



Crime and Corruption Commission
QUEENSLAND

Protecting the lives of children and their sexual safety

Review of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004 (Qld)*

Call for Submissions

October 2022



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1 Introduction

In 2004, all Australian states and territories agreed to introduce nationally consistent legislation that sought to protect children from the risks posed by people living in the community who had been convicted of sexual or other serious offences against children. Broadly, the intent was to require those offenders to keep police informed of their personal details and whereabouts for a period of time. The *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (Qld) (the Act) establishes and regulates the Queensland component of this national scheme.

The Act has two main parts. First, it establishes a child protection register operated by the Queensland Police Service (QPS) and requires particular offenders to report regularly to police. Non-compliance with reporting obligations, without a reasonable excuse, is a criminal offence and can result in an offender being sentenced to up to five years' imprisonment.

Second, for that same category of offender, it allows police to apply for a court order prohibiting an offender from engaging in certain conduct, or requiring the offender to do a particular thing. Police can apply for these orders – called Offender Prohibition Orders – if the offender has engaged in conduct which poses a risk to the safety or wellbeing of one or more children. The conditions of the court order are tailored to address the particular risks the offender poses. Non-compliance with an Offender Prohibition Order, without a reasonable excuse, is a criminal offence and can result in an offender being sentenced to up to five years' imprisonment.

The Act is not intended to be punitive and the reporting obligations are not an additional sentence. Rather, the purposes of the Act¹ are:

- to provide for the protection of the lives of children and their sexual safety; and
- to require certain offenders² to report their personal details to police for a period of time while living in the community to, first, reduce the likelihood they will reoffend and, second, facilitate the investigation and prosecution of any future offences if they do reoffend.

1.1 Aim of the review

The Crime and Corruption Commission (CCC) is required to review the operation of the Act and give its report to the Speaker for tabling in the Legislative Assembly.³ The review aims to determine:

- how the Act operates, including policies, training, and practices that give life to the Act; and
- how well the options provided in the Act protect children, and manage or mitigate the risks posed by offenders defined under the Act.

1.2 Have your say

To assist the CCC with its review, we would like to hear your views, especially in response to the questions provided in Chapter 3 of this paper. We are particularly keen to hear from those agencies involved in administering the Act, those who administer other legislation that aims to protect children or to manage offenders, and those with personal experience of the Act, including offenders. Instructions on how to make a submission to the CCC appear in the Appendix.



2 Key elements of the Act

In this Chapter we describe key elements of the Act to give readers sufficient detail to understand and respond to the questions posed in Chapter 3.

We begin by describing who is placed on Queensland’s child protection register, what these offenders’ reporting obligations are and how long they must comply with them, and the powers available to police to monitor these offenders. We also describe one option available to police when this type of offender behaves in a way that poses a risk to children, and the penalties for offenders’ non-compliance with particular obligations under the Act. Finally, we describe the rights of offenders under the Act.

2.1 Who is placed on the child protection register

People who are placed on Queensland’s child protection register are referred to in the Act as “reportable offenders”.⁴ There are several categories of reportable offenders, but the most common is a person to whom all of the following applies:

- they have been convicted of at least one “prescribed offence” listed in Schedule 1 of the Act;
- where the prescribed offence was committed against an identified victim,⁵ the victim was a child; and
- their conviction was formally recorded in their criminal history.

The list of prescribed offences includes offences specific to children, non-child specific offences, and equivalent offences committed in other states, territories and countries.⁶ Child specific offences include indecent treatment of a child under 16, carnal knowledge of a child under 16, maintaining a sexual relationship with a child, using the internet to procure a child under 16, making, distributing or possessing child exploitation material, trafficking in children, and sexual intercourse with a child outside Australia. Non-child specific offences include sexual assault, prostitution, rape, incest and murder.

Some other categories of reportable offenders are:

- Where a court convicts a person of an offence that is not a prescribed offence, but is satisfied they pose a risk to the lives or sexual safety of one or more children, and the court makes an Offender Reporting Order requiring the person to report to the register.⁷
- A person who has previously been convicted of a prescribed offence, has been subject to a continuing detention or supervision order made under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) (DPSOA), and was not a reportable offender when they stopped being subject to the detention or supervision order (referred to in the Act as a “post-DPSOA reportable offender”).⁸
- An offender who is a respondent to an Offender Prohibition Order, even if they were not subject to reporting obligations before the order was made (see part 2.5 of this Chapter).

