DRAFT SECOND READING SPEECH

HON. M.T. (RENE) HIDDING MLC

Community Protection (Offender Reporting) Amendment Bill 2016

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Madam Speaker,

I move that the Bill now be read a second time.

The Bill contains amendments to the *Community Protection (Offender Reporting) Act 2005* which are intended to ensure Government fulfils Tasmania's commitment to the national approach to sex offender registration through the Australian National Child Offender Register (ANCOR). In addition to this commitment, the Bill also seeks to correct anomalies that have been identified in the Act since the last amendments were made to it in 2011.

Madam Speaker, the Bill proposes a new section for the making of a community protection order. This is an order, made by a Magistrate, on the application of the Commissioner of Police which prohibits or restricts the movement, or conduct of a reportable offender who is already on the Register.

Where the Commissioner is satisfied that a reportable offender poses a risk to the safety or wellbeing of a child, or children, he or she may apply to the court for a community protection order.

As the Bill describes, the order may prohibit or restrict a reportable offender's association or contact with certain persons and prevent him or her from being at, or in the vicinity of certain places. An order might restrict the ability for an offender to undertake certain types of employment, or, depending on the circumstances of the offending, or any intelligence that the Commissioner may be privilege to, prohibit or restrict the consumption of alcohol and/or other drugs.

Community protection orders align with the intention of the *Community Protection (Offender Reporting) Act,* which is to reduce the likelihood that sex offenders will reoffend.

Community protection orders already exist in the Northern Territory (child protection prohibition orders), Western Australia (child protection orders) and in the ACT (prohibition orders).

An example, I am advised by police, where a community protection order would be sought relates to a well-known, dangerous and recidivist child sex offender in Launceston. This offender attended a school and when staff spoke to him he stated he was there to see his daughter. He did not have a daughter and the offender was recognised by a staff member who called the police. The offender was arrested and charged with the offence of 'Loitering near children' (section 7A Police offences Act 1935). The matter went to court and was dismissed as police were unable to prove the 'loitering' component of the charge. The conduct of this child sex may well have been restricted if there was a community protection order in place.

Another example where such an order would be sought relates to a man from Glenorchy that was convicted and imprisoned for sexually assaulting his daughter. On his release from prison,

the offender returned home, and continued to live with his family, including his daughter who he had molested for three years and was now aged 11. In this instance, police were forced to apply for a restraint order to protect the child.

There are also offence and penalty provisions for failing to comply with a community protection order.

In respect to reportable offenders informing the Registrar of travel into and out of the State of Tasmania. There is some incongruity in the Act and the Bill proposes to address this by making amendments to sections 16 and 19. First and foremost, any travel into or out of Tasmania by a reportable offender, and this includes a corresponding reportable offender from another jurisdiction, for any period must be reported to the Registrar.

For a corresponding offender, as it stands, section 16 of the Act permits the offender to be in Tasmania for 7 days before notifying the Registrar and this is only if he or she intends to remain for 14 days or more. The Bill will amend section 16 and require the offender to report to the Registrar within 3 days of arrival in Tasmania.

Where a reportable offender from Tasmania intends to leave the State, section 16 requires that he or she report this travel to the Registrar 7 days prior to leaving. This notification period has not changed however, notice is now required for any intended absence from Tasmania. I understand there may be situations, such as a family emergency, that may make 7 days notice impracticable, so the Bill has provided a clause whereby 24 hours notice may be given. This provides a fair balance for the need to monitor the movements of sex offenders in and out of our State and a reasonable expectation that from time to time, urgent and unexpected travel may be necessary.

And finally, in relation to section 16 of the Act, there is a requirement that a reportable offender must, within 7 days, notify the Registrar of any changes to his or her personal details. The Bill makes one small amendment to this requirement in that any reportable contact an offender has with a child must now be reported within 24 hours.

Again, this is not an unreasonable expectation when considering the safety and wellbeing of a child and in fact, jurisdictions nationally are slowly implementing these same safety mechanisms. The ACT (in 2012), Queensland (in 2014) and Western Australia (in 2013) all require sex offenders disclose reportable contact with a child within 24 hours.

Madam Speaker, section 17 of the Act lists all the personal details a reportable offender is required to provide to the Registrar. Name, address, clubs or organisation affiliations, distinguishing marks and features, employment details, vehicle details and the like. When the Act was last amended (in 2011), details of electronic identifiers, internet providers, email addresses and associated passwords were added to the list. However, it seems that at the time it was not made abundantly clear that police can actually use those details and access a reportable offender's electronic data. The details provided are simply recorded, with no way to verify if they are in fact correct.

This Bill seeks to rectify this situation and provide a mechanism whereby these details may actually be used, as was intended at the time, to deter offenders from accessing child exploitation material or engaging in predatory behaviour.

A reportable offender is already required to furnish the details of any passwords, codes or other information or assistance to gain access to data that may be stored on a computer,

phone or other electronic device. The Bill will now require the offender to present such devices for inspection to verify the information provided is also correct.

