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Minister for Police, Fire, and Emergency Services and
Minister for Corrective Services
PO Box 15195
CITY EAST QLD 4002

3rd November 2016

Attention: Senior Sergeant Vicki Barrett

Via email transmission: Barrett.Vicki@police.qld.gov.au

Re: Review of the Preliminary Draft of the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016

Dear colleague,

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd (ATSILS) welcomes the opportunity to make a submission on the Preliminary Draft of the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016 (Preliminary Draft).

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Our primary role is to provide criminal, civil and family law representation. We are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). As an organisation which for over four decades has practised at the coalface of the justice arena, we believe we are well placed to provide meaningful comment. Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

We understand that the Child Protection (Offender Reporting) and other Legislation Amendment Bill 2016 seeks to give effect to the Crime and Corruption Commission Recommendations and introduces a number of other policy proposals, aimed at further enhancing the protection provisions and streamlining the administrative processes of the legislation. As a general proposition, ATSILS strongly supports legislation that protects communities, by monitoring, controlling or limiting the behaviour of those convicted of sexual or other serious crimes against children.

FEEDBACK ON PROVISIONS

Precis 1

Amalgamate the Child Protection (Offender Prohibition Order) Act 2008 and Child Protection (Reportable Offender) Act 2004 into one Act and repeal the Child Protection (Offender Prohibition Order) Act 2008.

We would support this provision.

Precis 2

Extend the provisions to include that a reportable offender must continue to report until all processes which make that person a reportable offender has been concluded, including being subject to an Offender Prohibition Order.

We do not take issue with this provision, provided the extension of the reportable conditions imposed upon defendants is framed in culturally capable policies, to limit cultural and literacy barriers and maintain compliance. As has been noted for many years now, the concept of timely reporting is a culturally difficult concept for Aboriginal and Torres Strait Islander people, as well as such on occasions cutting across family or community commitments and/or responsibilities:

‘Formal directions in accordance with bonds or parole orders to individuals not to associate with specific others or warnings not to become involved in specific activities are likely to be either ineffectual (as an individual’s obligations towards others are well established) or detrimental to traditional structures.’¹

¹ Aboriginal Welfare — Initial Conference of Commonwealth and State Aboriginal Authorities, held at Canberra, 21st-23rd April, 1937, AGPS, Canberra, 1937, 31.

Additionally, literacy barriers occur when untrained case workers and other relevant stakeholders approach our clients without thought to their education and literacy levels.

'As with any cross-language communication situation, clear and accurate communication is most likely to occur when you use words, concepts and grammar that are familiar to both languages and avoid using words, concepts or grammatical structures that only exist in one language and not the other'².

Cultural competency training must be provided to all relevant persons, framed in strategies to improve the effectiveness and cultural capabilities of administering offender reporting if compliance is to be achievable.

Precis 3

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

We would support this provision.

Precis 4

Amend, the CPOPO Act to remove the threshold of “recent” as it applies to “recent concerning conduct”.

We do not take issue with the provision, provided the ‘currency’ of the concerning conduct is a consideration which the court must consider before making an order, which would be reflected in section 13D of the proposed *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

Precis 5

Streamline and clarify the civil processes which apply to an OPO to align all processes with the Uniform Civil Procedure Rules (UCPR), other than for the prosecution of an offence and allow concurrent proceedings to operate in a similar manner to other civil processes in Queensland.

We would support aligning civil processes applying to an Offender Prohibition Order (OPO) with the Uniform Civil Procedure Rules (UCPR). However, the importance of allowing concurrent proceedings to operate in a similar manner to other civil processes in Queensland is questioned, as ‘running both criminal and civil proceedings concurrently could be

² Law Society of the Northern Territory (2nd, 2015) Protocol 5, 20.

interpreted as an abuse of process ...[and] may enable the prosecution to use the OPO proceedings to obtain fresh evidence and to test the veracity of its own evidence before the criminal proceedings occur'³. The extent to which the evidence in a civil proceeding can be subsequently used in a criminal proceeding so as not to disadvantage an offender in relating to the criminal proceedings has not been properly addressed in the Preliminary Draft. ATSILS recommends the Preliminary Draft be amended to reflect the recommendations of the Crime and Corruption Commission Report.