Not every offender who is convicted of a prescribed offence and who has their conviction recorded will be a reportable offender. For example, a person convicted of a single prescribed offence who is not sentenced to a term of imprisonment or supervision order, and a child who commits a single offence of distributing or possessing child exploitation material (regardless of their sentence) will not be a reportable offender.⁹



2.2 What information, and how frequently, reportable offenders need to report to police

The Act imposes reporting obligations on reportable offenders who are living in the Queensland community.

These obligations do not begin until a reportable offender is released from custody¹⁰ and are suspended if a reportable offender is subsequently sentenced to a further term of imprisonment, or for any period of time that a reportable offender spends outside Queensland.¹¹ For lengthy periods spent in another state or territory, the reportable offender will have reporting obligations under the corresponding legislation in the other state or territory. Similarly, a reportable offender who moves to Queensland from another state or territory will have to report their personal details to Queensland police until their reporting period ends under both the Act and the corresponding Act in the other state or territory.¹²

Schedule 2 of the Act lists the personal details that a reportable offender must provide when they make their initial report in person¹³ at their local police station. The list of personal details is extensive and includes:

- the reportable offender's name (including previous names), address, date and place of birth, passport number, tattoos or permanent distinguishing marks and employment details;
- details about any child the reportable offender communicates with, or has physical contact with (referred to in the Act as "reportable contact"¹⁴);
- all motor vehicles owned or driven by the reportable offender;
- any club or organisation which has child members or organises activities for children that the reportable offender is also a member of;
- whether the reportable offender has ever been required to report to a child protection register in another state or territory;
- details of any period spent in government detention;
- all phone and internet services used by the reportable offender;
- details of email addresses and internet usernames used by the reportable offender, including passwords;
- details of social networking sites that the reportable offender joins, including passwords; and
- travel details where the reportable offender travels outside Queensland at least once a month, including the reason for travelling, frequency and destination.

The timeframes for different reporting requirements are provided in Table 1.



Table 1. Timeframes for different reporting requirements.

Reporting requirement	Timeframe to report to the register
Initial report ¹⁵	<p>Generally within 7 days after the day the reportable offender receives their notice of reporting obligations.</p> <p>If a notice is not given, then generally 7 days after being sentenced for a prescribed offence or being released from detention (whichever date is later).</p>
Periodic reports ¹⁶	<p>Every February, May, August and November.</p> <p>A reportable offender can be required to report more frequently than every three months if this “is necessary to protect the lives or sexual safety of children”.¹⁷</p>
Following a change of personal details ¹⁸	<p>Generally within 7 days but for some changes the timeframe is 24 hours, e.g. if the change relates to contact with a child.</p> <p>If the change occurs when the reportable offender is outside Queensland, within 48 hours after entering and remaining in Queensland for 48 hours.</p>
Notifying an intended absence from Queensland ¹⁹	<p>At least 7 days before leaving Queensland, but if this is impracticable, within 24 hours.</p> <p>A reportable offender who intends to travel elsewhere in Australia for at least 48 hours, or internationally,²⁰ must also report their travel plans, including details about locations, dates, accommodation and any child they intend to travel with or have reportable contact with.²¹</p>
Returning to Queensland after an absence ²²	<p>Within 4 days of their arrival in Queensland.</p>

A reportable offender who is currently subject to a supervision order made under the DPSOA has different reporting obligations because they are already being monitored by officers from Queensland Corrective Services. These reportable offenders are only required to make an initial report of their personal details and do not have to report any changes or make any periodic reports.²³

2.3 The duration of reporting obligations

The length of time that a reportable offender is subject to reporting obligations for depends on a number of factors.²⁴ Key factors are the offender’s age when they committed the offence which made them a reportable offender, whether, after they became a reportable offender, they committed any further prescribed offences, and whether or not the person is a post-DPSOA reportable offender. The duration of reporting obligations is provided in Table 2.



Table 2. Duration of reporting obligations.

Adult reportable offender	Child reportable offender ^a	Circumstance that determines the duration
5 years	2.5 years	The offender commits an offence(s) that results in them being placed on the child protection register, but does not commit any further prescribed offences after they are given a notice about their reporting obligations.
10 years	5 years	If, <i>after</i> a person becomes a reportable offender and is given a notice about their reporting obligations, they are found guilty of one further prescribed offence.
Life	7.5 years	If, <i>after</i> a person becomes a reportable offender and is given a notice about their reporting obligations, they are found guilty of more than one prescribed offence. ²⁵
Life	Life	All post-DPSOA reportable offenders, regardless of how many prescribed offences they have been found guilty of and when, and their age when those offences occurred ²⁶

