

# Community Protection (Offender Reporting) Amendment Bill (No. 2) 2011

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Western Australia

LEGISLATIVE ASSEMBLY

**Community Protection (Offender Reporting)  
Amendment Bill (No. 2) 2011**

**A Bill for**

**An Act to amend the *Community Protection (Offender Reporting) Act 2004* and to make consequential amendments to the *Criminal Investigation (Identifying People) Act 2002* and the *Dangerous Sexual Offenders Act 2006*.**

The Parliament of Western Australia enacts as follows:

1

## **Part 1 — Preliminary**

2

### **1. Short title**

3

This is the *Community Protection (Offender Reporting)*  
4 *Amendment Act (No. 2) 2011.*

5

### **2. Commencement**

6

This Act comes into operation as follows —

7

(a) Part 1 — on the day on which this Act receives the  
8 Royal Assent;

8

9

(b) the rest of the Act — on a day fixed by proclamation.

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**Part 2 — Community Protection (Offender Reporting)  
Act 2004 amended**

**3. Act amended**

This Part amends the *Community Protection (Offender Reporting) Act 2004*.

**4. Long title amended**

In the long title after “**may commit**,” insert:

**to enable information to be published about certain  
offenders,**

**5. Part 5A inserted**

After section 84 insert:

**Part 5A — Publication of information  
about offenders**

**Division 1 — Preliminary**

**85A. Terms used**

In this Part —

***DSO supervision order*** means a supervision order  
under the *Dangerous Sexual Offenders Act 2006*;

***locality***, of a person, means a description of the general  
locality, such as the town or suburb, in which the  
person resides;

***publish***, except in section 85M, means make available  
for inspection by members of the public on a website  
maintained by the Commissioner.

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1                      **85B.      Delegation by Commissioner**

2                      The Commissioner may delegate under section 110 a  
3                      power of the Commissioner under Division 2 only to a  
4                      police officer who holds or is acting in the office of  
5                      Deputy Commissioner or Assistant Commissioner.

6                      **85C.      Commissioner not required to publish or provide**  
7                      **information**

8                      Nothing in this Part requires the Commissioner to  
9                      publish or provide information about any reportable  
10                     offender or other person.

11                    **85D.      Restriction on information about protected**  
12                    **witnesses**

13                    Nothing in this Part authorises the Commissioner to  
14                    publish or provide information about a person to whom  
15                    Part 3 Division 10 applies.

16                    **Division 2 — Commissioner may publish information**

17                    **85E.      Application**

18                    This Division has effect despite any written or other  
19                    law to the contrary.

20                    **85F.      Commissioner may publish personal details of**  
21                    **certain reportable offenders**

- 22                    (1) In this section —  
23                    *personal details*, in relation to a reportable offender,  
24                    means the information listed in section 26(1) and —  
25                    (a) includes a photograph or digital image of the  
26                    offender; but  
27                    (b) does not include any details that the offender  
28                    reports under section 26(1)(e) or any other  
29                    details that would identify a child.

- 1           (2) The Commissioner may publish any or all of the  
2           personal details of a reportable offender, other than a  
3           reportable offender who is a child, if —
- 4               (a) the Commissioner is satisfied that the  
5               reportable offender —
- 6                     (i) has failed to comply with any of his or  
7                     her reporting obligations; or
- 8                     (ii) in purported compliance with Part 3, has  
9                     provided information that is false or  
10                    misleading in a material particular;
- 11               and
- 12               (b) the reportable offender's whereabouts are not  
13               known to the Commissioner.
- 14           (3) The Commissioner may at any time —
- 15               (a) remove any or all of the personal details of a  
16               reportable offender from the website on which  
17               they are published under subsection (2); or
- 18               (b) again publish under subsection (2) any or all of  
19               the personal details of the reportable offender  
20               after their removal under paragraph (a).
- 21           (4) If —
- 22               (a) the Commissioner has published any personal  
23               details of a reportable offender under  
24               subsection (2); and
- 25               (b) the reportable offender subsequently reports his  
26               or her whereabouts to the Commissioner under  
27               Part 3,
- 28           the Commissioner must, as soon as is practicable after  
29           receiving the report, remove those personal details  
30           from the website on which they are published.