Precis 6

Amend the CPOPOA to improve information sharing between QPS and relevant agencies, and between QPS and members of the public.

We would not take issue with this provision, subject to sighting the final draft of the proposed legislation. Of particular concern is the consideration of the QPS sharing information with members of the public – and in ensuring that sufficient statutory safeguards are in place in respect of such.

Precis 7

Allow police, where there is a reasonable suspicion that a reportable offender has committed an offence under the amalgamated legislation, to direct a person to provide access information for any device or information which can be accessed through a device.

We are opposed to this provision in its current form. However, we would not take issue with such if the proposed draft legislation not only required a 'reasonable suspicion' that an offence (under the legislation) has been committed, BUT, that there needs to be an added safeguard, requiring the officer to also demonstrate a reasonable belief that such access is materially related to the suspected offence. That is, the fact that a police officer has a reasonable basis to suspect that a material offence has been committed is not enough – there also needs to be a nexus between the investigation of that alleged offence and the need to access said device.

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Precis 8

Amend the penalty for failing to comply with an OPO to a maximum penalty of 300 penalty units or five years' imprisonment, consistent with the penalty provisions under the CPORA

We would not be strongly opposed to this provision – although we would question as to whether 5 years' imprisonment for non-compliance alone – is too severe. We have had a recent homeless client in the Brisbane area, subject to multiple non-compliance breaches, simply by virtue of his itinerant life style. Without any further offending, it appears he is destined to be returned to prison.

Precis 9

Extend the application of an OPO order to clarify that an OPO can be made by consent under particular circumstances and if in the interests of justice.

We do not take issue with this provision but refer back to our response in Recommendation 3. When the Queensland Police Service and the courts are dealing with Aboriginal and Torres Strait Islander Queenslanders, it is imperative to be aware of their literacy and cultural barriers when asking explaining obligations and/or seeking their consent. Culturally competent communications are imperative if injustices arising out of such considerations as gratuitous concurrence are to be avoided.

Precis 10

Prohibit a self-representing respondent from cross-examining (in person) a child witness in any proceeding.

We would support this provision (subject to other indirect avenues of cross-examination being made available).

Precis 11

Require a reportable offender who is subject to a supervision order under the Dangerous Prisoners (Sexual Offenders) Act 2003 (DPSOA) to make an initial report (New proposal – section 4 CPORA).

We would take no issue with this provision.

Precis 12

Extending who is considered to be a reportable offender to reflect that a person who is sentenced for an offence that is not a reportable offence may be deemed a reportable offender if the court is satisfied that the facts and circumstances of the offence have elements of a reportable offence (New proposal – section 5 CPORA).

We would be strongly opposed to this provision. Our primary stance is that if an accused is sentenced in relation to an offence which is not a reportable offence, it is contrary to fairness to simply 'deem' such after the event. However, we would also foresee unintended consequences which would almost certainly adversely impact upon alleged victims. For example, it is not that uncommon for an accused charged with a reportable offence to insist upon taking a matter to trial – but later being 'persuaded' into a plea of guilty by virtue of the Crown offering to substitute the charge with a non-reportable offence. The proposed amendment would clearly open the door for such an accused (upon a plea of guilty to the substituted charge) to then be deemed a reportable offender with all the related consequences. Given that a legal representative would be remiss not to advise their client accordingly – it would mean that such scenarios are far more likely to lead to contested trials – not just with the potential for an acquittal but also with the ramification of putting the victim through added trauma.

