviews, some police reported that an inability to monitor compliance discourages them from using OPOs, because they were considered "unenforceable". In considering whether police powers should be extended to augment the CPOPO regime, the CCC has endeavoured to strike a balance between the objectives of the CPOPO Act and the rights to privacy and fundamental freedoms of offenders subject to an OPO.

In conducting this balancing exercise it has been necessary to consider a number of factors:

- The fact that, upon the making of an OPO, a court has decided that the offender's conduct means an unacceptable risk is posed to the lives or sexual safety of children.
- Differentiating the relative seriousness of an offender's conduct when compared to other categories of sexual or violent offenders such as:
  - those offenders subject to incarceration pursuant to the *Criminal Law Amendment Act 1945* — who are those persons who cannot control their sexual instincts, and
  - offenders subject to a continuing detention or supervision order pursuant to the DPSO Act— which applies to prisoners who are a serious danger to the community.
- Although there is no evidence about the likelihood that an offender will fully comply with OPO conditions, there is a possibility of recidivism.

It is recognised that offenders subject to an OPO are not in the same category as offenders under the DPSO Act or the Criminal Law Amendment Act. However, despite some submissions maintaining that the compliance could be adequately monitored through reporting obligations (CCYPCG 2013; Confidential submission C 2013; QPU 2013), some extension to existing police powers might be desirable to reduce the risk that offenders subject to an OPO pose to the lives and sexual safety of children. This is considered in light of the balancing of rights of offenders and the public outlined above.

Presently, police can enter the offender's residence or other premises without consent to check for a breach of an OPO, if:

- they have obtained a search warrant, which can only be issued if there are reasonable grounds for suspecting evidence of an offence is either at the premises or is likely to be taken there within 72 hours of the issue of the search warrant [see ss. 150 and 151 of the *Police Powers and Responsibilities Act 2000 (PPRA*)], or

56 See Chapter 2, Part 2, Division 4 of the *Police Powers and Responsibilities Act 2000*.

- they hold a reasonable suspicion that there is evidence of an indictable offence at the premises and that the evidence will be concealed or destroyed unless the place is immediately entered and searched, followed by a post-search approval from a magistrate (ss. 160 and 161 of the PPRA), or
- they hold a reasonable suspicion that a child is at immediate risk of harm or is likely to suffer harm if the officer does not take immediate action or immediately take the child into custody (see ss. 16 and 18 of the *Child Protection Act 1999*).[57]

Police can also enter without warrant and without a suspicion of any breach of an OPO to verify an offender's personal details reported under the CPOR Act (s. 21A PPRA). However, police in Queensland presently cannot enter an offender's residence to both search and seize computers and require access information (user names and passwords) unless authorised to do so under a search warrant.

The research has concluded that:

- Existing powers to search with a warrant could be used, but these were impractical because protecting children sometimes requires police to act very quickly.
- For searches (without a warrant) to prevent loss of evidence, there is no power[58] to require a person to provide "access information" for electronic devices (e.g. a user name and password) which is something that can presently be ordered by a search warrant.[59]

Given that the object of an OPO is to mitigate the risk of reoffending, it is considered that the following changes are required to provide police with the ability to more effectively monitor compliance with prohibitions:

- **Provide police with the power to search, seize and require access information without a warrant, when there is a reasonable suspicion of a breach:** This could be based on the existing emergent search provisions (ss. 159–160 PPRA). Amendment to section 159 would be required to incorporate CPOPO offences as that Part of the PPRA only applies to certain specified and indictable offences.

  It is also suggested that the existing post-search approval provisions apply to this power. Such a process provides a measure of oversight of the exercise of police power.

  The proposed power may assist for situations where police find evidence "in plain sight". For example, during a section 21A PPRA entry (to check personal details) an officer may notice children's toys on the floor of the residence of a registered offender whose OPO prohibits co-habitation with children. The existence of the toys should be enough to give rise to a reasonable suspicion which would form the basis of a lawful "emergent" search.
- **Provide police with the power to require a person at the premises to provide "access information" for seized or detained computers or electronic equipment:** In Western Australia[60] if a protection order prohibits conduct that relates to the use of the internet, police may at any time and without warrant enter premises to inspect or seize a computer, and require a password. The power must not be exercised more than once in any 12-month period.[61] The Western Australia law provides a useful example of a power to act in relation to internet-based offenders where forming the requisite suspicion could be difficult or impossible. The existence of such a power could be a powerful incentive against such offending.

57 This is a list of the main powers currently available to police but it is not exhaustive.

58 Chapter 7, Part 2 PPRA.

59 Section 154 PPRA.

60 Section 94C *Community Protection (Offender Reporting) Act 2004*.

61 Except if authorised by a senior police officer.

- **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:** The penalty for failing to comply with a direction to provide access information is currently one year's imprisonment [s. 156(3) PPRA, s. 205 Criminal Code Act]. Some offenders may consider this preferable to providing the access information that may allow police to detect an offence with a higher maximum penalty. For example, a new reportable offence, a failure to comply with an OPO (maximum two years' imprisonment, s. 38 CPOPO Act), and a failure to comply with CPOR Act reporting obligations (maximum penalty of five years' imprisonment, s. 50 CPOR Act) all have higher maximum penalties than the current penalty for refusing to provide access information. Treating refusal as a breach of the OPO would give some offenders sufficient incentive to comply with the police direction.

It is suggested that it is appropriate that police who exercise any of these proposed powers should also be subject to the provisions in the PPRA that require entries to be recorded in the register of enforcement acts (s. 679). It may be appropriate for a new section to be inserted into the Police Responsibilities Code 2012 to regulate the type of information that should be recorded.

Recommendation 13

Consider amending the relevant legislation to:

(a) provide police with the power to search, seize and require access information without a warrant, when there is a reasonable suspicion of a breach of an OPO

(b) provide police with the power to require a person at the premises to provide access information for seized or detained computers or electronic equipment

(c) 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.

Electing to use an OPO to respond to concerning conduct

Some police interviewed indicated that they were not using OPOs for reasons described earlier in this report. As well as inadequate knowledge about what constitutes concerning conduct, they cited lack of resources to apply for an OPO when their other child protection responsibilities were higher priority, and their belief that the requirement for "recent" concerning conduct unreasonably limited the circumstances in which they could apply for an OPO. The review confirmed that these factors had influenced the decision of some officers not to apply for an OPO even though the situation had met the criteria for doing so.

Other factors were also seen to have discouraged the use of OPOs by police. The review identified a perception among police that many of the other possible responses to concerning conduct (see p. 10) were preferable to applying for an OPO. Factors contributing to this belief were:

- the disparity between the penalty for breaching an OPO and that for breaching CPOR Act reporting obligations (see p. 37)
- the complexity of the QPS OPM (see p. 38)
- the complexity and time-consuming nature of the OPO application process (see p. 38).

Other issues discouraging use of the CPOPO Act included the fixed duration of OPOs, the inability of OPOs to require an offender to engage in specific conduct (rather than simply prohibit specific conduct), and the difficulties associated with serving OPOs in person (see p. 40).