Note a: A child reportable offender is a reportable offender who was under 18 years of age when they committed the offence or offences which made them a reportable offender.²⁷

2.4 Police powers to monitor reportable offenders

The Act and the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA) contain several powers that assist police to check if a reportable offender is complying with their reporting obligations, committing any offences under the Act, or engaging in conduct that poses a risk to the safety or wellbeing of children.²⁸

Some powers can be exercised against all reportable offenders at any time, for example:

- a police officer may enter premises where a reportable offender generally resides to verify the personal details provided by the reportable offender to the register;²⁹ and
- a police officer can photograph a reportable offender or something the reportable offender is required to provide personal details about (e.g. a vehicle).³⁰

Other powers can only be used once. For example, a police officer may inspect a digital device (e.g. a mobile phone, laptop or portable hard drive) in a reportable offender's possession if, in the last three months, the reportable offender has been released from detention or sentenced to a supervision order.³¹

Some powers can only be exercised if a police officer suspects a reportable offender has committed an offence under the Act. For example, a police officer may require the reportable offender to give the officer access to a digital device in the reportable offender's possession, including assisting the officer with any passwords necessary to gain access to the device.³²

Other monitoring powers are specific to certain categories of reportable offenders. For example, a police officer may conduct four inspections per year of every digital device in the possession of a reportable offender who has been convicted of a "prescribed internet offence".³³



Information sharing powers are another feature of monitoring reportable offenders. They include the power to:

- direct a government or private entity to provide police with any information about a reportable offender that is relevant to deciding whether an application for an order under the Act should be made, or investigating an offence under the Act;³⁴
- give information about a reportable offender – including identifying information and information about an Offender Prohibition Order – to a government or private entity, if the information will help protect the lives of children and their sexual safety;³⁵ and
- give information about an order made under the Act to any person, so long as it is necessary and appropriate to reduce a risk to the lives of children and their sexual safety.³⁶

2.5 When police can apply for an Offender Prohibition Order

In 2008, police were provided with an option to respond to the risks posed by particular offenders who live in the community, and who are behaving in a way that poses a risk to children. This was a new power³⁷ to apply to a Magistrates Court³⁸ for an Offender Prohibition Order.

The application can be brought against a “relevant sexual offender” who engages in conduct “the nature or pattern of which poses a risk to the safety or wellbeing of one or more children, or of children generally.”³⁹ A relevant sexual offender⁴⁰ includes people defined as current reportable offenders, as well as:

- a person who has previously been a reportable offender, but their reporting period has come to an end; and
- a person who has never been subject to reporting obligations because their sentence for a prescribed offence ended before the Act commenced in January 2005.

Before a court can make an Offender Prohibition Order, it must be satisfied, on the balance of probabilities, that the offender poses an unacceptable risk to the safety or wellbeing of one or more children or of children generally, and the Offender Prohibition Order will reduce the risk.⁴¹ An Offender Prohibition Order can prohibit the person named in the order from engaging in certain conduct (e.g. being in a particular location), or require the person to do a particular thing (e.g. wear a tracking device).⁴²

A police officer may apply to the court for a temporary or a final Offender Prohibition Order if they become aware that a relevant sexual offender has engaged in concerning conduct.⁴³ The duration of an Offender Prohibition Order depends on the type of order:

- temporary Offender Prohibition Order: maximum of 28 days
- final Offender Prohibition Order made against an adult offender: five years
- final Offender Prohibition Order made against a child offender: two years.

When an offender who is subject to an Offender Prohibition Order made in another state or territory moves to Queensland, a police officer can apply to have the order registered with a Queensland court.⁴⁴ Once registered, it has the same effect as an order originally made under the Act.⁴⁵

Where an application for a temporary order is unsuccessful, or a hearing for a final order is adjourned and no temporary order is made, a court must consider making a disqualification order.⁴⁶ A disqualification order temporarily prohibits the offender from holding or applying for a notice issued under the *Working with Children (Risk Management and Screening) Act 2000* (Qld) (*Working with Children Act*) that authorises them to work with children.



