

Explanatory Memorandum

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

This Bill will create a means by which the Commissioner of Police may disclose information to the community concerning certain categories of reportable offenders, dangerous sexual offenders and other persons considered to be a risk to the lives or sexual safety of other persons.

A reportable offender is a term used in the *Community Protection (Offender Reporting) Act 2004* which describes a person whom a court sentences for a reportable offence. A reportable offence is an offence which comprises of a sexual or serious element involving a child or an incapable person as listed in Schedules 1 and 2 of the Act and also in the *Community Protection (Offender Reporting) Regulations 2004*. 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. As well as reportable offenders, this Bill will apply to dangerous sexual offenders and other offenders upon the authorisation of the Minister for Police.

This Bill contains offence provisions which will regulate the use of any information which is disclosed to the public.

Part 1 - Preliminary

Clause 1. Short title

This Bill will become the *Community Protection (Offender Reporting) Amendment Act (No.2) 2011*.

Clause 2. Commencement

Clause 2 provides for the proposed Act to be enacted in two parts. Part 1 comes into operation on the day the Act receives Royal Assent. Part 1 of this Bill contains the clause that will give the Bill its title as an Act, and this clause.

The remainder of the Act comes into operation on a day fixed by proclamation.

Part 2 – Community Protection (Offender Reporting) Act 2004 amended

Clause 3. Act amended

The clauses contained in this Part of the Bill will amend the *Community Protection (Offender Reporting) Act 2004* (the Act).

Clause 4

This clause amends the long title of the Act to recognise its new function of enabling information to be published about certain offenders.

Part 5A – Publication of information about offenders

Division 1 – Preliminary

Clause 5. Part 5A inserted

This clause will insert proposed new sections 85A through 85M inclusive in the Act after section 84.

These sections provide three ways in which the Commissioner of Police can release information to the general public concerning certain types of offenders. These sections also provide protection to the Commissioner and the State in the exercise of the powers found in Part 5A and create offences governing the use of publicly released information.

Proposed section 85A

This section provides for the terms used in Part 5A. Part 5A will use the terms ‘DSO supervision order’, ‘locality’ and ‘publish’.

‘DSO supervision order’ refers to a supervision order under the *Dangerous Sexual Offenders Act 2006*. A person will come under the *Dangerous Sexual Offenders Act 2006* when they have been ordered by the Supreme Court to post-sentence detention or to supervision in the community by way of a supervision order. An order of this nature can be made when the offender is under a sentence of imprisonment for a serious sexual offence.

'Locality' is defined in reference to a person and means a description of the general locality, such as a town or suburb, in which the person resides.

In the context of the permitted publication scheme, 'publish' means to make information available for inspection by members of the public on a website maintained by the Commissioner of Police. This definition does not apply to proposed section 85M which relates to offences involving the unlawful publication, display and distribution of identifying information.

Proposed section 85B

Presently, under section 110 of the Act, the Commissioner may delegate any power or duty he holds under the Act to:

- a police officer who is specified , or of a class specified, in the delegation; or
- a person employed under the *Public Sector Management Act 1994* Part 3 who is specified, or of a class specified, in the delegation.

The proposed section 85B restricts the extent to which the delegation power found in section 110 applies to Part 5A. It provides that the Commissioner may delegate his power under Division 2 only to a police officer who holds or is acting in the office of Deputy Commissioner or Assistant Commissioner.

Proposed section 85C

The proposed section 85C specifies that nothing in Part 5A requires the Commissioner to publish or provide information relating to any reportable offender or other person and therefore the decision to publish information is always discretionary.

Proposed section 85D

The proposed section 85D refers to Part 3 Division 10 of the Act. Part 3 Division 10 relates to protected witnesses under the State Witness Protection Program as defined by the *Witness Protection (Western Australia) Act 1996*.

Proposed section 85D ensures that information concerning protected witnesses to whom Part 3 Division 10 applies cannot be published through the use of any of the modes of publication permitted under Part 5A.

Division 2 – Commissioner may publish information

Proposed section 85E

This section provides for the application of Division 2 and specifies that it has effect despite any written or other law to the contrary.

Proposed section 85F

Proposed section 85F sets out the circumstances in which reportable offenders who are not compliant with their reporting obligations may have identifying information published.