Further details are also required to be reported. Addresses of premises where he or she has access to for the purpose of storage, parental status, including whether or not a partner, or the offender themselves are pregnant, the details of schools or child care facilities attended by children they have reportable contact with, and if there are any family law court orders in existence. In addition to motor vehicle details, an offender will now also need to provide details of any boat, caravan, motor home, jet ski or other vehicle owned or used by them.

All these amendments are designed to keep police informed of the whereabouts and other personal details of reportable offenders as specified in the intent of the Act.

Madam Speaker, in its current form the Act does not define 'contact' with a child. This omission has led to uncertainty as to what type of contact or engagement with a child should be reported. When the Act was reviewed in 2012 by Quantum Consulting Australia, it found that for national consistency, Tasmania should adopt a definition similar to that used in other states. Victoria and New South Wales have adopted a definition that was recommended by the Victorian Law Reform Commission and Queensland (in 2014) and South Australia (in 2013) have also followed suit.

This Bill clearly defines reportable contact as being contact where the child resides, or is in unsupervised care, with a reportable offender for at least 3 days (consecutive or not) in a 12 month period. Reportable contact with a child also occurs where there is an exchange of contact details, or some form of physical contact, or communication for the purpose of inviting further contact.

And finally, in relation to section 17, the Bill provides for the *Community Protection (Offender Reporting) Regulations 2016* to omit, amend or add personal details listed in that section of the Act. This is important in a contemporary society and will allow for timely alterations to the section of the Act in the event of technological advances.

The Bill further amends the Act to allow for the taking of a non-intimate forensic procedure as defined by the *Forensic Procedures Act 2000*. In its current form, the Act allows for fingerprints and photographs, including a photo of a body part (not genitals, anal area, buttocks or in the case of a female, her breasts), to be taken of a reportable offender. A non-intimate forensic procedure includes blood, saliva, DNA, hair, nail and impressions.

The taking of DNA is not only a valuable tool for police in the investigation of any future offences (as specified in the intent of the Act) but specifying a non-intimate forensic procedure will provide some consistency in respect to the definition across Tasmanian legislation generally.

In carrying out procedures (photographs and fingerprints), the Act currently authorises the use of reasonable force however, there is some uncertainty about the application of such. For clarity, the Bill will allow a reportable offender to be detained for the purpose of carrying out the procedures as well as to prevent the loss, destruction or contamination of any forensic material. It is important that this authority is balanced and the Bill requires that where this occurs, the reportable offender must be informed of the reason for his or her detention, that the detention is authorised and that they will be released immediately after the process is completed. In addition, the Bill requires that a reportable offender must not be held for longer than necessary and stipulates the manner in which the procedure is to be carried out.

Madam Speaker, from time to time, the court may direct that a young reportable offender be entered onto the Register and the challenges of managing the young offenders reporting obligations may be difficult. The Bill enables the Commissioner, where satisfied on reasonable grounds that there is no risk to the safety or wellbeing of a child or children, to vary or suspend the reporting obligations of a young offender. This amendment aligns with the best interest of the child principle contained within the *Children, Young Persons and Their Families Act 1997* and will assist with the re-integration of a young reportable offender. The ability for the Commissioner to vary or suspend the reporting obligations of a young reportable offender, when appropriate, may also assist the youth in participating in normal educational, sporting, social and community activities.

Currently, there is one youth on the Register and one young offender in the Ashley Youth Detention Centre who will be included on the Register when released. I am also advised that there have previously been three young reportable offenders on the Register.

Sex offender registration is a national approach and all Australian jurisdictions subscribe to the Australian National Child Offender Register (ANCOR), however some sex offenders have been known to leave a jurisdiction without being served a notice of their reporting obligations. To address this, and to conform with the national approach, the Bill authorises police to detain a person they have reasonable grounds to believe is a reportable offender and has not been given, or is unaware of, his or her reporting obligations. A police officer may take the person to a police station to ascertain their status and where necessary, enable that person to be given written notice of their reporting requirements.

This amendment will ensure that a corresponding reportable offender cannot use travel to Tasmania to avoid their responsibilities under another Australian law. Madam Speaker, this amendment will also mean that our own authorities will be aware of the presence of a reportable offender in the State and assist in monitoring of that offenders movements.

Effective case management and monitoring of reportable offenders on an individual basis is essential in reducing the likelihood of re-offending. The current confidentiality provisions within the Act create some difficulty for authorities attempting to assess the information provided by the offender and manage the risks.

To that end, this Bill will allow for information sharing between the Commissioner and other Government Departments for the purposes of law enforcement or judicial functions/activities, and where it is necessary to ensure the safety and wellbeing of a child or children.

The A.C.T., New South Wales, Northern Territory and Victoria all have provisions for information sharing with prescribed entities. The Bill will allow entities, such as the Department of Education and the Department of Justice to be prescribed by the Regulations.