2.6 Offences under the Act and their penalties

The Act contains a number of offences, all of which attract a maximum penalty of a \$43,125 fine or up to five years' imprisonment. The offences include a reportable offender, *without a reasonable excuse*:

- failing to comply with reporting obligations;⁴⁷
- failing to comply with an Offender Prohibition Order;⁴⁸
- failing to comply with a police request for access to a digital device (e.g. mobile phone), including all passwords; and;⁴⁹
- providing information which the person knows is false or misleading.⁵⁰

2.7 Reportable offenders' rights under the Act

The Act provides reportable offenders with a number of rights to review and appeal certain decisions, including:

- to be provided with a copy of all information they have reported to the register and ask for information to be changed if it is not correct;⁵¹
- to review the decision to place their name on the child protection register or a decision about their reporting period;⁵²
- to apply for an internal QPS review⁵³ of certain decisions,⁵⁴ and appeal the review decision to the Magistrates Court;⁵⁵ and
- a reportable offender required to report for life can apply to the Supreme Court for an order suspending their reporting obligations if 15 years has passed since they were last sentenced or released from detention, or if they are a post-DPSOA reportable offender, were last subject to a DPSOA detention or supervision order.⁵⁶



3 Key issues and questions

We are inviting submissions on how the Act operates in practice. To help guide your submission, we have proposed questions in this chapter under nine topic areas.

Submissions are due by Monday 14 November 2022. See the Appendix for more information.

3.1 Who the Act applies to

The Act applies to two categories of offender: a “reportable offender” and a “relevant sexual offender”. We describe these definitions in Chapter 2, and the appropriateness of these definitions is central to achieving the purposes of the Act.

A relevant sexual offender can be a *current* reportable offender, a *former* reportable offender (because their reporting period has ended) or a person who *would have been* a reportable offender if their sentence for a prescribed offence had not ended before the commencement of the Act in January 2005.

- 1. To what extent is the definition of “reportable offender” in section 5 of the Act appropriate? It may be relevant to consider the definition of “reportable offence” and the list of “prescribed offences”.⁵⁷**
- 2. To what extent is the definition of “relevant sexual offender” appropriate?⁵⁸ This definition applies to Offender Prohibition Orders.**
- 3. How are Offender Reporting Orders used in practice? Do you have any concerns about the appropriateness, wording, or application of section 13? Are there any barriers to its use?**

3.2 How the Act refers to “risk”

References to risk to children are used throughout the Act, not only as a purpose or intent of the Act, but also as a factor to be considered in making a police or court decision. The Act contains four different thresholds of “risk”:

- A risk to the lives or sexual safety of children – which applies before certain powers can be exercised or an order made.⁵⁹
- A risk to the safety or wellbeing of children – which applies to police applying for an Offender Prohibition Order.⁶⁰
- An unacceptable risk to the safety or wellbeing of children – which applies to a court making an Offender Prohibition Order.⁶¹
- A risk to the safety of children – which applies to a court deciding whether to suspend a reportable offender’s life-long reporting obligations.⁶²

Across these four thresholds, there are two dimensions:

- the degree of risk (a risk, or an unacceptable risk); and



- what the risk is relevant to (lives or sexual safety of children, safety or wellbeing of children, or safety of children).

4. To what extent are the four different thresholds of “risk” in the Act appropriate?
5. What are the advantages and disadvantages of providing more guidance in the Act on how to interpret the four different thresholds of “risk”?

3.3 The adequacy of police resources and practices to monitor risk

Administering the Act is largely the responsibility of the QPS. This involves a significant volume of work, and work that involves dealing with behaviours that may pose a significant risk to the community. To undertake their role, police use powers under the Act and the *Police Powers and Responsibilities Act 2000* to check if a reportable offender is complying with their reporting obligations, committing any offences under the Act, or engaging in conduct that poses a risk to the safety or wellbeing of children.

6. To what extent is the QPS adequately resourced to manage the volume, diversity, and complexity of work that is associated with the operation of the Act?
7. To what extent are the tools, practices, policies and legislative powers used by police for the following purposes appropriate, adequate, and easy to understand:
 - a. To check if a reportable offender is complying with their reporting obligations?
 - b. To identify if a relevant sexual offender is engaging in conduct that poses a risk to the safety or wellbeing of children?
 - c. To identify conduct that may constitute an offence under the Act?
 - d. To appropriately share information about reportable offenders, or children they have contact with?

3.4 Reporting by child reportable offenders

In this section we are exploring how the Act differentiates between child and adult offenders. The Act contains a number of provisions that only apply to offenders who have committed prescribed offences when they were a child (a child reportable offender). For example:

- A child who commits a single offence of possession or distribution of child exploitation material⁶³ will not be a reportable offender,⁶⁴ whereas an adult will be (unless another exception applies).
- The length of time that a child reportable offender is required to report to the register is half that of an adult, and the duration of a final Offender Prohibition Order is two years for a child offender compared to five for an adult.
- All child reportable offenders can apply to the police commissioner to have their reporting obligations suspended⁶⁵ and can appeal the decision in the Magistrates Court,⁶⁶ whereas an adult can only apply if they have a cognitive or physical impairment, or a mental illness.