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**85G. Commissioner may publish photograph and locality of certain persons**

(1) In this section —

*Department of Corrective Services* means the department of the Public Service principally assisting the Minister in the administration of the *Prisons Act 1981*;

*photograph* includes a digital image;

*prescribed offence* means a Class 1 offence, a Class 2 offence or a sexual offence, as defined in the *Evidence Act 1906* section 36A.

(2) Subject to this section, the Commissioner may publish a photograph and the locality of a person, other than a person who is a child —

(a) if the person is subject to a DSO supervision order and that order does not provide that the person's photograph and locality are not to be published under this section; or

(b) if —

(i) the person, after becoming a reportable offender, commits and is found guilty of a prescribed offence; and

(ii) any offence committed by the person, including the prescribed offence, is a Class 1 offence or an offence committed against a child under *The Criminal Code* section 323 or 324;

or

(c) if —

(i) the person has been found guilty of an offence punishable by imprisonment for 5 years or more; and



- 1 (ii) on application by the Commissioner,  
2 that publication is authorised by the  
3 Minister on being satisfied that the  
4 person poses a risk to the lives or sexual  
5 safety of one or more persons, or  
6 persons generally.
- 7 (3) If the Commissioner proposes to publish the  
8 photograph and locality of a person under  
9 subsection (2), the Commissioner —
- 10 (a) must give the person written notice of the  
11 proposal and the reasons for it; and
- 12 (b) must inform the person in that notice that he or  
13 she has a specified period (of not less than  
14 21 days) to make submissions or be heard in  
15 relation to the proposal; and
- 16 (c) if subsection (2)(a) applies in relation to the  
17 person, must give written notice of the proposal  
18 to the chief executive officer of the Department  
19 of Corrective Services.
- 20 (4) Before publishing the photograph and locality of the  
21 person, the Commissioner must have regard to —
- 22 (a) any submission made, or information or  
23 document provided, by the person within the  
24 period referred to in subsection (3)(b); and
- 25 (b) if notice is given under subsection (3)(c), any  
26 submission made by the chief executive officer  
27 of the Department of Corrective Services  
28 within the period of 21 days after that notice is  
29 given.
- 30 (5) For the purposes of subsection (2)(c), it is not  
31 necessary that the Minister be able to identify a risk to  
32 a particular person or particular persons or a particular  
33 class of persons.

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- 1           (6) In determining whether to authorise publication under  
2 subsection (2)(c), the Minister may take into account  
3 the following —
- 4           (a) any medical, psychiatric, psychological or other  
5 assessment relating to the person;
- 6           (b) any information indicating whether or not the  
7 person is likely to commit a prescribed offence  
8 in the future;
- 9           (c) whether or not there is any pattern of offending  
10 behaviour on the part of the person;
- 11           (d) the person's antecedents and the seriousness of  
12 his or her total criminal record;
- 13           (e) the person's age and the age of any victims of  
14 any offences committed by the person at the  
15 time those offences were committed;
- 16           (f) the difference in age between the person and  
17 any victims of those offences;
- 18           (g) any other matter the Minister considers  
19 relevant.
- 20           (7) The Commissioner must provide with an application  
21 under subsection (2)(c) any information available to the  
22 Commissioner that is relevant to the Minister's  
23 determination whether to authorise publication.
- 24           (8) The fact that an offence in respect of which a person  
25 has been found guilty becomes spent does not affect  
26 the consideration of the offence as part of the person's  
27 total criminal record for the purposes of  
28 subsection (6)(d).

**85H. Removal of photograph and locality from website**

- (1) The Commissioner may at any time —
- (a) remove the photograph and locality of a person from the website on which they are published under section 85G(2); or
  - (b) again publish under section 85G(2) the photograph and locality of a person after their removal under paragraph (a).

