



Legislative review of the

**Child Protection
(Offender Prohibition Order)
Act 2008**

Consultation paper

CRIME AND
MISCONDUCT
COMMISSION



QUEENSLAND

August 2013

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1 Introduction

1.1 Background

Over the past decade, Queensland has introduced offender-based laws to protect children from convicted child sex offenders who live in the community.¹ By offender-based laws, we mean those that seek to control or limit the behaviour of the offenders, rather than those aimed at children or their environment. These laws give the courts, the Queensland Police Service (QPS) and Queensland Corrective Services (QCS) various options for managing the risks posed by these offenders. The *Child Protection (Offender Prohibition Order) Act 2008* (the CPOPO Act) provides one such option.

Some convicted child sex offenders are sentenced by the court to a community-based order and are supervised in the community by QCS Probation and Parole officers. More serious offenders who have been imprisoned for their offences are released on parole and similarly subject to supervision by QCS officers. The most serious sexual offenders, after finishing their term of imprisonment, may be released into the community subject to a supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (the DPSO Act). Such offenders are subject to intensive surveillance and supervision by QCS officers.

In addition to the obligations imposed by these orders, the *Child Protection (Offender Reporting) Act 2004* (the CPOR Act) requires most child sex offenders living in the community to keep the QPS informed of their personal details and whereabouts for a period of time. The Queensland Child Protection Register, which is part of the Australian National Child Offender Register, enables the QPS to monitor, investigate and prosecute offenders who may commit subsequent offences.

Although the introduction of the CPOR Act improved the state's ability to monitor child sex offenders, the government argued that it did not "empower police to take steps to prevent a paedophile from engaging in concerning conduct...that is a precursor to the commission of a further offence" (Queensland, Legislative Assembly (Spence) 2007, p. 4345). In June 2008, the Queensland Government sought to strengthen its ability to prevent behaviour that posed a risk to the safety of children and introduced the CPOPO Act.

The CPOPO Act provides the QPS with the power to apply to the court for an "offender prohibition order" that prohibits an offender from engaging in "concerning conduct". Usually this will be conduct that is lawful but, given its nature or pattern and the offender's previous criminal history, poses a risk to the lives or sexual safety of children. A breach of an offender prohibition order can result in up to two years' imprisonment.

1.2 Aim of the review

The Crime and Misconduct Commission (CMC) is required by law to review the operation of the CPOPO Act and table its report in Parliament (s. 60). As directed, we began this review in June 2013, five years after the commencement of the Act.

The Act applies to a particular classification of sex offender, referred to as a "relevant sexual offender" (explained in Chapter 2). As options for managing the risks posed by these offenders are available under the Act and elsewhere, it is artificial to simply examine the operation of the CPOPO Act in isolation from this broader environment. Consequently, we will review how relevant sexual offenders

¹ By "child sex offender", we mean a person who has been convicted of a sexual offence or offences against a child.

living in the community are managed, examining the use of provisions under the CPOPO Act as well as other options, where relevant.

The review aims to determine:

- how relevant sexual offenders engaging in concerning conduct come to the attention of the QPS and QCS
- how the QPS and QCS respond to relevant sexual offenders who engage in concerning conduct
- how well these responses protect children.

1.3 Invitation for submissions

We would like to hear your views, specifically in response to the questions provided in Chapter 3 of this paper. We are particularly keen to hear from those involved in administering the CPOPO Act and the other available options, and from those with personal experience of the CPOPO Act — parents, caregivers, families and offenders. We will also be consulting with QPS officers, QCS officers, people from relevant government and non-government agencies, and the courts.

How to make a written submission

If you would like to make a written submission, please complete the submission form available for download from the CMC website at <www.cmc.qld.gov.au/cpopo>. Send your completed submission form to us by no later than 5 pm Monday 16 September 2013 by any of the following methods:

Online: Upload your completed submission form on the CMC website at <www.cmc.qld.gov.au/cpopo/submit>

Post : Child Protection (Offender Prohibition Order) Act Review
Crime and Misconduct Commission
Applied Research and Evaluation unit
GPO Box 3123
Brisbane Qld 4001

Email: CPOPOActReview@cmc.qld.gov.au

Fax: 07 3360 6333

We may not consider late submissions.