In addition to information sharing, the Bill authorises the Commissioner or the Secretary of the responsible Department for the *Public Health Act 1997,* (currently this is the Department of Health and Human Services) to disclose to a parent, guardian or carer of a child that a person having reportable contact with a child is a reportable offender. To do this however, there must be grounds that it is necessary and appropriate for ensuring the safety and wellbeing of a child or children.

Similar laws exist in the A.C.T. and in New South Wales. There is also legislation in corresponding Acts in South Australia and Western Australia.

Madam Speaker, it is recognised that the information provided is sensitive in nature but the wellbeing and sexual safety of a child ought to be at the forefront of any legislative change. Notwithstanding this, the Bill does prescribe that a parent, guardian or carer must keep this information secret and there are significant penalties where such information is divulged.

Ensuring the information provided by a reportable offender is accurate and up to date is imperative for the effective operation of the Act. The Registrar is responsible for maintaining the Register and any data uploaded from it to the national (ANCOR) database. The Registrar is also responsible for the integrity of the information held and collated by police. It is therefore essential that police officers are able to verify information that is provided to the Registrar.

Currently, there is no authority for an officer to enter a reportable offenders premises (unless he or she obtains a warrant) to verify the details that have been provided to the Registrar. For example; whether there are children in the home, internet connections and social media capabilities, data storage devices kept at the premises, or any evidence of employment.

This Bill authorises police to enter into, remain on, and search a reportable offender's premises to verify personal details. For this to occur, there are criteria that are required to be met, such as communicating to the reportable offender the police officer's authority to enter before doing so. A reportable offender must not prevent a police officer from carrying out this function.

In Tasmania, a number of Acts that relate to vulnerable or at risk members of the community provide police with powers to enter property in certain circumstances. The *Family Violence Act 2004* and the *Mental Health Act 2013* are two examples where the need for police to enter a premises with immediacy are specifically legislated. This Bill, Madam Speaker, provides an authority to enter a premises, conveyance or container, without a warrant, where a police officer reasonably suspects a reportable offender is committing, or has committed an offence against the Act. Such a power will provide police with the ability to detect and hopefully prevent offences, as well as preventing the loss, destruction or concealment of evidence such as the deletion of images or the erasing of stored data.

Police will also have the authority to copy records and where necessary, seize devices for further inspection.

One issue highlighted by the recent review of the Act is that there is no power of arrest where a reportable offender fails to comply with the Act. The proposal to provide police with the power to arrest a person they believe on reasonable grounds to be committing an offence against the Act will enhance the level of protection afforded children and vulnerable members of the community.

This amendment is intended to provide protective mechanisms and provide police with the power to immediately intervene where a person is found contravening an order or reporting obligations.

The Bill prescribes a new section in the Act relating to the publication of personal details of certain reportable offenders. Where a reportable offender has failed to comply with his or her reporting conditions or provided false or misleading particulars, and whose whereabouts are unknown, the Commissioner may publish any or all personal details of the reportable offender.

The amendment is similar to legislation contained in the South Australian and Western Australian Acts. In Tasmania, it is envisaged that a photograph, for example, of a reportable offender that police were unable to locate, would be released on the Tasmania Police website with details similar to those that are published currently. There would not be any reference to

the fact that the reportable offender is on the Register nor, the fact that he or she is a reportable offender and the image or details would be removed as soon as the offender had been located.

The final two amendments Madam Speaker relate to penalties for providing false or misleading information and Class 1 offences.

Currently, the penalty for providing false or misleading information has increased from not more than 50 penalty units to not more than 100 penalty units with the option for 6 months imprisonment remaining the same. In today's terms, this penalty would equate to an increase from $7,700.00 to $15,400.00. Other Australian jurisdictions apply penalties for the same or similar offence ranging from $10,000.00 (SA) to $55,000.00 (NSW) with the average penalty across six Australian jurisdictions being $27,340.00.

And finally Madam Speaker, the inclusion of the offence of prohibited behaviour into Schedule 1 of the Act as a Class 1 offence. Prohibited behaviour is an offence under section 21 of the *Police Offences Act 1925* and includes indecent or offensive behaviour. The inclusion of this offence would broaden the ability, where considered necessary, for a Magistrate to impose reporting conditions on those convicted of this offence.

Prohibited behaviour is that which a reasonable person is likely to find indecent or offensive and a Magistrate, on hearing the facts of the matter, particularly where there is an underlying sexual element, may direct the offender be included on the Register.

Madam Speaker, the Government has a responsibility to the Australian National Child Offender Register (ANCOR) and is committed to ensuring Tasmania remains contemporary with other Australian jurisdictions in relation to the registration and monitoring of sexual offenders.

The Bill will further enhance the safety of vulnerable Tasmanians including the sexual safety and wellbeing of our children and empower police to actively monitor those offenders the court have considered need to be included on the Register.

Regulations will be drafted once the legislation has passed to give effect to the prescribed entities and the amending, as necessary of the personal details to be reported by a reportable offender.

The Bill will become law on a date it receives royal assent.

I commend the Bill to the House.