Penalty for breaching an OPO

A failure to comply with an OPO is a simple offence with a maximum penalty of two years' imprisonment (s. 38).[62] A failure to comply with CPOR Act reporting obligations, on the other hand, is a crime (which is an indictable offence) with a maximum penalty of five years' imprisonment (s. 50 CPOR Act). This disparity appears counterintuitive, given that offenders who receive an OPO, unlike other reportable offenders, demonstrate an ongoing and unacceptable risk to the lives or sexual safety of children. Further, legal analysis of those Australian jurisdictions with provisions comparable to those in the CPOPO Act shows that:

- the standard penalty for failing to comply with an OPO is a maximum of five years' imprisonment in all jurisdictions except Queensland
- the penalty for failing to comply with an OPO is the same as the penalty for failing to comply with reporting obligations in all jurisdictions except South Australia and Queensland.[63]

Importantly, amendments in 2011 to the CPOR Act offence allow for it to be heard summarily in the Magistrates Court, and set the maximum penalty for a summary conviction (ss. 52, 52A, 52B). These provisions adopt the approach taken in the Criminal Code Act for indictable offences dealt with summarily (Chapter 58A). So that offences under the CPOPO Act are viewed by the community, the police and the courts to be at least as serious as the CPOR Act offences, it is important that the offence provision in the CPOPO Act be amended to align with the penalty for failing to comply with CPOR Act reporting obligations. The amendments should:

- make the offence of failure to comply with an OPO a crime
- make the penalty a maximum of five years' imprisonment or a fine of 300 penalty units (currently $33 000)
- make provision for the offence to be heard summarily
- set the maximum penalty for a summary conviction.

Sections 52, 52A and 52B of the CPOR Act provide a suitable model.

A sentencing magistrate will take into account the relative seriousness of the condition breached when determining the appropriate penalty. An increase of the penalty, as recommended, will provide them with more scope to ensure greater comparability in sentencing for breaches of CPOR reporting obligations and breaches of OPO conditions.

Recommendation 14

Amend the CPOPO Act to align the offence provision with the penalty for failing to comply with CPOR Act reporting obligations.

62 It is a simple offence because there is no indication in section 38 that the offence is an indictable offence [s. 44(2)(d) *Acts Interpretation Act 1954* (Qld)].

63 This analysis compared the maximum penalty for a failure to comply with an OPO (or equivalent) and the maximum penalty for a failure to comply with reporting obligations (or equivalent) for Queensland, New South Wales, Western Australia, Northern Territory, Australian Capital Territory and South Australia. Note that the South Australian penalty for failing to comply with an OPO is contained in the *Child Sex Offenders Registration (Control Orders and Other Measures) Amendment Act 2014*, commenced on 30 November 2014.

QPS OPM that relates to the CPOPO Act

The QPS OPM on the CPOPO Act is comprehensive and legally accurate, but appears to be most useful to police officers who are already familiar with the legislation. For someone considering using an OPO for the first time, the policy appears difficult to follow, and gives minimal useful guidance on when to apply for an OPO, relative to the suite of other options available for responding to concerning conduct. Recommendation 4 deals with this issue (see p. 23).

The OPO application process

The OPO application process can be lengthy — over half of all OPO applications (*n* = 15) took between seven months and more than two years from the date of the first concerning conduct to the final court outcome. The review identified the following factors contributing to these delays:

- **The QPS OPM does not reflect current practice:** The QPS OPM guiding the use of the CPOPO Act (s. 7.19) was published soon after the Act was passed. As the powers were unprecedented in Queensland, the QPS developed a rigorous internal approval process to ensure their appropriate use. The process has evolved since then, but the policy has not been updated accordingly. For instance, the OPM requires that the applicant officer submit their draft application to a brief checker who then sends it to the Operations Leader of the Registry (s. 7.19.17); however, this practice has not been in effect for about two years. The CCC believes that this lack of alignment between the QPS OPM and practice is contributing to delays.
- **The QPS OPM requires a substantial amount of information for final OPO applications:** Some police reported frustration that the QPS OPM requires a full brief of evidence for an application for a final order. After looking at the OPM, it does appear that the requirements for this application are substantial. The QPS may wish to reconsider them when they are reviewing the OPM (see Recommendations 3, 12 and 15).
- **The civil application process is not well understood:** Applications brought under the CPOPO Act are civil proceedings and so are subject to the *Uniform Civil Procedure Rules 1999* (UCPR), rather than the *Criminal Practice Rules 1999*, which govern criminal proceedings. Unlike other Acts that allow police and other officers to bring civil proceedings,[64] neither the CPOPO Act nor the QPS OPM clearly state that the UCPR (or particular provisions of them) apply. In fact, the QPS OPM incorrectly directs police to prepare statements rather than affidavits.[65] The impact of this was evident in review interviews, with reports of uncertainty among police and prosecutors about the appropriate rules and procedures to follow in CPOPO Act proceedings. Prosecutors reported that this uncertainty led to inefficiencies in preparing OPO applications. For example, some police were not aware that they need to prepare affidavits rather than statements, and this results in officers having to return to witnesses to have them sign an affidavit.
- **The standard of proof and rules of evidence for CPOPO proceedings are not clear:** The standard of proof for a temporary or final order is "the balance of probabilities" (ss. 8, 15). However, the standard is not specified for other orders made under the CPOPO Act, such as those varying or revoking existing OPOs.

  The rules of evidence for orders other than temporary orders are also not clear. For all temporary orders, the court can rely on "information it considers sufficient and appropriate having regard to the temporary nature of the order" [ss. 15(4), 16(4)]. However, the Act does not mention the extent to which the rules of evidence that ordinarily apply in civil proceedings apply to other proceedings under the CPOPO Act.

64 For example, s. 8(6) *Criminal Proceeds Confiscation Act 2002* (Qld); s. 142 DFVP Act.

65 While the QPS OPM provides incorrect information, the training materials on the CPOPO Act state that affidavits are necessary and the application is civil, although it fails to specify that the UCPR apply.

Prosecutors suggested that the Act should state that a court is not bound by the rules of evidence and may inform itself in any way it considers appropriate (e.g. s. 145 DFVP Act). However, given that OPOs prohibit conduct that is otherwise legal, it is appropriate that all proceedings under the CPOPO Act (other than for a temporary order, due to the immediacy of the risk) be governed by the ordinary rules of evidence. Presumably, the ordinary rules of evidence and the evidentiary rules set out in the UCPR apply to all but temporary orders, but the Act does not make this clear.

- **Delays are caused by related criminal proceedings:** Many OPO applications (*n* = 13) have relied on concerning conduct that constitutes a criminal offence, and in most of these cases (*n* = 12), the offender was charged with at least one criminal offence about the same time as the application for an OPO was filed in court. However, some of these applications were adjourned (sometimes for a significant length of time) until after the criminal proceedings were finalised because it was believed that running both criminal and civil proceedings concurrently could be interpreted as an abuse of process. Specifically, concurrent proceedings 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. While the interaction between civil and criminal proceedings arising from the same conduct is dealt with in other Queensland legislation, the CPOPO Act does not contain similar provisions.[66] This practice has:
  - delayed the making of final orders for a lengthy period of time (*n* = 2)
  - resulted in multiple extensions of temporary orders (between 1 and 10), which can be an inefficient use of court resources (*n* = 3)
  - left children unprotected by an OPO (*n* = 4), in cases where there is a delay between the first court appearance and the final court outcome, a temporary order is not made in the interim, and the offender is not in custody
  - increased the total prohibition period, as the combined length of multiple temporary orders is not deducted from the duration of the final order.