Oral submissions

If you cannot provide a written submission, you are welcome to make an oral submission. Oral submissions will be taken over the phone by a CMC research officer and will be based on questions in the consultation paper. To arrange a suitable time to provide an oral submission, please call us on 07 3360 6060, or toll-free on 1800 061 611 (in Queensland outside Brisbane) during business hours. Oral submissions must be made by no later than 5 pm Monday 16 September 2013.

How the CMC handles submissions

We will read and consider all submissions. As a matter of routine, we may:

- quote from submissions or refer to them, either generally or individually, in publications
- make submissions public by uploading them to the CMC website; this would include the name of the submitter but no contact details
- contact you to ask whether you consent to further consultation for the purposes of the review.

We will not make public any submission or, where practicable, any part of a submission that:

- contains allegations of misconduct or official misconduct
- contains identifying information about a third party (the names of people, businesses or organisations), offensive material (including abusive or threatening behaviour), defamatory material, or links to other websites
- does not address issues relevant to the review
- infringes the intellectual property rights of others
- promotes commercial interests.

Written and oral submissions will be treated in the same way.

Do you wish to maintain partial or complete confidentiality?

If you would prefer your submission to be published on the CMC website without your name being disclosed, clearly mark the submission as "NAME WITHHELD".

If you do not want your submission published on the CMC website, clearly mark the submission as "CONFIDENTIAL".

In either case, your identifying details will not be published in our report.

If there is no clear selection of one of these alternatives, we will regard any submission (including an anonymous submission) as a public document, and will publish it on our website.

Does your submission contain allegations of misconduct?

The submission process is not the correct avenue for making a complaint of misconduct or suspected misconduct to the CMC. Should you wish to do so, please see our website at <www.cmc.qld.gov.au> for further information. You may also call 07 3360 6060, or toll-free on 1800 061 611 (in Queensland outside Brisbane).

We will forward any submissions containing allegations of misconduct or official misconduct to our complaints area for assessment.

Privacy statement

No submission marked as confidential will be published on our website. However, any submission may be subject to disclosure under the *Right to Information Act 2009*, and access applications for submissions will be determined in accordance with that Act.

2 The Child Protection (Offender Prohibition Order) Act 2008

2.1 Scope of the Act

The CPOPO Act aims to prohibit relevant sexual offenders from engaging in conduct that poses a risk to the lives or sexual safety of children by the making of a court order, known as an offender prohibition order.

Two conditions must be met before the QPS can apply for an offender prohibition order. First, the offender must be a *relevant sexual offender*. Second, they must have recently engaged in *concerning conduct*.

Under the CPOPO Act, a relevant sexual offender is an adult or a child who is a “reportable offender” under the CPOR Act, or would have been one had they not completed their sentence before the CPOR Act commenced. A reportable offender is an adult or a child sentenced for a reportable offence, which is a sexual offence and/or murder committed against a child.

Two classifications of child sex offender cannot be dealt with under the CPOPO Act. Offenders who are subject to a supervision or interim supervision order under the DPSO Act or a forensic order under the *Mental Health Act 2000* are not eligible for an offender prohibition order under the CPOPO Act (Sch.).

Concerning conduct is conduct, actions or behaviour engaged in by a relevant sexual offender that poses a risk to the lives or sexual safety of one or more children, or of children generally (s. 6(3) CPOPO Act). Section 6(3) of the CPOPO Act provides the following examples:

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

As these examples demonstrate, concerning conduct can be conduct that is otherwise lawful.

2.2 Obtaining an offender prohibition order

The QPS may apply to the court for a temporary or a final offender prohibition order if it becomes aware that a relevant sexual offender has engaged in concerning conduct. A temporary order is sought when there is an immediate threat to children.