However, the corresponding legislation in some other states and territories treats child offenders differently to the way they are treated under the Queensland Act. For example, in Victoria,⁶⁷ the Northern Territory⁶⁸ and Tasmania,⁶⁹ a child offender will only become a reportable offender if a



court makes a reporting order; and in New South Wales,⁷⁰ a court sentencing a child offender can make an order that overrides the provisions that would otherwise automatically make certain child offenders a reportable offender.

8. Do you think the provisions in the Act that apply to child offenders are appropriate?

3.5 Reporting by offenders with diverse and complex needs

In this section we are exploring how the Act accommodates the needs of reportable offenders who experience diverse and complex circumstances.

At times, reportable offenders may experience personal or social circumstances that make it difficult for them to comply with their obligations under the Act (e.g. a psychosocial, cognitive, or intellectual disability, or instability in their housing situation). This may result in unintentional non-compliance with an offender's reporting obligations or with an Offender Prohibition Order.

A police officer who becomes aware of a reportable offender who is failing to comply with their reporting obligations⁷¹ or failing to comply with an Offender Prohibition Order⁷² has several options including:

- They have a discretion not to charge the reportable offender with an offence, when appropriate.
- They may decide that the reportable offender has not committed an offence because they have a "reasonable excuse".
- If the reportable offender has a significant cognitive or physical impairment, or a significant mental illness that is interfering with their ability to comply, they can initiate a suspension of the offender's reporting obligations⁷³ (so long as they do not pose a risk to the lives or sexual safety of children) or apply to a court for the Offender Prohibition Order to be varied or revoked.⁷⁴

9. In your experience, what are the features or circumstances of reportable offenders who:

- a. Have difficulty understanding their reporting obligations or obligations under an Offender Prohibition Order?**
- b. Have difficulty complying with their reporting obligations or obligations under an Offender Prohibition Order, and this is not due to their risk to children?**
- c. Intend or try to comply with their reporting obligations, but have difficulty with making the report?**

10. When considering reportable offenders who experience circumstances that may result in unintentional non-compliance, do you have any comments about the appropriateness of:

- a. The options available to police, including provisions in the Act?**
- b. Police and court decision making in these situations?**

11. What is the appropriate role of departments or other entities when a reportable offender is experiencing circumstances that may result in unintentional non-compliance?



3.6 Information sharing and other links between legislation

The Act is only one of a number of Acts that seek to protect the lives and sexual safety of children, and the safety and wellbeing of children.⁷⁵ Where relevant, our review will examine the relationship between the Act and other legislation.

- 12. Are the provisions in the Act and in other legislation that allow agencies (including the QPS and Queensland Corrective Services) to exchange information about reportable offenders broad enough to protect the lives of children and their sexual safety, and ensure children's safety and wellbeing?**
- 13. How does information sharing between agencies work in practice?**
- 14. Are there links between the Act and other legislation or agencies that should be changed or created?**

3.7 Effectiveness of reporting obligations and Offender Prohibition Orders

Broadly, section 3 states that the purposes of the Act are to: protect the lives and sexual safety of children; prevent reportable offenders from reoffending; and assist with the investigation and prosecution of subsequent offences committed by reportable offenders.

- 15. To what extent do the reporting obligations help to achieve the purposes of the Act?**
- 16. To what extent do Offender Prohibition Orders help to achieve the purposes of the Act?**
- 17. What are the key barriers to keeping children safe from the risks posed by reportable offenders or relevant sexual offenders?**

3.8 Other opportunities for change

It is 18 years since the Queensland government, along with all other states and territories, agreed to introduce nationally consistent sex offender reporting legislation. It is nearly the same duration since the Act first came into operation. In that time, changes have been made to numerous laws, policies and practices that seek to protect children and manage child sex offenders, the number of offences being reported has increased, and technological developments have resulted in new offending methods.