To address these factors, and in doing so decrease delays in the court, the CPOPO Act and section 7.19 of the QPS OPM should be amended to state:

- that all proceedings under the Act other than a prosecution for an offence are civil proceedings
- that affidavits, not statements, are required
- when the UCPR apply
- that the standard of proof for all questions of fact, other than in a prosecution for an offence, is the balance of probabilities
- that the rules of evidence that apply in civil proceedings apply to all proceedings under the Act, except for temporary orders made under sections 15 or 16 and prosecutions for an offence
- that an application under the CPOPO Act may be filed, heard and decided concurrently with related criminal proceedings, and the extent that evidence about the civil proceedings can be used, so as not to disadvantage the offender in related criminal proceedings.

For an example of an Act that limits the application of the UCPR, see section 142 of the DFVP Act.

Recommendation 15

Amend the CPOPO Act and section 7.19 of the Queensland Police Service Operational Procedures Manual to clarify aspects of the civil application process, standard of proof and rules of evidence, and allow concurrent hearings.

66 See s. 138(1),(2) DFVP Act; s. 103 Child Protection Act.

Other factors discouraging use of the Act

- **The fixed duration of OPOs was questioned:** A magistrate making a final OPO does not have any discretion to set the length of time for which the order should be in effect (the Act prescribes five years for adult offenders and two years for child offenders). While the CCC heard of some circumstances where a shorter duration is appropriate,[67] it believes that the provisions that permit the QPS or the offender to apply to vary or revoke the OPO are sufficient (s. 22). The QPU (2013) also questioned the length of OPOs, arguing for a duration longer than five years. While most Australian jurisdictions with provisions comparable to the CPOPO Act give the court some flexibility to set the duration of the OPO,[68] there is nothing in the CPOPO Act to preclude a police officer from applying for a second OPO providing the offender has recently engaged in concerning conduct. Therefore, the review found no compelling reason to alter the provisions in the Act about duration.
- **The inability to require an offender to engage in specified conduct was questioned:** The CPOPO Act allows a court only to *prohibit* particular conduct by an offender. It cannot require that an offender engage in particular conduct (s. 11).[69] Some police officers and the QPU (2013) requested this be changed in the CPOPO Act. After considering the purpose of the legislation — that the tool be used to prohibit conduct when the offender is taking preparatory steps to reoffend — the CCC believes that this shift clearly goes beyond the intent of the legislation.
- **Police reported some difficulty serving OPOs in person:** When an OPO is made but the offender is not in court, police officers must serve the order in person [ss. 24, 57(3)]. Police reported that this is onerous, as some offenders make efforts to hide from them to avoid being served. Instead, police would prefer alternatives similar to the provisions in the DFVP Act [ss. 177(3), 184]. However, the CPOPO Act already allows police to apply to a magistrate to serve the order by another method [s. 57(4)], and states that if police cannot serve the order, but tell the offender about the order conditions in another way, the offender can still be successfully prosecuted for a failure to comply with their OPO [ss. 38(2)(c), 39]. As a result, the review found no compelling reason to alter these provisions.

Legal protections in the court process

The provisions in the CPOPO Act attempt to strike a balance between the Act's intention of protecting children from the risks posed by offenders, and protecting the civil rights of offenders (see p. 8). This review identified two areas where change could achieve a better balance — by addressing legislative ambiguities about OPOs made by consent, and by providing more protections for vulnerable witnesses participating in court hearings.

Ambiguities about OPOs made by consent

When police present an application for an OPO in court, the offender may either consent to its being made or contest the application. However, the magistrate must still consider certain factors before making the order by consent (s. 21).[70]

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67 For example, where the OPO only mentions contact with a specified child victim, and that child is almost at the age of consent, the order duration may mean that at some stage during the five-year period, the order would prohibit contact with an adult.

68 ACT: s. 132G Crimes (Child Sex Offenders) Act; NSW: s. 6 Child Protection (Offenders Prohibition Orders) Act; NT: s. 74 Child Protection (Offender Reporting and Registration) Act; SA: s. 66JD Child Sex Offenders Registration (Control Orders and Other Measures) Amendment Act; WA: s. 91 Community Protection (Offender Reporting) Act.

69 In Australia, only the Western Australian legislation allows a court to make an OPO that requires an offender to engage in particular conduct [s. 93(6)].

70 For example, the court may consider whether the offender has an intellectual disability or is illiterate or is subject to some other condition that prevents the offender from understanding the effect of consenting to the OPO [s. 21(4)].

This section of the Act contains some ambiguities. It is unclear whether:

- The section applies to all applications and orders made under the Act.
- If the magistrate decides it is not in the interests of justice to conduct a hearing or consider the matters listed in section 9 [see section 21(3)], before making the order, he or she still needs to be satisfied about the key criteria for making an OPO (e.g. that the person is a relevant sexual offender and poses an unacceptable risk to children). The CCC suggests that when the court is satisfied about the "interests of justice" criterion, it must conduct a hearing and consider the criteria in sections 8 and 9. Further, when the court decides the "interests of justice" criterion is not satisfied, it may also be useful to clarify what further criteria (if any) must be considered [e.g. s. 8(1)].

The wording in section 10 of New South Wales' Child Protection (Offenders Prohibition Orders) Act (also copied in the Western Australia and Northern Territory Acts) may be a useful guide in redrafting section 21.

Recommendation 16

Amend section 21 of the CPOPO Act to clarify the ambiguities about OPOs made by consent.

Protections for vulnerable witnesses

The CPOPO Act does not include any provisions that protect child witnesses in CPOPO Act hearings. The only protections that apply are the general protections under sections 9E and 21A of the *Evidence Act 1977* (Qld).[71] While these will provide some measure of protection, they will not adequately protect against the possible adverse consequences for a child witness who is cross-examined by a self-represented offender in person.

This type of protection has been granted in other Queensland legislation:

- The DFVP Act provides that an unrepresented offender cannot cross-examine a child witness in person [s. 151(3)]. For other "protected witnesses", including the aggrieved, the court has discretion to make such an order where the cross-examination is likely to cause emotional harm or distress, or such intimidation as to disadvantage the witness [s. 151(2)]. The offender is given the option of obtaining legal representation (at least for the cross-examination) or foregoing the cross-examination.[72]
- The Evidence Act makes extensive provision for the protection of "protected witnesses" as well as "affected children" in criminal offences of a sexual or violent nature. In particular, sections 21L to 21S prohibit a person who has been charged with an offence from cross-examining a child under 16 in person. Such provisions do not apply to OPO applications, which are civil proceedings (see ss. 21AC, 21L), but could be readily modified to apply.

71 Section 9E provides principles for how a child under 16 should be treated while giving evidence. Section 21A allows a court to direct that a "special witness" (which includes a child under 16) give their evidence in an alternative way, such as via a pre-recording.

72 Under sections 21O and 21P of the Evidence Act, a grant of legal aid will be given to allow cross-examination of the witness by a legal representative.

The CCC believes this type of protection should be provided to all children under the age of 16 in hearings under the CPOPO Act, irrespective of whether the evidence they give during a proceeding is about concerning conduct directed at them or someone else, or a breach of an OPO that directly involves them or someone else. An amendment to the CPOPO Act, similar to the above examples, or an amendment to the Evidence Act will provide for more suitable protections for vulnerable witnesses in OPO hearings.

Recommendation 17

Amend the CPOPO Act to provide adequate protection to child witnesses:

(a) by prohibiting a self-represented offender from cross-examining (in person) a child witness in any proceeding under the Act

(b) by providing that offenders must be given the opportunity to obtain legal representation (either publicly funded or not) in these circumstances

(c) by incorporating protections similar to those contained in the DFVP Act or the Evidence Act.