The QPS has the power to direct another government agency to provide information to help it decide whether to apply for an order (s. 42 CPOPO Act). An application requires details about the offender’s criminal history and the nature of the concerning conduct, specifically:

- each conviction for a reportable offence
- the particulars of the concerning conduct
- when the concerning conduct occurred
- the conduct to be prohibited by the order, including any conditions sought by the QPS (s. 6(2) CPOPO Act).

The court will make an order if satisfied that, on the balance of probabilities, the offender is a relevant sexual offender and poses an unacceptable risk to the lives or sexual safety of children, and the making of the order will reduce this risk (s. 8(1) CPOPO Act).

In making its assessment the court must also consider particular information about the offender and the victim(s). This includes the relevant sexual offender's offending history, the ages of the victim(s) and offender, and the offender's circumstances such as employment and health (s. 9(1) CPOPO Act).

For a temporary order, the court must also be satisfied that the making of the order is necessary to prevent an immediate risk (s. 14(1) CPOPO Act).

The court can make an offender prohibition order for a child offender only if it is satisfied that the order is a last resort and the most effective way of reducing the risk (s. 8(2)(b) CPOPO Act). The court must also consider additional matters including the child's educational needs and any assessments and reports about the child and its family (ss. 9(1)(h) and 10(2) CPOPO Act).

For both temporary and final offender prohibition orders, it is not necessary that a magistrate be able to identify a risk to a particular child (ss. 8(3) and 15(2)(b) CPOPO Act). The risk can be general. For example, it may be sufficient that a person with a lengthy history of committing sexual offences against children has moved into accommodation where young children reside.

The duration of an offender prohibition order depends on the type of order:

- temporary offender prohibition order: maximum of 28 days
- final adult offender prohibition order: five years
- final child offender prohibition order: two years (ss. 18, 12(1)(a) and (b) CPOPO Act).

When an offender subject to such an order made in another state or territory moves to Queensland, the QPS can apply to have the order registered with a Queensland court (s. 30 CPOPO Act). Once registered, it has the same effect as an order originally made under the CPOPO Act (s. 33).

2.3 Reporting obligations

The CPOPO Act does not impose its own reporting obligations on offenders subject to an offender prohibition order. In most cases, these offenders are subject to the CPOR Act reporting obligations prior to the making of the offender prohibition order. However, if an offender is not a "reportable offender" when such an order is made, under s. 36(1) of the CPOPO Act they become a reportable offender and are subject to the CPOR Act reporting obligations for the duration of the order.

The CPOR Act reporting regime is outlined in Table 1.

Table 1: Reporting requirements for reportable offenders

Reporting requirement	Timeframe
Initial report	Within seven days of the later of, the QPS giving written notice of reporting obligations, or the making of an offender reporting order (or an offender prohibition order, s. 36(1) CPOPO Act)
Annual report	Annually
Following a change of personal details	<ul style="list-style-type: none"> • Within 24 hours if: <ul style="list-style-type: none"> ○ the change relates to where a child resides ○ the reportable offender has unsupervised contact with a child • Within 14 days for any other change
Notifying an intended absence from Queensland	At least seven days before leaving Queensland
Returning to Queensland after an absence (where the reportable offender was required to report intended leave from Queensland)	Within 14 days after entering and remaining in Queensland

2.4 Monitoring offenders subject to an offender prohibition order

There are no provisions in the CPOPO Act or in QPS policy that require the QPS to monitor compliance with an offender prohibition order. However, the QPS has developed strategies to help monitor these offenders.

First, offenders are “flagged” on the QPS information system. This ensures that any police officer who has contact with an offender subject to an offender prohibition order has access to information about the terms of the order and can determine whether the offender has breached it.