- (2) If —
- (a) the Commissioner has published a photograph and the locality of a person under section 85G(2)(a); and
  - (b) the person ceases to be subject to the DSO supervision order; and
  - (c) neither section 85G(2)(b) nor (c) applies in relation to the person,

the Commissioner must, as soon as is practicable, remove the photograph and locality from the website on which they are published.

- (3) If —
- (a) the Commissioner has published a photograph and the locality of a person under section 85G(2)(b); and
  - (b) the person's reporting obligations expire; and
  - (c) neither section 85G(2)(a) nor (c) applies in relation to the person,

the Commissioner must, as soon as is practicable, remove the photograph and locality from the website on which they are published.

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**85I. Commissioner may take into account certain matters**

(1) In determining whether or not —

(a) to publish any personal details of a person who is a reportable offender under section 85F(2) or a photograph and the locality of a person under section 85G(2) (the *identifying information*); or

(b) to remove the identifying information from a website under section 85F(3) or 85H(1),

the Commissioner may take into account the matters to which this section applies.

(2) This section applies to these matters —

(a) whether the publication of the identifying information about a person would interfere with —

(i) an investigation by police officers in relation to the person; or

(ii) the person's compliance with the reporting obligations of this Act; or

(iii) the operation of a community order under the *Sentencing Act 1995*, a DSO supervision order or any other order or requirement under a written law to which the person is subject;

(b) whether the publication of the identifying information about the person might identify a victim of an offence, or the school attended by a victim of an offence, committed by the person;

(c) the effect that the publication of the identifying information about the person might have on a victim of an offence committed by the person;

- 1 (d) whether, in statements made by the victim to  
2 the Commissioner, the publication of the  
3 identifying information about the person has  
4 been supported or opposed by a victim of an  
5 offence committed by the person;
- 6 (e) whether the publication of the identifying  
7 information about the person would increase  
8 the risk of the person committing offences;
- 9 (f) the Commissioner's assessment of the benefit  
10 to the community of the publication of the  
11 identifying information about the person;
- 12 (g) if the identifying information is about a person  
13 who is awaiting trial on a charge of an  
14 offence — whether the publication of the  
15 identifying information might prejudice the fair  
16 trial of the person;
- 17 (h) any other matter the Commissioner considers  
18 relevant.

19 **85J. Commissioner may inform child's parent or**  
20 **guardian whether specified person is a reportable**  
21 **offender**

- 22 (1) A person may apply to the Commissioner to be  
23 informed whether or not a person specified in the  
24 application (the *specified person*), other than a person  
25 who is a child, is a reportable offender.
- 26 (2) The application must be made in a manner approved by  
27 the Commissioner.
- 28 (3) The applicant must provide, in support of the  
29 application, any evidence required by the  
30 Commissioner to be satisfied that the specified person  
31 has regular unsupervised contact with a child of whom  
32 the applicant is a parent or guardian.

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- 1           (4) For the purposes of subsection (3), a person does not  
2           have regular unsupervised contact with a child unless  
3           he or she has unsupervised contact with the child for at  
4           least 3 days (whether consecutive or not) in any period  
5           of 12 months.
- 6           (5) If the Commissioner is satisfied that the specified  
7           person has regular unsupervised contact with a child of  
8           whom the applicant is a parent or guardian, the  
9           Commissioner may inform the applicant whether or not  
10          the specified person is a reportable offender.
- 11          **85K. Protection as to publication and other provision of**  
12          **information**
- 13          (1) In this section —  
14          *information* includes the identifying information  
15          referred to in section 85I.
- 16          (2) If the Commissioner determines in good faith —  
17               (a) to publish or provide any information under this  
18               Division; or  
19               (b) not to publish or provide any information under  
20               this Division,  
21          no civil or criminal liability attaches to the  
22          Commissioner or the State by reason of publishing or  
23          providing that information or omitting to publish or  
24          provide that information.
- 25          (3) If information is published or provided by the  
26          Commissioner under this Division, that publication or  
27          provision of information is not to be regarded —  
28               (a) as a breach of any duty of confidentiality or  
29               secrecy imposed by law; or  
30               (b) as a breach of professional ethics or standards  
31               or as unprofessional conduct.

