

COMMUNITY PROTECTION (OFFENDER REPORTING) AMENDMENT BILL (NO. 2) 2011

Introduction and First Reading

Bill introduced, on motion by **Mr R.F. Johnson (Minister for Police)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR R.F. JOHNSON (Hillarys — Minister for Police) [12.20 pm]: I move —

That the bill be now read a second time.

The Community Protection (Offender Reporting) Amendment Bill (No. 2) 2011 delivers on the state government's commitment to introduce a public sex offender register in Western Australia. This bill will enable any member of the public to access certain information on Western Australia's most dangerous and high-risk sexual offenders and will also enable parents and guardians to make inquiries with Western Australia Police about any person who has access to their children. The objective of this bill is to ensure that families and communities have information on known sex offenders that will assist in the protection and safety of children.

Before I turn to the detail of the bill, I will briefly explain what the terms "reportable offender" and "dangerous sexual offender" mean in a legislative context. A reportable offender is a term used in the Community Protection (Offender Reporting) Act 2004 that describes a person whom a court sentences for a reportable offence. A reportable offence is an offence that has a sexual or serious element involving a child, or an incapable person as defined in part 2 of the act. A reportable offender can also include offenders who come to reside in Western Australia from other jurisdictions and persons whom the court has ordered to comply with the act. A reportable offender is required by the act to report their personal details to police on a regular basis. Such details include their address, whether they reside with or have regular unsupervised contact with children, their email address and internet service provider, and details of their employment. A "dangerous sexual offender" is a person who has been ordered by the Supreme Court, under the Dangerous Sexual Offenders Act 2006, to post-sentence detention or to strict supervision in the community. An order of this nature can be made when the offender is under a sentence of imprisonment for a serious sexual offence. Both the Dangerous Sexual Offenders Act and the Community Protection (Offender Reporting) Bill can apply to children. Western Australia currently does not have any children who are dangerous sexual offenders. However, there are a small proportion of reportable offenders who are children. It is important to note that the bill does not apply to child offenders. Whilst an offender is still a child, no publication or disclosure can be made in relation to them.

I will now turn to the detail of the bill. This bill enables three different types of disclosure. The first tier of disclosure will apply to reportable offenders who have failed to comply with their reporting obligations under the act or who have provided a false or misleading report to police. In these circumstances, if police also do not know the location or whereabouts of the reportable offender, they will be subject to disclosure. Disclosure in these circumstances will occur via publication on a website maintained by the Commissioner of Police. The purpose of this publication will be to enhance public vigilance and increase the prospect of the offender's arrest. Although all personal details relating to a noncompliant offender can potentially be published—except for information that may identify a child—the commissioner will have discretion as to what personal information will ultimately appear on the public register. Once the reportable offender reports their whereabouts to police, the publication in relation to that offender will be removed from the website as soon as possible.

The second tier of disclosure involves publication of the image and locality of certain categories of offenders primarily for the purposes of enhanced public awareness and safety. There are three categories of offenders who will be eligible for this type of publication. The first category of offenders will be dangerous sexual offenders subject to supervision orders under the Dangerous Sexual Offenders Act. However, the bill provides that it will be possible for the Supreme Court to include in a supervision order that the dangerous sexual offender's photograph and locality not be published. The second category will be reportable offenders who are considered to be high risk. "Risk" in this context is determined by the reportable offender having re-offended since becoming a reportable offender and one of the offences committed was a serious sexual offence against a child or an indecent assault offence involving a child. The final category of offenders subject to publication will consist of those whom the Commissioner of Police applies to the Minister for Police for approval to publish. This category will be persons who have been convicted of an offence punishable by five years or more imprisonment and concern is held that this person is a risk to the lives or sexual safety of one or more persons, or persons generally. The minister does not need to identify a risk to a particular person or class of persons in authorising the approval to publish. In making the authorisation, the bill specifies that the Minister for Police may take into account the following factors: any medical, psychiatric, psychological or other assessments relating to the person; any information indicating whether the person is likely to commit a sexual offence in the

future; whether there is any pattern of offending behaviour on the part of the person; the person's antecedents and the seriousness of his or her total criminal record; the person's age and the age of any victims of any offences committed by the person at the time those offences were committed; the difference in age between the person and any victims of those offences; and any other matter the Minister for Police considers relevant.