Second, the QPS has established compliance management guidelines that apply to all reportable offenders, including those subject to an offender prohibition order, to ensure that they comply with their obligations under the CPOR Act. The guidelines specify that each reportable offender will be subject to compliance management strategies that may be detailed in a compliance management plan. This plan can also specify the offender’s current risk assessment and the level of monitoring required. Being subject to an offender prohibition order can have a bearing on these. The guidelines strongly recommend, but do not require, that the plan be reviewed annually.

2.5 Breaching and varying an offender prohibition order

Any breach of an offender prohibition order is a criminal offence punishable by a maximum of two years’ imprisonment (s. 38 CPOPO Act).

An offender prohibition order can be varied or revoked. The court will agree to a variation or revocation only if it is in the interests of justice, having regard to:

- changes in the offender’s circumstances (e.g. changes to their accommodation, employment, health, cultural or social needs) or circumstances affecting them (e.g. they were prohibited from going within a stated distance of a stated child care centre that has subsequently closed down)
- whether such a change is appropriate on compassionate grounds (e.g. to enable the offender to visit a relative who is seriously ill or to attend a relative’s funeral) (s. 22(3) CPOPO Act).

2.6 Information sharing provisions

The CPOPO Act provides for the disclosure of information to ensure the safety of children. Specifically, once an offender prohibition order has been made:

- the QPS can provide information about the offender and the terms of the order to the following “prescribed entities”
 - Department of Communities, Child Safety and Disability Services
 - Department of Education, Training and Employment
 - Commission for Children and Young People and Child Guardian (s. 43 CPOPO Act)
- the above prescribed entities can then share certain information with relevant people, such as a school teacher (s. 44 CPOPO Act)
- the QPS may also give information about an offender prohibition order to a parent of a child subject to such an order or to a parent or guardian of any child protected by the order (s. 47 CPOPO Act).

3 Key issues and questions

3.1 Identifying concerning conduct

Any individual or agency can identify concerning conduct by a relevant sexual offender. This includes members of the public, and officers from government and non-government agencies.

In particular, the QPS and QCS play an important role in identifying concerning conduct. The QPS may identify it in the process of monitoring reportable offenders subject to reporting obligations under the CPOR Act, or in the course of other routine policing activities such as “street checks” or QPS investigations, or because a matter has been referred to them by an individual or agency.

QCS officers may identify concerning conduct when monitoring reportable offenders subject to probation or parole conditions.

We are seeking your comments on the process for identifying concerning conduct.

Questions: Identifying concerning conduct

1. How effective is the current process for identifying relevant sexual offenders who engage in concerning conduct? If you think that the process could be improved, how could that be achieved?
2. If you are responding on behalf of an organisation, what policies or procedures do you have to assist in (a) identifying concerning conduct, and (b) notifying other people or agencies that concerning conduct has occurred?
3. In your view, how effective are (a) the Queensland Police Service and (b) Queensland Corrective Services in proactively identifying relevant sexual offenders who engage in concerning conduct?

3.2 Responding to concerning conduct

The QPS is the only agency that can apply for an offender prohibition order. However, it is not obliged to do so if it becomes aware of concerning conduct by a relevant sexual offender. The QPS has a range of other options it can take. Before using its discretion to select the most appropriate response, it may consider factors such as:

- the current status of the person engaging in concerning conduct (i.e. whether they are already subject to an offender prohibition order, community-based order, or parole order)
- the seriousness of the concerning conduct
- the level of risk posed to children
- the offender’s circumstances and relevant criminal history
- the availability of policing resources.

Depending on the circumstances, possible QPS responses to concerning conduct include:

- applying to the court for an offender prohibition order
- charging the relevant sexual offender with the offence of failing to comply with reporting obligations under the CPOR Act

- charging the relevant sexual offender with a new offence if the concerning conduct constitutes a criminal offence
- sharing the information with other relevant agencies, including QCS, if the concerning conduct is a breach of a community-based order (which includes a community service order, intensive correction order or a probation order) or a parole order
- any combination of these responses.