As well, most states and territories have amended their sex offender reporting legislation, so the Act now differs from the corresponding legislation in other jurisdictions. Some key differences include:

- The provisions that regulate how a person becomes a reportable offender differ, particularly for child offenders (described at part 3.4).⁷⁶
- The criteria for making a reporting order is wider in some jurisdictions than it is in Queensland.⁷⁷
- The minimum reporting period in Queensland is 5 years for an adult (refer back to Table 2), whereas in all other states and territories, it is 8 or 15 years or even life, depending on the type and number of offences committed.
- The provisions on suspending and removing a reportable offender from the register differ in terms of who can apply, what the criteria for suspension or removal is, who the decision-maker



is, whether there is an appeal process, and whether a victim needs to be notified⁷⁸ before the application is made.⁷⁹

- In limited situations, police in some jurisdictions can publish information to members of the public that identify a person as a reportable offender.⁸⁰
- In one jurisdiction, courts can make an Offender Prohibition Order that includes additional powers for police to monitor whether the offender who has engaged in conduct that poses a risk to children is complying with the order.⁸¹
- In one jurisdiction, the way police carry out their functions under the Act is specifically subject to scrutiny by an oversight agency.⁸²

- 18. Are there current legislative provisions, strategies, approaches, decisions, or tools that should be changed to better protect children from reportable offenders and relevant sexual offenders living in the community?**
- 19. Are there new legislative provisions, strategies, approaches, decisions or tools that should be considered to better protect children from reportable offenders and relevant sexual offenders living in the community?**

3.9 Specific questions for current or former reportable offenders

We would also like to hear from any individuals who are currently, or previously have been, a reportable offender. If you have represented or been a support person for a reportable offender, we would also like to hear your views and experiences.

Complying with reporting obligations involves knowing:

- what information you need to give to the register;
- when you need to provide it;
- who you need to provide it to; and
- how you need to provide it.

Complying with an Offender Prohibition Order involves understanding how the order requires you to change your behaviour.

- 20. What factors make it easy or difficult for you to comply with your reporting obligations?**
- 21. What factors make it easy or difficult for you to comply with your Offender Prohibition Order?**
- 22. Do you know who to speak to if you want to find out more about your obligations and rights under the Act?**
- 23. Is there anything else about your experience as a reportable offender, or as their support person, that you want to share?**



Appendix: Have your say – How to make your submission

Your views and experiences about the issues we have discussed in this paper are important to us. To make a submission to the CCC:

- Review Chapter 3 “Key issues and questions” (starting on page 10). Note that your submission does not need to address every question or discussion point.
- It is important that you tell us how you would like your submission to be treated, based upon one of the following options:
 - a. Public submission** – we may refer to or quote directly from the submission, and name the source of the submission, in relevant publications. Public submissions may be published on the CCC website.
 - b. Anonymous submission** – we may refer to or quote directly from the submission in relevant publications but will not identify its source. Anonymous submissions, with all identifying information removed, may be published on the CCC website.
 - c. Confidential submission** – we will not quote or refer to the submission in any report or publication, however the information contained in the submission may be considered in preparing any such report. Confidential submissions will not be published on the CCC website.
- Where there is no clear selection of one of these options, we will treat the submission as a confidential submission.
- Provide your submission to us by **Monday 14 November 2022** by one of the following methods.

Email: CPOROPO.Review@ccc.qld.gov.au

Post: CPOROPO Review
Crime and Corruption Commission
GPO Box 3123
Brisbane QLD 4001

If you cannot write to us, please call 07 3360 6250 to audio record your oral submission. The oral submissions line will be open from **Monday 31 October to Monday 14 November 2022**, between the hours of 8:00am and 4:00pm AEST.

Submissions that contain allegations of corrupt conduct or police misconduct, or report a crime

The submission process is not the right avenue to make a complaint about either corrupt conduct or police misconduct, or to report a crime. We are obligated to refer submissions which contain allegations of corrupt conduct or police misconduct to our complaints department and submissions that report a crime to the Queensland Police Service.

How the CCC will treat your submission

Your submission will be made available in full to the members of the research team for the purpose of carrying out this legislative review and will be managed in accordance with the *Information Privacy Act 2009* (Qld). We will regard the information you provide as confidential, unless you tell us you would like your submission to be treated as a public or anonymous submission. Please note we will not make public any submission that contains allegations of corrupt conduct or police misconduct,



does not address issues relevant to the review, contains identifying information about a third party, contains offensive material, contains defamatory material, or contains material that infringes the intellectual property rights of others or promotes commercial interests.

Your questions about this review

Please email your question to CPOROPO.Review@ccc.qld.gov.au and we will contact you.