Conclusion

This review by the Crime and Corruption Commission focused on the first five years of operation of the CPOPO Act — a law that enables Queensland police to take preventative measures to reduce the likelihood of further sexual or other serious offending against children by people with previous convictions.

The review found that in its first five years of operation, the CPOPO Act was being used as intended by Parliament — the OPOs made were applied to offenders with a high risk of reoffending who were engaging in conduct that presented a risk to children. Further, the level of use of OPOs was commensurate with similar legislation in other Australian states.

Nevertheless, the review identified numerous issues to address, many of which were discouraging police from using the Act, or limiting their ability to learn of concerning conduct before an offence occurs. Its recommendations to address these will help build a more unified and effective legislative, policy and practice framework for child protection in Queensland, enable police to better understand and use the relevant legislation, and amend legal provisions that currently may be disadvantaging offenders and vulnerable witnesses.

Legislation that seeks to protect children from offenders who have been convicted of sexual or other serious crimes against children is a relatively new area of law. These laws, their policy frameworks and their implementation require regular assessment to ensure that children are being protected and an appropriate balance maintained between the rights of offenders and the community. Since sex offender registration legislation was first introduced in Australia in 2000, there have been at least seven legislative reviews, resulting in numerous recommendations to modify Acts in several Australian jurisdictions. The present review adds to Australia's growing evidence base about the operation and effectiveness of this type of legislation.

The CCC commends this report to the Queensland Parliament.

Appendix 1:
Methodology

Key questions

The review sought to examine the first five years of operation of the CPOPO Act. Key questions were:

(1) How has the CPOPO Act operated in practice between 2008 and 2013?

(2) To what extent has the Act achieved its purpose of providing for the protection of the lives and sexual safety of children?

The study period was from 2 June 2008 to 2 June 2013.

Population and samples

Due to resource constraints, the review was unable to examine data for the population of offenders on the child protection register to answer the research questions. This made it necessary to draw two samples to do so (see p. 3). Analyses identified that both the sample and sub-sample were representative of the population in age and Indigenous status. However, the sample was over-representative of females compared to the population, and the sub-sample contained too few females to test the representativeness (see below).

Representativeness of the sample and sub-sample

	Population vs. Sample	Population vs. Sub-sample	Sample vs. Sub-sample
Age	$t(4760) = 0.91$, $p = .366$	$t(4378) = 0.48$, $p = .633$	$t(600) = 0.14$, $p = .890$
Gender	$\chi^2(2) = 4.01$, $p = .135$	–	–
Indigenous	$\chi^2(1) = 0.09$, $p = .766$	$\chi^2(2) = 0.08$, $p = .961$	$\chi^2(1) = 0.01$, $p = .930$

Data used to answer the key questions

The following data sources were used to answer the key questions:

- official QPS, QCS and court data
- semi-structured interviews with members of the QPS, QCS and one magistrate
- submissions from stakeholders
- legislation, policies and training materials.

How has the CPOPO Act operated in practice between 2008 and 2013?

A range of official QPS, QCS and court data was used to answer this key question. Specifically:

- QPRIME occurrences relating to the use of the CPOPO Act [*Offender Prohibition Application — Offences against Children (0532), Temporary Offender Prohibition Order Application — Offences against Children (0533), and Interstate Offender Prohibition Order* (0534)]
- information on how the court hearings progressed, the outcome of OPO applications and sentencing outcomes for breaches of OPOs (from QWIC data, the Queensland Civil Information Management System data and court files)[73]
- the demographic characteristics and offending histories of reportable offenders in Queensland
- all convictions and outstanding charges ever recorded in Queensland for reportable offences (Sch. CPOPO) and child-related offences
- QPS and QCS records that reflect behaviour that matches the review's definition of concerning conduct (see p. 7 and text box below).

Search terms to identify concerning conduct

From QPS records

Conduct terms	Place/object terms	Target terms
Concern*	School	Child*
Risk*	Kind*	Bab*
Change	Daycare	Toddler
Hang*	Day care	Teen*
Watch*	Playschool	Minor
Groom*	Pool	Juvenile
Offer*	Park	Underage
Giv*	Theatre	Kid
Provid*	Movie	Homeless
Loiter*	Cinema	Street kid
	Playground	Streetkid
	Toy*	

Note: These search criteria assume that search terms are not case sensitive, and uses * as the truncation symbol.

From QCS records

Contact summaries that fulfilled at least one of the following search criteria:

- consult% AND supervis% OR district OR region! OR manager OR mnger OR mger OR manger OR mgr OR mngr OR dm OR d.m OR d. m OR d m OR rm OR r.m OR r. m OR r m
- case conf! OR case discus!
- CC
- risk as!

Note: These search criteria assume that search terms are not case sensitive, and uses % as the wildcard symbol, and ! as the truncation symbol.

73 The Department of Justice and Attorney-General could not locate two of the court files.

Data analysis

Quantitative data were analysed predominantly using descriptive statistics. In a few cases, chi-square analyses and t-tests were used to test for significant differences between groups.

Has the Act achieved its purpose of providing for the protection of the lives and sexual safety of children?

The analyses conducted to answer the previous key question, "How has the CPOPO Act been used?" were scrutinised to answer this question.

While the review was able to make some inferences about the performance of the Act from official data, most data relevant to answering this question came from interviews, submissions and reviewing of legislation, policy and training.

Interviews

The interviews provided insight into participants' perceptions and experiences of the CPOPO Act, as well as providing an opportunity for these parties to make suggestions about ways to improve the Act. They also provided valuable information unavailable from administrative data, such as an understanding of:

- the place of OPOs among other tools available to officers
- issues and barriers to using CPOPO legislation
- the roles of different agencies (and groups within agencies) in the operation of the Act.

Data collection method

The CCC conducted 41 semi-structured interviews of 69 people (n_{QPS} = 46, n_{QCS} = 22, $n_{magistrates}$ = 1) between October 2013 and January 2014. Interviews were conducted either with one interviewee (n = 25) or in small groups (n = 16). Most interviews were conducted by telephone (n = 33), and the remainder were conducted in person at the interviewees' workplace (n = 8).

More than 42 hours of interview data were collected. The interviews ranged from 27 minutes to six and a half hours, with the median being 52 minutes.[74] Interview notes were hand written or typed. Where quotes have been included through the report, they are correct according to the notes, but some acronyms have been written in full for readability.

Recruitment

The CCC conducted targeted recruitment of:

- QPS officers, including Officers in Charge of CPIUs, CPIU officers, CPOR coordinators, CPOR intelligence staff, police officers who have applied for an OPO, police prosecutors who have experience prosecuting an OPO, QPS training officers and senior officers from the Child Safety and Sexual Crime Group[75]
- QCS officers, including District Managers, Probation and Parole Office Senior Case Managers, Probation and Parole Office Supervisors and senior QCS officers from the High Risk Offender Management Unit
- magistrates who have experience with proceedings under the CPOPO Act (see text box on p. 47).

74 The duration of three of the interviews was not recorded.

75 Some QPS officers who formerly worked in these positions also participated in this review.

Breakdown of interviewees

QPS: Of the 46 QPS personnel interviewed, the majority were Officers in Charge of a CPIU (*n* = 11), other CPIU officers (*n* = 10) or OPO applicant officers (*n* = 9). Ten police prosecutors were contacted based on who had the broadest experience with OPOs.[76] Of these, four declined to be interviewed. The remaining 10 QPS personnel were CPOR coordinators, senior officers from the Child Safety and Sexual Crime Group, or officers who worked in intelligence or training.