If QCS officers identify concerning conduct, they may take action under the *Penalties and Sentences Act 1992* or the *Corrective Services Act 2006*, or refer the matter to the QPS. Depending on the circumstances, possible QCS responses to concerning conduct include:

- notifying the QPS of the conduct (if there is a possibility that the behaviour constitutes an offence, or to enable the QPS to consider applying for an offender prohibition order)
- taking case management action to manage the risk — for example, increased surveillance of the offender or referrals to intervention
- temporarily amending or suspending the parole order and/or applying to a parole board for the parole order to be amended, suspended or cancelled
- applying to the court for the order to be amended or revoked, where the person has breached a community-based order
- sharing the information with other relevant agencies
- any combination of these responses.

Discretion is a key feature of our justice system. We are seeking your views on the factors that influence whether an offender prohibition order is used when a relevant sexual offender engages in concerning conduct.

Questions: Responding to concerning conduct

4. In your view, in what situations should an offender prohibition order be the preferred response?
5. Are there any barriers to the Queensland Police Service and Queensland Corrective Services selecting the most appropriate response? We are particularly interested to hear your views on the information sharing provision in the CPOPO Act (s. 42), which gives the Queensland Police Service the power to direct another government agency to provide information to help it decide whether to apply for an order.
6. Do you know of any incidents where the Queensland Police Service did not seek an offender prohibition order, but you believe that such an order was the most appropriate response? Please provide as much detail as possible.
7. Do you know of any incidents where the Queensland Police Service did seek an offender prohibition order, but you believe that another response was more appropriate? Please provide as much detail as possible.
8. From your perspective, what are the potential implications of (a) the Queensland Police Service and (b) Queensland Corrective Services electing to use responses other than an offender prohibition order to respond to concerning conduct?

3.3 Determining risk and “unacceptable risk”

The concept of risk is a key element of the CPOPO Act. Concerning conduct does not need to be unlawful. Before applying for an offender prohibition order, the QPS must believe on reasonable grounds that the relevant sexual offender has recently engaged in conduct that poses “a risk to the lives or sexual safety of one or more children, or of children generally” (s. 6(3) CPOPO Act) (emphasis added).

In their application to the court, the QPS must provide details of the concerning conduct, and demonstrate the risk posed. In their application for a temporary offender prohibition order, the QPS must include an additional statement demonstrating that there is an immediate risk.

At court, the magistrate will issue an offender prohibition order if satisfied that the relevant sexual offender:

- poses an *unacceptable risk* to the lives or sexual safety of children, and
- the making of the order will reduce the risk (s. 8(1) CPOPO Act).

Only Queensland requires the test of “unacceptable risk” to be met. In New South Wales, Western Australia, the Northern Territory and the Australian Capital Territory, the court need only be satisfied of “a risk”.²

We are seeking your comments on the threshold of unacceptable risk in the context of a magistrate’s decision to issue an offender prohibition order. We are also interested in factors considered in determining the risk presented by the relevant sexual offender, as well as the factors considered in determining the conduct that should be prohibited in an offender prohibition order.

Questions: Determining risk and “unacceptable risk”

9. What factors should the Queensland Police Service consider in deciding whether to apply for an offender prohibition order?
10. In your experience, does the conduct prohibited by an offender prohibition order correspond to the risks posed by the relevant sexual offender? Please provide as much detail as possible.
11. Is it appropriate that the court must be satisfied that the relevant sexual offender poses an *unacceptable risk* to the lives or sexual safety of children in order to consider issuing an offender prohibition order? Should this threshold be lowered to “a risk” to align with legislation in other Australian states and territories? If so, why?

3.4 Reporting obligations and monitoring

While the CPOPO Act and QPS policy do not require the QPS to monitor compliance with offender prohibition orders, an offender subject to this order will be monitored for compliance with their obligations under the CPOR Act.

An offender subject to an offender prohibition order may be monitored more frequently than a reportable offender who is not subject to one, reflecting the additional risk they present to children.