References

- 1 Section 3 of the Act.
- 2 Section 3(1A)(b) refers to these offenders as: “particular offenders who commit sexual, or particular other serious, offences against children”.
- 3 Section 74C of the Act.
- 4 Defined in section 5 of the Act.
- 5 Some prescribed offences do not have an identified victim (e.g. possessing or distributing child exploitation material, ss. 228C and 228D of the Criminal Code (Qld)).
- 6 Item 9(f) of Schedule 1 of the Act (Prescribed offences).
- 7 Section 13 of the Act. Offender reporting orders can also be made against a person who is alleged to have committed an offence but who was not convicted because of a court finding about their state of mind, provided they are subject to a forensic order made under the *Mental Health Act 2016* (Qld).
- 8 Defined in section 7A of the Act.
- 9 Section 5(2) of the Act.
- 10 Section 35 of the Act.
- 11 Section 34 of the Act.
- 12 Defined in section 7 of the Act.
- 13 Sections 14 and 26(1)(a) of the Act.
- 14 Defined in section 9A of the Act.
- 15 Section 14 and Schedule 3 of the Act.
- 16 Sections 18, 19 and the definition of “reporting month” in Schedule 5 (dictionary) of the Act.
- 17 Section 19(2) of the Act.
- 18 Section 19A of the Act.
- 19 Section 20 of the Act.
- 20 Note that section 271A of the *Criminal Code* (Cth) makes it an offence for a reportable offender to leave Australia without approval from “a competent authority”.
- 21 Section 20 of the Act.
- 22 This obligation applies where the reportable offender was required to report their intended leave from Queensland. See section 22 of the Act.
- 23 Section 4 of the Act.
- 24 See sections 36-39 of the Act.
- 25 In calculating how many new offences a reportable offender has been found guilty of, the Act says that two or more offences that arise from the same incident and that were all committed within a 24 hour period against the same victim are to be treated as a single offence: sections 36(4) and 11(1).
- 26 Section 38A of the Act.
- 27 Section 37 of the Act. See also the definition of “child” in schedule 1 of the *Acts Interpretation Act 1954* (Qld).
- 28 When police become aware that a reportable offender is engaging in this type of conduct, they can apply for an Offender Prohibition Order; see part 2.5 of this paper.
- 29 Section 21A(1) of the PPRA.
- 30 Section 31 of the Act.
- 31 Section 21B(1)(a) of the PPRA.
- 32 Section 51B of the Act. As soon as reasonably practicable after exercising this power, the officer must apply for a post-search approval order: see section 51B(6) of the Act and section 161 of the PPRA.
- 33 Sections 21B(1)(b), (2) and (5) of the PPRA. An example of a prescribed internet offence is the offence under section 218A of the *Criminal Code* (Qld) of using the internet to procure a child under 16.



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- 34 Section 74D of the Act.
- 35 Section 74E of the Act.
- 36 Section 74I of the Act.
- 37 The provisions on Offender Prohibition Orders were originally located in the *Child Protection (Offender Prohibition Order) Act 2008* (Qld) but were moved into the Act in 2017.
- 38 The application must be made to the Childrens Court constituted by a Childrens Court magistrate if the offender is a child: see the definition of “court” in Schedule 5 (dictionary) of the Act.
- 39 The Act refers to this conduct as “concerning conduct”: see the definition in section 13A(3).
- 40 The term “relevant sexual offender” is defined in Schedule 5 (dictionary) of the Act.
- 41 Section 13C of the Act. Prior to 2018, an application could only be brought if an offender had engaged in conduct that posed a risk to the lives or sexual safety of children. Similarly, a court could only make an Offender Prohibition Order if it was satisfied the offender posed an unacceptable risk to the lives or sexual safety of children and the Offender Prohibition Order would reduce that risk. The criteria for bringing an application and for making an Offender Prohibition Order was deliberately broadened by amendments included in the *Police Powers and Responsibilities and Other Legislation Amendment Act 2018* (Qld).
- 42 Sections 13F and 13FA of the Act.
- 43 Sections 13A and 13I of the Act.
- 44 Section 13Y of the Act.
- 45 Section 13ZB of the Act.
- 46 Section 13T of the Act.
- 47 Section 50(1) of the Act.
- 48 Section 51A(1) of the Act.
- 49 Section 51B(3) of the Act.
- 50 Section 51(1) of the Act.
- 51 Section 73 of the Act.
- 52 Section 74 of the Act.
- 53 Section 67H of the Act.
- 54 Section 67G and Schedule 4 of the Act. There are three types of decisions this relates to: a decision to increase the frequency with which a reportable offender must report; a decision refusing a reportable offender’s application for their reporting obligations to be suspended; and a decision to revoke a previous decision to suspend a reportable offender’s reporting obligations. Suspension decisions can be made under sections 67C (QPS initiated) or 67D (on a reportable offender’s application) if the reportable offender is a child reportable offender, or they have a cognitive or physical impairment, or a mental illness. A key criterion for making the suspension is that the reportable offender does not pose a risk to the lives or sexual safety of one or more children, or of children generally.
- 55 Section 67J of the Act.
- 56 Section 41 of the Act.
- 57 Section 9 and Schedule 1 of the Act.
- 58 Defined in Schedule 5 of the Act.
- 59 For example, before a court makes an Offender Reporting Order under section 13; before the police commissioner or their delegate suspends a reportable offender’s reporting obligations under sections 67C or 67D; and before the police commissioner or their delegate shares information about an Offender Prohibition Order with a parent of a child protected by the order under section 74I.
- 60 Sections 13A(1) and (3) and 13I(1) of the Act.
- 61 Sections 13C(1), 13J(1) and 13K(2) of the Act.
- 62 Section 42 of the Act.
- 63 The definition of “child exploitation material” in section 207A of the Criminal Code (Qld) includes images that depict a person who is, or appears to be, under 16 years of age in a sexual context. The offences of distributing child exploitation material (s. 228C) and possessing child exploitation material (s. 228D) are wide enough to include instances of “sexting”.
- 64 Section 5(2)(c) of the Act.
- 65 See section 67D of the Act and note that the police commissioner can also initiate suspending a child reportable offender’s reporting obligations under section 67C.
- 66 Section 67J of the Act.