QCS: Of the 22 QCS personnel interviewed, the majority were District Managers (*n* = 9) or Senior Case Managers (*n* = 9). A few personnel from the High Risk Offender Management Unit as well as a few Supervisors also participated in an interview.

Magistrates: The CCC invited several magistrates to participate in a focus group. One indicated interest but did not recall sufficient detail about the matter to be interviewed. A different magistrate later expressed interest in being interviewed (*n* = 1).

These people were identified by the QPS CPOR unit, from information from court files, from information provided by QCS, or by recommendations from other interviewees. They received an email from the CCC inviting them to participate. Once the interviews had reached saturation point, recruitment ceased.[77]

Data analysis

All interview recordings were imported into *NVivo 9* for coding and analysis. Coders used an inductive approach to code the interview content:

> *Inductive* analysis involves *discovering* patterns, themes, and categories in one's data. Findings emerge out of the data, through the analyst's interactions with the data, in contrast to *deductive* analysis where the data are analyzed according to an existing framework (Patton 2002, p. 453, emphasis in original).

There were two stages of coding.[78] Stage 1 involved organising the content into broad categories or topic areas. This is simply organising, more like data management than fracturing the data to identify substantive issues. Most of the broad categories were identified before reviewing the interview data, informed by the research questions (Maxwell 2005).

Stage 2 involved "fracturing" the data to identify the substantive issues within each broad topic (Maxwell 2005, p. 97). This exercise was predominantly conducted using open coding. This means that the categories were derived inductively (i.e. from the data) (Maxwell 2005, p. 97; Strauss & Corbin 1998). Towards the end of Stage 2, however, the coder created a small number of categories that related to specific hypotheses. The content within the categories at the end of Stage 2 was analysed to answer the research questions.

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76 Breadth of experience was determined based on factors like the range of applications they had been involved in (e.g. temporary orders, final orders, variations), the number of matters they had been involved in, and if they had been involved in a "significant" matter.

77 Saturation point was determined by the research team involved in interviewing the participants, and was defined as being when the interviews were no longer identifying new issues.

78 "Coding in qualitative research is one way of exploring bits of information in the data, and looking for similarities and differences within these bits to categorize and label the data (Padgett 1998; Patton 2002; Tutty, Rothery & Grinnel 1996). To code, data are broken down, compared, and then placed in a category. Coding is an iterative, inductive, yet reductive process that organizes data, from which the researcher can then construct themes, essences, description, and theories" (Walker & Myrick 2006, p. 549).

Submissions

On 19 August 2013 the CCC (then the Crime and Misconduct Commission) published a consultation paper and invited submissions on 21 key questions relating to six key issue areas: identifying concerning conduct; responding to concerning conduct; determining risk and unacceptable risk; reporting obligations and monitoring; information sharing; and effectiveness (Crime and Misconduct Commission 2013). Submissions closed on 16 September 2013.

Submissions were encouraged by:

- sending letters or emails to over 50 stakeholders in the government and the legal community, and to non-government organisations, research institutes, academic institutions and advocacy groups
- sending letters to current and past offenders with an OPO
- releasing a media alert about the project on 19 August 2013 and posting a notice and link about the consultation paper on the Get Involved State Government website, <www.getinvolved.qld.gov.au>
- providing a flyer for distribution at the Queensland Law Society's 2013 Criminal Law Conference.

Eight written submissions and no oral submissions were received. Five of these were confidential and the other three were from the former Commission for Children and Young People and Child Guardian, Protect All Children Today Inc., and the Queensland Police Union.

The submissions were thematically analysed according to the key review questions.

Legislation, policies and training materials

The equivalents of Queensland's CPOPO and CPOR Acts in other Australian states and territories were analysed, as well as other Queensland, Australian and overseas legislation as required.

Policies relating to the CPOPO and CPOR Acts were obtained from the QPS, and policies relating to the management of sex offenders in the probation and parole environment were obtained from QCS. Further, the QPS provided the following training materials relating to the CPOPO Act:

- Regional Coordinator Training on OPOs (PowerPoint presentation)
- Participants' Workbook QC0472 for the Child Protection Register Training (as at April 2012).

Appendix 2:
Interview schedules

Queensland Police Service — child protection and intelligence officers

General questions

1. Perhaps we could start by you telling us about your role.
2. Tell me a bit about how your office manages reportable offenders.

Concerning conduct and response

3. Do you feel you have a clear or unclear idea of what concerning conduct is?
4. Can you give me any examples of something that is concerning conduct?
5. Tell me about how the QPS finds out about reportable offenders who engage in concerning conduct?
6. How much or how little do you think this reflects the true amount and nature of concerning conduct that reportable offenders engage in?
7. What do you think gets in the way of the QPS finding out about reportable offenders who engage in concerning conduct?
8. So you receive information about concerning conduct, what happens next?
9. Does anything get in the way of you confirming or investigating allegations about concerning conduct?
10. When faced with a reportable offender who has engaged in concerning conduct, what options are available to you?
11. Can you describe the role that intelligence and information sharing has in managing reportable offenders?
12. Have you ever shared information about reportable offenders? Tell me about it.
13. Do you have the powers to share information in the way you think is necessary?

Offender prohibition orders

14. Do you have any knowledge of the CPOPO Act, or OPOs?
15. Have you ever shared information about an OPO? Tell me about it.
16. From what you've seen, what things do police consider when deciding whether or not to apply for an OPO?
17. How about the decision about the type of order? You have both a temporary and final order available — what is the usual practice?
18. From what you've seen, what things do police consider when making decisions about the behaviour police seek to prohibit in the OPO?
19. From what you've seen, do you think the behaviour prohibited matches the risk posed by these offenders?
20. We've looked at the numbers, and we know that OPOs are being used much less frequently than originally intended. Can you think of why this might be the case?
21. Is there anything that would prevent or discourage you from using an OPO in the future?

Effectiveness

22. There are a range of different options that the QPS has to respond to the risks posed by these offenders. QCS also has a range of different options to respond to the risks. From what you've seen, do you think some responses are more effective than others in protecting children? Why/why not?
23. What is your opinion of the options that you have available to you?

Reflections

24. Is there anything that you think stands in the way of you and your team effectively protecting children from reportable offenders?
25. I also would like you to think about how your work has changed over time, has there been any significant factors that have changed the way you operate, particularly over the last 5 years or so?

Queensland Police Service — police prosecutors

Description

1. Would you start by telling us about your role as a prosecutor — for how long (and how long ago) and where?
2. How many OPO applications have you been involved in? Tell me a bit about them.
3. Have any of you had experience with an application that involved a child reportable offender?

Hearing process

4. Can you describe how applications are heard at court?
5. What happens when there are criminal proceedings occurring at the same time as an OPO application is made?
6. Have you been the prosecutor for any hearings where the application was contested? Tell me about it.
7. Are there any practice issues with OPO applications (e.g. because it's a civil jurisdiction, following uniform civil procedure rules)?
8. What are the main strengths and weaknesses of the hearing process?
9. Do you have any role in police decision-making about whether or not to apply?