**Division 3 — Offences**

**85L. Conduct intended to incite animosity towards or harassment of identified offenders**

(1) In this section —

*animosity towards* means hatred of or serious contempt for;

*harassment* includes threat, serious and substantial abuse and severe ridicule;

*identified offender* means —

- (a) a person whose personal details are published by the Commissioner under section 85F; or
- (b) a person whose photograph and locality are published by the Commissioner under section 85G; or
- (c) a person in relation to whom the Commissioner provides the information under section 85J that the person is a reportable offender;

*public place* includes —

- (a) a place to which the public, or any section of the public, has or is permitted to have access, whether on payment or otherwise; and
- (b) a privately owned place to which the public has access with the express or implied approval of, or without interference from, the owner, occupier or person who has the control or management of the place; and
- (c) a school, university or other place of education, other than a part of it to which neither students nor the public usually have access.

(2) A reference in subsection (4) or (5) to conduct includes a reference to conduct occurring on a number of occasions over a period of time.

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- 1 (3) For the purposes of subsection (4) or (5), conduct is  
2 taken not to occur in private if it —
- 3 (a) consists of any form of communication with the  
4 public or a section of the public; or
- 5 (b) occurs in a public place or in sight or hearing of  
6 people who are in a public place.
- 7 (4) A person must not engage in any conduct, otherwise  
8 than in private, by which the person intends to create,  
9 promote or increase animosity towards, or harassment  
10 of, a person as an identified offender.  
11 Penalty: imprisonment for 10 years.
- 12 (5) An offence under subsection (4) is a crime.
- 13 (6) A person must not engage in any conduct, otherwise  
14 than in private, that is likely to create, promote or  
15 increase animosity towards, or harassment of, a person  
16 as an identified offender.  
17 Penalty: imprisonment for 2 years.
- 18 **85M. Publication, display and distribution of identifying**  
19 **information**
- 20 (1) In this section —
- 21 *display* means display in or within view of a public  
22 place, as defined in section 85L(1);
- 23 *distribute* means distribute to the public or a section of  
24 the public;
- 25 *identifying information* means information that is  
26 identifiable as —
- 27 (a) the personal details of a person published by  
28 the Commissioner under section 85F; or
- 29 (b) the photograph and locality of a person  
30 published by the Commissioner under  
31 section 85G; or



1 (c) the information that a person is a reportable  
2 offender provided by the Commissioner under  
3 section 85J;

4 ***publish*** means publish to the public or a section of the  
5 public.

6 (2) A person must not, without having first obtained the  
7 written approval of the Minister, publish, distribute or  
8 display any identifying information.

9 Penalty: imprisonment for 2 years.  
10

11 **6. Section 115 amended**

12 (1) After section 115(1) insert:  
13

14 (2A) The Minister must carry out a review of the operation  
15 and effectiveness of the amendments made to this Act  
16 by the *Community Protection (Offender Reporting)*  
17 *Amendment Act (No. 2) 2011* as soon as is practicable  
18 after the third anniversary of the coming into operation  
19 of section 5 of that Act.  
20

21 (2) In section 115(2) delete “the review” and insert:  
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23 each review  
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**Part 3 — Other Acts amended**

**Division 1 — *Criminal Investigation (Identifying People)*  
Act 2002 amended**

**7. Act amended**

This Division amends the *Criminal Investigation (Identifying People) Act 2002*.

**8. Section 73 amended**

After section 73(1)(nb) insert:

(nc) for the purposes of the *Community Protection (Offender Reporting) Act 2004* section 85F or 85G;

**Division 2 — *Dangerous Sexual Offenders Act 2006* amended**

**9. Act amended**

This Division amends the *Dangerous Sexual Offenders Act 2006*.

**10. Section 18 amended**

After section 18(2) insert:

(3) Without limiting subsection (2), the supervision order may provide that the photograph and locality of the person are not to be published under the *Community Protection (Offender Reporting) Act 2004* section 85G.

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