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- 67 See the definition of a “registrable offence” in section 7(1) that refers to certain offences committed as an adult, and section 11(2) and (6) (sex offender registration order) of the *Sex Offenders Registration Act 2004* (Victorian Act).
- 68 See sections 11(1) and 13(2) of the *Child Protection (Offender Reporting and Registration) Act 2004* (NT Act).
- 69 See sections 5(1) and 6 of the *Community Protection (Offender Reporting) Act 2005* (Tasmanian Act).
- 70 See section 3C of the *Child Protection (Offenders Registration) Act 2000* (NSW Act).
- 71 An offence under section 50 of the Act.
- 72 An offence under section 51A of the Act.
- 73 Section 67C of the Act.
- 74 Section 13Q of the Act.
- 75 Some other Acts include the DPSOA, the *Child Protection Act 1999* (Qld), the *Penalties and Sentences Act 1992* (Qld), the *Corrective Services Act 2006* (Qld), the *Domestic and Family Violence Protection Act 2012* (Qld), the Working with Children Act, and section 271A of the Criminal Code (Cth).
- 76 Under the Tasmanian Act, no adult or child offender becomes a reportable offender unless, at the time they are sentenced, the court makes an order directing their name be added to the register: see sections 5(1) and 6.
- 77 For example, in both the Australian Capital Territory (s. 16 of the *Crimes (Child Sex Offenders) Act 2005* (ACT Act)) and Victoria (s. 11(3) of the Victorian Act) an order can be made where a court is satisfied the offender poses a risk to the sexual safety of one or more persons or of the community (as opposed to one or more children). In South Australia (s. 9(3) of the *Child Sex Offenders Registration Act 2006* (SA Act)), a court only needs to be satisfied that the person poses a risk to the safety and well-being of any child (as opposed to risk to a child’s life or sexual safety).
- 78 See for example, sections 122B and 122C of the ACT Act.
- 79 For example, the only suspension provisions in the NSW Act are those which apply to reportable offenders who are required to report for life, whereas the Victorian Act allows the police commissioner to apply to a court to suspend the reporting obligations of any reportable offender and allows the police commissioner to suspend the reporting obligations of any reportable offender for a maximum period of five years (sections 39A and 45A of the Victorian Act). Before a court or the police commissioner can order a suspension they must be satisfied that the offender does not pose a risk, or poses a low risk to the sexual safety of one or more persons or of the community.
- 80 The Western Australia legislation (see Part 5A of the *Community Protection (Offender Reporting) Act 2004*) allows police to publish information to members of the public that identifies a person as a reportable offender in three limited situations. They are: to a parent or guardian of a child who asks if a person who has regular unsupervised contact with the child is a reportable offender; to persons living in the same suburb as a high risk reportable offender; and to members of the public generally where a reportable offender has failed to comply with their reporting obligations or provided false or misleading information to the register and their whereabouts are unknown. The Tasmanian (s. 47A), SA (s. 66F) and ACT (s. 116A) Acts also allow police to publish identifying information about “missing” reportable offenders.
- 81 See sections 66U to 66ZG of the Victorian Act.
- 82 Section 70L of the Victorian Act requires the Independent Broad-based Anti-corruption Commission (IBAC) to monitor Victoria Police’s compliance with Parts 3 (Reporting obligations) and 4 (Sex Offender Register) of the Act.





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