Applications and criteria

10. How would you rate the quality of information in the application that you've received?
11. Do you believe that the conduct prohibited by an order matches to the risks posed by the reportable offender?
12. Section 8 states that the court needs to be satisfied that the offender poses "an unacceptable risk" to the lives or sexual safety of children. In other jurisdictions, the threshold is "a risk". What do you think about Queensland's threshold?
13. When presenting evidence for court to be satisfied of "an unacceptable risk", do you have any difficulty satisfying that?
14. The court also needs to be satisfied that "the making of the order will reduce the risk". Do you have any difficulty presenting evidence to satisfy that?
15. (If experience with child offender) I want to hear about the criteria "the making of the order is a last resort and the most effective way of reducing the risk". Do you have any difficulty presenting evidence about these criteria?
16. In your experience, how easy or hard is the balance of probabilities to satisfy?
17. Section 9 tells us what things a court must consider about the offender's criminal history, the effect of the order relative to the risk they pose and the offender's circumstances. Do you think that this list of factors is sufficient?
18. Do you present evidence about other factors that don't appear in section 9? What are they?
19. Any experience with hearings for a breach of the OPO?
20. Are there any other criteria that you want to comment on?

Reflections

21. Do you know how the OPO, or its application, is perceived by police?
22. The CPOPO Act has been in operation since June 2008 — from what you've seen over that time, have police perceptions about OPOs or police use of OPOs changed over time? How?
23. From your experience, how well informed do you think magistrates are about the legislation?

Queensland Corrective Services Officers

Description

1. Perhaps we could start by you telling us about your role?
2. Could you tell me about how your office manages reportable offenders?

Concerning conduct

3. Are you clear on the kind of behaviour I mean when I say "concerning conduct"?
4. Tell me about how you/ QCS find out about reportable offenders who engage in concerning conduct.
5. How much or how little do you think this reflects the true amount and nature of concerning conduct that reportable offenders engage in?
6. What do you think gets in the way of QCS finding out about reportable offenders who engage in concerning conduct?
7. Give me an idea of process — so you receive information about concerning conduct, what happens next?
8. Does anything get in the way of you confirming or investigating allegations about concerning conduct?
9. When you're faced with a reportable offender who has engaged in concerning conduct, what options are available to you?
10. Are there any situations where one course of action is mandatory, or do you always have discretion?
11. Can you give me a general idea of the strengths and weaknesses of the responses that are available to you?
12. What are the things you consider before choosing a course of action?
13. Do you ever consult with other agencies before choosing a course of action (e.g. QPS)? Why/why not?

Information sharing

14. Can you describe the role that intelligence and information sharing has in managing reportable offenders?
15. Have you ever shared information about reportable offenders?
16. Do you have the powers to share information in the way you think is necessary?
17. Are there any changes to information sharing law, policy or practice that would make your job easier?

Prohibition orders

18. Do you have any knowledge of the CPOPO Act, or OPOs?
19. Have you ever changed your monitoring or management *because* of an OPO?
20. From what you've seen, do you know how police perceive OPOs?
21. Have police perceptions about OPOs or police use of OPOs changed over time? How?

Effectiveness

22. There are a range of different options that QCS has to respond to the risks posed by these offenders. The QPS also has a range of different options to respond to the risks, including surveillance, prohibition orders. From what you've seen, do you think some responses more effective than others in protecting children? Why/why not?
23. What do you think about the options available to you?

Reflections

24. Is there anything that stands in the way of your team effectively protecting children from reportable offenders?
25. I also would like you to think about how your work has changed over time, has there been any significant factors that have changed the way you operate, particularly over the last five years or so?

Magistrate

The CPOPO Act

1. Do you have any suggestions for amending the CPOPO Act?
2. It's been suggested that police should be able to issue temporary OPOs. Some officers have pointed to the approach taken in the Domestic and Family Violence Protection Act (DFVP Act) where police can issue police protection notices (s. 101). What do you think of this idea?
3. When police charge a reportable offender with a new reportable offence, do you think it is appropriate or inappropriate for them to also apply for an OPO?
4. Some police have suggested that bail conditions can be used as an alternative to applying for an OPO. How common is it for a bail order to include conditions that are comparable to an OPO?
   - Can bail conditions place prohibitions or restrictions on a person having contact with children generally or going near certain locations where children congregate?
   - How common is it for police to ask for these types of bail conditions?
   - Does section 11(2) of the Bail Act need to be amended to make it clear these types of conditions can be made?
5. It's been suggested that the CPOPO Act could be amended to allow OPOs to be made or varied at the time a person is sentenced for a relevant offence. What do you think about this?
6. It's been suggested that the CPOPO Act could be amended to require OPOs to contain certain standard conditions, similar to the requirement in the DFVP Act (s. 28). What do you think about this suggestion?
7. We've looked at all OPOs that have been made in the last 5 years and have noticed that most prohibitions relate to children under 16 years of age and only a few refer to children under 18. Do you know why this is the case?
8. Are you restricted in any way by the draft orders prepared by police or are you free to impose your own conditions?
9. Section 8 of the Act says that the court must be satisfied that the offender poses "an unacceptable risk to the lives or sexual safety of children". In other jurisdictions, the threshold is "a risk". What do you think about Queensland's threshold?
10. Do you have any difficulties interpreting "risk to the lives or sexual safety of children"?

Appendix 3:
Supplementary results of the use of OPOs in 2008–13

Number of OPOs

The 32 OPO applications related to 25 offenders. Nineteen of these offenders had a single OPO application. Of the six offenders who had multiple OPO applications:

- three had applications for variations to their final order, one of whom appealed their variation
- two had a temporary order and a final order
- one had applications for two final orders (because the first was unsuccessful).

Further, the 22 temporary orders made by the magistrate while a final order was pending related to six offenders (ranging from one to ten orders per person).

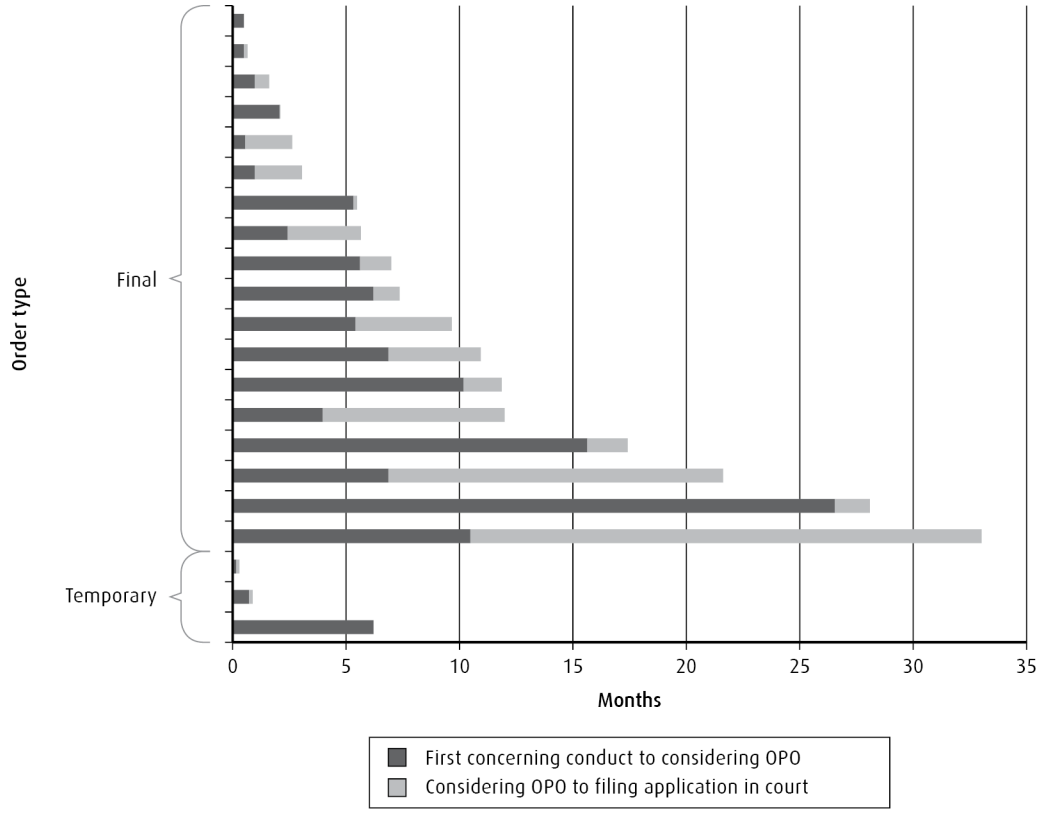
In most cases, the offender consented to the order (n = 11).[79]