We had a recent example before the District Court in Brisbane where a client committed a lude act on a train whilst highly intoxicated in front of a number of students in school uniform. He was charged with an offence which was a reportable offence as well as an alternative charge which was not a reportable offence. The Crown were content to accept a plea of guilty to the non-reportable offence upon the basis that the intoxicated act was out of character for someone who was mortified by his conduct, plus there was no way for the accused to have known at the material time as to whether the school girls were aged over or under 16 years.

Indeed, given that some commit offences which are reportable offences but which are totally out of character and a clear one-off blemish – there is logic in a reverse argument that judicial officers should have a discretion, in clearly exceptional circumstances, to relieve an accused of the reporting requirements upon a plea of guilty to a reportable offence.

Precis 13

Clarify that reportable contact with a child includes contact that occurs within Queensland and contact outside of Queensland (New proposal – section 9A CPORA).

We would support this provision.

Precis 14

Requires a reportable offender to report the cessation of all personal details which are required to be reported under schedule 2 of the CPORA (New proposal – section 19A CPORA).

We would support this provision.

Precis 15

Reduce the timeframes for reporting travel information from seven days to 48 hours, to minimise the opportunity for reportable offenders to circumvent the reporting obligations associated with travelling (New proposal – sections 19A (2), 20, 21, 22, CPORA).

We would support this provision.

Precis 16

Extend the provisions where the police take fingerprints and photographs (New proposal – sections 30 and 31 CPORA).

We do not take issue with this provision, provided there are stipulated safeguards in place to ensure that any information obtained from the use of biometric devices is not used for any other purpose.

Precis 17

Extend the liability provisions to protect a person or agency who provides information about a reportable offender, where the person is acting honestly (section 48 CPOPOA).

We would support this provision.

Precis 18

Suspend a reportable offender from reporting obligations where he or she has a significant mental illness (Division 10 CPORA).

We would support this provision and further seek that this recommendation be not limited to offenders who were children when offence was committed, but also to adults with significant mental illness as well. We base this submission on the Victorian Law Reform Commission's⁴ report which details many registered sexual offenders, especially those with a disability, struggle to understand or remember their reporting obligations.

The report submitted:

A number of people who are subject to the obligations of the Registration Act have an intellectual disability or experience periods of mental illness. These circumstances may have contributed to their offending. Ironically, those conditions also make it harder to understand and comply with the conditions of the Registration Act.

Precis 19

Extend the provision to allow a legal representative or delegate authorised on behalf of the reportable offender to seek information or review an entry on the child protection register (sections 73 and 74 CPORA).

We would support this provision.

Precis 20

Extend the provisions of section 21A PPRA to include power to inspect electronic devices to verify personal information reportable by the reportable offender

We would be opposed to this provision. Section 21A PPRA currently allows a police officer to enter premises where a reportable offender generally resides to verify the offender's personal details. We would see it as constituting an unnecessary invasion of privacy to allow a police officer to access electronic devices for this stated purpose. We would be concerned that such

⁴ Victoria Legal Aid, Submission No 14 to Victoria Law Reform Commission, *Inquiry into the Sex Offender Registration*, 4 August 2011, 5.

devices would be accessed for reasons other than verifying personal information. Where such might be the intent – the police have other avenues which can be followed - but which provide certain safeguards (for example, seeking a search warrant).

Precis 21

Insert a new provision into the PPRA to allow police to proactively manage risks posed by reportable offenders who have elevated risk of re-offending.

We understand this provision will be deleted, however until confirmation of that, we would oppose this provision as it lacks a head of power to give rise to access this search.

Precis 22

Extend the period of authority for a Queensland Police Service staff member to acquire and use an assumed identity.

We would support this provision.

In closing, once again our thanks for this opportunity to provide feedback on the Preliminary Draft of the Child Protection (Offender Reporting) and Other Legislation Amendment Bill 2016.

Please do not hesitate to contact us at our head office in Brisbane should you have any questions or require any clarification.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Shane Duffy', written in a cursive style.

Shane Duffy

Chief Executive Officer