The bill specifies the matters the Commissioner of Police may take into account when determining whether to publish a person's details, or considering removing those details from the website. These considerations apply to both the first and second tiers of publication. Considerations include whether the publication of the identifying information about a person would interfere with an investigation by police officers in relation to the person; the person's compliance with the reporting obligations of this legislation; or the operation of a community order under the Sentencing Act 1995, a supervision order made under the Dangerous Sexual Offenders Act, or any other order or requirement under a written law to which the person is subject. Further considerations are 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; the effect that the publication of the identifying information about the person might have on a victim of an offence committed by the person; whether, in statements made by the victim to the Commissioner of Police, the publication of the identifying information about the person has been supported or opposed by a victim of an offence committed by the person; whether the publication of the identifying information about the person would increase the risk of the person committing offences; the commissioner's assessment of the benefit to the community of the publication of the identifying information about the person; if the identifying information is about a person who is awaiting trial on a charge of an offence, whether the publication of the identifying information might prejudice the fair trial of that person; and any other matter that the commissioner considers relevant.

If the Commissioner of Police proposes to publish the photograph and locality of a person under the second tier, the commissioner must give the person written notice of the proposal and provide them with a specified period of not less than 21 days to make a submission on the proposal. If the person is a dangerous sexual offender, the commissioner must also provide notice of the proposed publication to the Department of Corrective Services. Before publication can occur, the commissioner must have regard to any submission made by the person, and, if the person concerned is a dangerous sexual offender, any submission by the Department of Corrective Services. Again, publication of the second tier of offenders will occur on a website maintained by the Commissioner of Police. There will be some limitations on the information disclosed for the second-tier offenders so that only the locality and photograph of the offender will appear on the website. The commissioner may remove the photograph and locality of a second-tier offender from the website at any time. He also must remove the person's details if the person ceases to be a dangerous sexual offender subject to a supervision order or if the person is no longer a reportable offender or a person who has been convicted of an offence punishable by five years' imprisonment or more—for example, in circumstances in which a conviction is quashed. The commissioner must also remove the photograph and locality of a reportable offender if that person's reporting obligations have ceased and they are not on the website by virtue of being a dangerous sexual offender subject to a supervision order, or by the authorisation of the Minister for Police.

The final tier of proposed public disclosure will enable parents and guardians to inquire of police whether a specific person who has access to their child or children is a reportable offender. The applicant will be required to supply police with any evidence required by the commissioner to be satisfied that the person the subject of the inquiry has regular unsupervised contact with the child or children. If the commissioner is satisfied that the person the subject of the inquiry has unsupervised contact with the applicant's child or children, the commissioner may confirm to the applicant whether the person is a reportable offender.

The bill provides for protection to the Commissioner of Police and the state of Western Australia from civil or criminal liability arising from the publication or provision of information under this bill. This protection from liability extends to omitting to publish or provide information. The bill also ensures that information published or provided cannot be regarded as a breach of duty of confidentiality or secrecy imposed by law or as a breach of professional ethics or standards or as unprofessional conduct.

Given the highly sensitive nature of the bill, offence provisions have been included that will apply to the misuse of publically disclosed information. Firstly, the bill creates an offence that prohibits behaviour in a public place that is intended to create, promote or increase animosity towards or harassment of a person who has been identified on either the website or through an inquiry. This offence carries a penalty of 10 years' imprisonment. The bill also provides for a similar offence without the requisite mental element that prohibits behaviour in a public place that is likely to create, promote or increase animosity towards, or harassment of, a person who has been identified either on the website or through an inquiry. This offence carries a penalty of two years' imprisonment. Further, the bill creates an offence that prohibits information obtained either from the website or through an inquiry being published, distributed or displayed without the prior written approval of the Minister for Police. This offence carries a penalty of two years' imprisonment.

The government wishes to evaluate this scheme and accordingly the bill contains a requirement for the minister to review the operation and effectiveness of these reforms in three years.

In closing, the bill seeks to provide members of the Western Australia community with a tool to further community safety and a measure to protect children and vulnerable people. I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.