Duration of application and court process

To examine how the police use OPOs, the CCC reviewed the length of time between the earliest incident of concerning conduct relied upon in the OPO application, the creation of the occurrence on the QPS information system (QPRIME), indicating the decision to consider an OPO, and the application being filed in the Magistrates Court (see Figure 3).

79 This was clear from the court file in only 14 cases. For the other three cases, the offender contested the order, did not attend the hearing, or attended but did not indicate whether they consented to the order.

Figure 3: Duration of the police process, by order type



Source: QPS and court file data
Note: Of all applications for final and temporary orders (n = 25), four applications for final orders do not appear in this figure due to missing data.

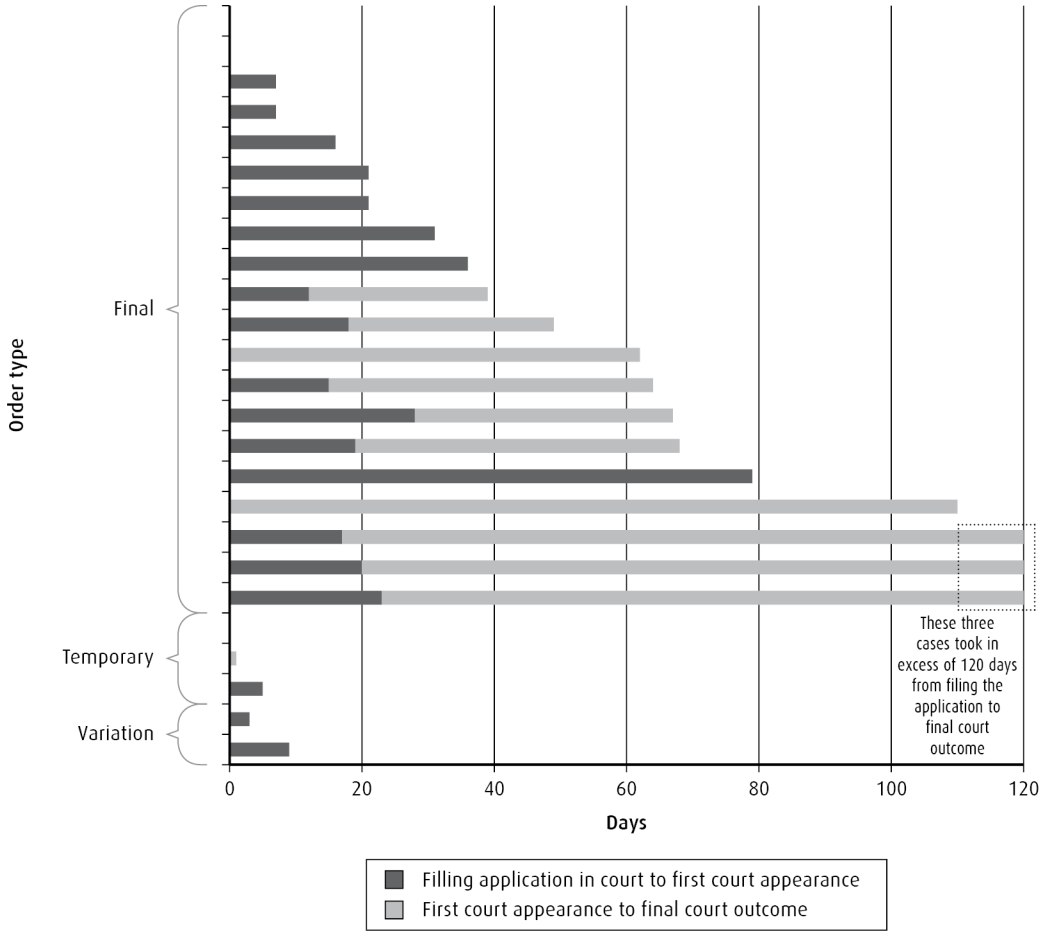
Temporary orders: A short time elapsed between the first concerning conduct and filing of the application in court for two of the three OPOs (9 days, 27 days), and a far longer period elapsed for the third (6 months).

Final orders: A longer period than that for temporary orders elapsed between police considering an OPO and filing the application. Ten of the final applications took approximately two months or less, and another five took approximately two to four months. The remaining three applications took more than eight months.

Variations: Applications for variations to existing OPOs (*n* = 3) took between just over two months and just under eight months to finalise. In one of the two applications that took the longest time (over three months, and just under eight months), the police found out about the concerning conduct a considerable period of time after the first concerning conduct had occurred (so the long duration in part reflects the length of time it took for police to learn of the concerning conduct). However, in this case, the offender was in the community for less than one month of this time during which he was subject to numerous parole conditions designed to protect children. In the other instance, the delays appear to be related to police waiting to see what happened with a related criminal proceeding before progressing with their application.

The review also examined the timing of key stages of the court process to determine how matters are dealt with in the Magistrates Court. To do this, it examined the length of time between filing of the application in the Magistrates Court, the first court appearance, and the court outcome of the application (see Figure 4).

Figure 4: Duration of the court process, by order type



Source: QPS and court file data

Note: Of all applications for final orders, temporary orders, and variations (*n* = 28), two applications for final orders and one variation does not appear in this figure due to missing data.

Temporary orders: The first court appearance for all temporary applications, which represented the most immediate risk to a child, occurred within one week of the filing of the application (less than 1 day, less than 1 day, 5 days).

Final orders: In most of the applications for final orders (*n* = 15), the first court appearance occurred within three weeks of the filing of the application.

Where the application is for a final order, magistrates can respond to the risk at the time of the first court appearance by making a section 16 temporary order, even though he or she has yet to determine whether a final order is justified. The average length of a section 16 temporary order was 47 days. Magistrates made these orders against six offenders. In four of these cases, the order was in effect for the whole time from the first court appearance to the final court outcome. In two cases, however, it was in effect for only part of that time. In a further four cases where there were considerable delays between the first court appearance and final court outcome, the magistrate did not make a temporary order.

Variations: In both applications for variations, less than two weeks elapsed between filing of the application in court and the first court appearance (3 days, 9 days), and the final court outcome was obtained at the first court appearance.

Offenders who receive an OPO

Offending histories

Of the 21 offenders with an OPO, 19 had offending histories in Queensland.[80] The review found that:

- The total number of offences committed in all offence categories varied from two to 61 per offender (*Median* = 12; *Mode* = 12).
- Eight of the offenders had committed at least one property offence, which indicates that some offenders with an OPO do not exclusively commit offences against children.