We are seeking your comments on whether reporting obligations for an offender subject to an offender prohibition order are appropriate, and how the QPS monitors these offenders.

2 *Child Protection (Offenders Prohibition Orders) Act 2004* (NSW) s. 5(1); *Community Protection (Offender Reporting) Act 2004* (WA) s. 90(1); *Child Protection (Offender Reporting and Registration) Act* (NT) s. 72(1); *Crimes (Child Sex Offenders) Act 2005* (ACT) s. 132D(1)(c). The remaining states do not provide for offender prohibition orders.

Questions: Reporting obligations and monitoring

12. Are the reporting obligations under the CPOR Act adequate for an offender subject to an offender prohibition order, or should they have additional or different reporting requirements? Why?
13. Is it appropriate that the CPOPO Act (a) does not require the Queensland Police Service to monitor compliance with an offender prohibition order and (b) does not give Queensland Police Service officers powers to monitor compliance with an offender prohibition order? Why?
14. Does the Queensland Police Service encounter any impediments in monitoring reporting obligations under the CPOR Act (and, as a consequence, the reporting obligations of offenders subject to an offender prohibition order)? If so, how could these impediments be addressed?
15. Is the Queensland Police Service the appropriate agency to monitor reporting obligations under the CPOR Act (and, as a consequence, the reporting obligations of offenders subject to an offender prohibition order)? If not, which agency is better placed to perform this role and why?

3.5 Information sharing

Information sharing is a crucial function of the CPOPO Act. The Act enables the QPS to provide information to prescribed entities about the offender and the terms of the offender prohibition order, to ensure the safety of children. These agencies include the Department of Communities, Child Safety and Disability Services, Department of Education, Training and Employment and the Commission for Children and Young People and Child Guardian (s. 43 CPOPO Act). The definition of prescribed entities does not include QCS or private sector entities (Sch. CPOPO Act).

In relation to the QPS gathering information to help it decide whether to apply for an order, refer to Question 5 on page 9.

We are seeking your comments on the scope of the information sharing provisions and how they are working in practice.

Questions: Information sharing

16. Should the definition of *prescribed entities* be amended (Sch. CPOPO Act)? If so, why?
17. Do any factors impede the timely disclosure of information by the Queensland Police Service under the CPOPO Act? Please provide as much detail as possible.
18. Do you know of any incidents where information about an offender or an offender prohibition order was not provided to relevant agencies or people, but in your view, should have been? Please provide as much detail as possible.

3.6 Effectiveness

We would like to hear your general views about the options available for responding to the risks posed by relevant sexual offenders who live in the community. In particular, we want to hear your views about the effectiveness of these responses, and any suggestions that you have to better protect children from relevant sexual offenders.

Questions: Effectiveness

19. How effective are the responses available to the Queensland Police Service and Queensland Corrective Services in protecting children? Do you believe that some responses are more effective than others? Please provide as much detail as possible.
20. How well does the CPOPO Act achieve its purpose of better protecting children from relevant sexual offenders who live in the community?
21. Do you have any other comments or suggestions about how the CPOPO Act (or if relevant, other Acts) could be amended to better protect children from relevant sexual offenders who live in the community?

References

Queensland, Legislative Assembly (Spence) 2007, *Parliamentary Debates (Hansard)*, 15 November 2007, pp. 4321–4412.

Legislation cited in this paper

Child Protection (Offender Prohibition Order) Act 2008 (Qld)

Child Protection (Offenders Prohibition Orders) Act 2004 (NSW)

Child Protection (Offender Reporting) Act 2004 (Qld)

Child Protection (Offender Reporting and Registration) Act (NT)

Community Protection (Offender Reporting) Act 2004 (WA)

Corrective Services Act 2006 (Qld)

Crimes (Child Sex Offenders) Act 2005 (ACT)

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)

Mental Health Act 2000 (Qld)

Penalties and Sentences Act 1992 (Qld)

Right to Information Act 2009 (Qld)

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