Table 3: Number of reportable offences committed by offenders with an OPO

Reportable offences	*n*	%
1	3	18
2–5	9	53
6–9	1	6
10 or more	4	24
Total	**17**[a]	**100**[b]

Source: QPS data

a While 19 of the 21 offenders had an offending history in Queensland, only 17 have at least one reportable offence on their offending history in Queensland.

b Percentages do not add up to 100 due to rounding.

Table 4: Nature of CPOR reportable offences committed by offenders with an OPO, recorded in Queensland

Offence	*n*	%	Unique offenders who committed this offence
Indecent treatment of children under 16	52	51	11
Carnal knowledge with or of children under 16	12	12	4
Abuse of persons with an impairment	9	9	1
Rape or attempted rape	8	8	2
Possession of child exploitation material	6	6	3
Illegal sodomy	6	6	2
Using a carriage service to access or transmit child pornography material	4	4	2
Grooming children under 16	1	1	1

80 Two offenders with no offences recorded against them in Queensland (as their offences were committed in other jurisdictions) were excluded from analyses.

Offence	*n*	%	Unique offenders who committed this offence
Maintaining a sexual relationship with a child	1	1	1
Aggravated assault of a sexual nature	1	1	1
Possession of objectionable computer game	1	1	1
Using a carriage service to procure persons under 16	1	1	1
Total	**102**	**100**[a]	**N/A**

Source: QPS data

a Percentages do not add up to 100 due to rounding.

Nature and frequency of concerning conduct

Table 5: Nature of concerning conduct engaged in by offenders with an OPO compared with that of other reportable offenders[81]

Nature of concerning conduct	Offenders with an OPO (*n* = 4)		Other reportable offenders (*n* = 134)	
	n	%	*n*	%
Illegal conduct				
Criminal offence against a child	47	53	13	5
Breach of CPOR Act reporting obligations	21	24	190	73
Legal conduct				
Contact with a child	13	15	23	9
At a place where children congregate	7	8	27	10
Other	1	1	7	3
Total	**89**	**100**[a]	**260**	**100**

Source: QPS data

a Percentages do not add up to 100 due to rounding.

The review also examined the nature of the criminal offences against a child in more detail.[82]

81 The review examined the nature of the concerning conduct recorded by QPS for these two groups of offenders, based on concerning conduct from the same data sources across the two groups. Because of variation in the way concerning conduct is recorded, not all offenders with an OPO have concerning conduct recorded in the sources examined for this analysis.

82 Because of different data sources, there are discrepancies between the data presented in this paragraph, and the data presented for "Criminal offence against a child" in Table 5. The Table 5 data were based on cleared offences, whereas the data presented in this paragraph were based on convictions and outstanding charges.

The offences committed by offenders with an OPO consisted mainly of contact sexual offences against a child (85%, *n* = 28), and the remainder were non-contact sexual offences against a child (15%, *n* = 5). The highest proportion of offences against children committed by the other reportable offenders were non-contact sexual offences (44%, *n* = 4), followed by contact sexual offences (33%, *n* = 3) and violent non-sexual offences (22%, *n* = 2).

Breaches of OPOs

The seven offenders (of 21 OPO offenders) who were charged with breaches were aged between 27 and 59 years (*Mean* = 41.66 years, *SD* = 13.15).[83] All offenders identified as non-Indigenous.

The text box below shows the general nature of the OPO breach, the time between the making of the order and the breach (or first breach) of the order, the court outcome and the penalty.

Failure to comply with an OPO

- Offender A was charged with one count of failing to comply, after being in a prohibited location nine days after the order came into effect (pleaded guilty, received a $400 fine).
- Offender B was charged with:
  - 11 counts of failing to comply, after having prohibited contact with a child and being in a prohibited location about eight months after the order came into effect (pleaded guilty, received eight months' imprisonment)
  - one count of failing to comply, after having prohibited contact with a child, about 13 months after the order came into effect (pleaded guilty, received a $500 fine).
- Offender C was charged with five counts of failing to comply, after having prohibited contact with a child on an unknown date within two months of the order being made (pleaded guilty, received nine months' imprisonment).
- Offender D was charged with:
  - one count of failing to comply, after having prohibited contact with a child about three months after the order came into effect (pleaded guilty, received three months' imprisonment)
  - one count of failing to comply, after being at a prohibited location about 15 months after the order came into effect (pleaded guilty, received three months' imprisonment)
  - one count of failing to comply, after being at a prohibited location and possessing a prohibited device about two years after the order came into effect (pleaded guilty, received 12 months' imprisonment).
- Offender E was charged with two counts of failing to comply, after possessing a prohibited device and ceasing required conduct about two months after the order came into effect (struck out, as the order was successfully appealed).
- Offender F was charged with one count of failing to comply, after being at a prohibited location, having prohibited contact with a child and possessing a prohibited device about seven months after the order came into effect (not finalised in the study period).
- Offender G was charged with one count of failing to comply, after being at a prohibited location about 14 months after the order came into effect (not finalised in the study period).

83 Age was calculated as at 2 June 2013.

Appendix 4:
Compliance monitoring in other Australian jurisdictions

New South Wales (for reporting obligations)

NSW police can enter and inspect a reportable offender's residence "for the purpose of verifying" information provided by the offender on two occasions during the first year the offender is on the register and then once a year for all subsequent years [s. 16C *Child Protection (Offenders Registration) Act 2000*]. A reportable offender must cooperate with police, including allowing them to enter and inspect, and this obligation "is a reporting obligation", which means that a failure to cooperate with police is an offence punishable by a maximum penalty of five years' imprisonment [s. 16C(4),(5) Child Protection (Offenders Registration) Act].

South Australia (for reporting obligations)

SA police can search a residence and can remove computers and other devices capable of storing electronic data from the residence for the purpose of inspecting them, and can require passwords to be provided. The power can also be used in relation to premises other than a residence, but it can be used only against "serious registrable offenders" (s. 66M *Child Sex Offenders Registration Act 2006*).

Western Australia (for OPO conditions)

WA is the only Australian jurisdiction that provides police with powers to monitor offenders for compliance with OPOs. These powers apply only in two situations. Where an order prohibits conduct relating to use of the internet, police can enter the offender's home and inspect and seize any computer "to determine whether there is any evidence that the offender has breached the order" [s. 94C *Community Protection (Offender Reporting) Act 2004*]. An offender with an OPO can also be required to provide police with user names and passwords to enable access to these data. As a safeguard, an officer at the rank of Sergeant or above must authorise the use of the power if police want to use it more than once in a twelve-month period.[84] Where an order prohibits the consumption of alcohol or drugs, police can require the offender to submit to various tests (e.g. breath test) [s. 94B Community Protection (Offender Reporting) Act]. A failure to comply with a requirement under either of these sections is an offence with a maximum penalty of two years' imprisonment.

Victoria (proposed, for OPO conditions)

The need for police powers to monitor compliance has recently been recognised in Victoria. The Victorian Law Reform Commission's review of Victoria's equivalent of Queensland's CPOR Act recommended that provisions allowing for OPOs be inserted into the Act (Victorian Law Reform Commission 2011). The Commission also recommended police be given new powers to enter and search any premises without a warrant where they have a reasonable belief that the offender is on the premises in breach of the order, or is engaging in conduct at the premises that breaches the order (recommendation 49).

84 Similar police powers are also found in section 99AAB of the Summary Procedure Act 1921 (SA), which applies where a paedophile restraining order is made under section 99AA.

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