In this section, ‘personal details’, in relation to a reportable offender, means a photograph or digital image of the reportable offender. It also includes the information reported to the Commissioner by the reportable offender as listed in section 26(1) of the Act (excluding details which would identify a child). These details include:

- date of birth;
- the address of each premises at which he or she resides;
- any email address that he or she regularly uses;
- if he or she is employed then the details of his or her employment;
- details of any affiliation with any club or organisation that has members who are children or that conducts activities in which children participate;
- make, model, colour and registration number of any motor vehicle owned by or generally driven by the reportable offender; and
- details of any tattoos or permanent or distinguishing marks that he or she has.

Proposed section 85F enables the Commissioner to publish on a website any or all of the personal details of a reportable offender, other than a reportable offender who is a child, if the Commissioner is satisfied that the reportable offender:

- has failed to comply with any of his or her reporting obligations; or

- in purported compliance with Part 3 of the Act, has provided information that is false or misleading in a material particular;
- and,
- the reportable offender's whereabouts are not known to the Commissioner.

Part 3 of the Act contains all the reporting obligations and requirements that each reportable offender must comply with.

Once a reportable offender's details have been published they may be removed wholly or in part at any time. The Commissioner may also re-publish any or all of the personal details of the reportable offender should the above criteria be applicable.

If the Commissioner publishes any personal details about a reportable offender under this section and the reportable offender subsequently reports his or her whereabouts to the Commissioner under Part 3 of the Act, then the Commissioner must, as soon as practicable after receiving the report, remove the published personal details from the website.

Proposed section 85G

Proposed section 85G sets out the circumstances in which persons not eligible for publication under proposed section 85F may have their photograph and locality published.

Certain terms used in the section are defined. The key definition is 'prescribed offence' which means a Class 1 offence, a Class 2 offence or a sexual offence as defined in the *Evidence Act 1906* section 36A. Class 1 or Class 2 offences are located in Schedules 1 and 2 of the Act. The definition of sexual offence in section 36A of the *Evidence Act 1906* encompasses all sexual offences set out in Chapter XXXI of the *Criminal Code*; the offences of procuring a person to be a prostitute; seeking to induce a person to act as a prostitute; seeking a prostitute in or in view of a public place; the offence of being an owner or occupier and permitting young persons to be on premises used for unlawful carnal knowledge; and includes conspiracies and attempts to commit such offences.

This section authorises the publication of a photograph and locality of the following three categories of persons (other than a person who is a child):

- persons who are subject to a DSO supervision order under the *Dangerous Sexual Offenders Act 2006*, except where that order provides that a person's photograph and locality are not to be published;

- persons who:
 - after becoming a reportable offender, commit and are found guilty of a prescribed offence; and
 - 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;
- persons who:
 - have been found guilty of an offence punishable by imprisonment for 5 years or more; where on application from the Commissioner, publication has been authorised by the Minister on the basis that the person poses a risk to the lives or sexual safety of one or more persons or persons generally.

The proposed section sets out the notification procedure prior to publication occurring. It provides that, if the Commissioner proposes to publish the photograph and locality of a person then the Commissioner is required to give the person written notice of that proposal and the reasons for it. The written notice must inform the person that he or she has a specified period of not less than 21 days to make a submission or be heard in relation to the proposal to publish. If the proposal to publish relates to a person subject to a DSO supervision order, then written notice of the proposal must also be given to the chief executive officer of the Department of Corrective Services.

Before publishing the photograph and locality of the person, the Commissioner is required to have regard to any submission made, or information or document provided by the person. Also, if the Department of Corrective Services is notified, the Commissioner must have regard to any submission made by that Department if it is provided within the period of 21 days.

If the Minister is requested to authorise publication of the photograph and locality of a person, it is not necessary that the Minister be able to identify a risk to a particular person or particular persons or a particular class of persons.

In making his determination whether to authorise publication on the basis that a person poses a risk to the lives or sexual safety of one or more persons or persons generally, the Minister may take into account the following factors:

- any medical, psychiatric, psychological or other assessment relating to the person;

- any information indicating whether or not the person is likely to commit a prescribed offence in the future;
- whether or not 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 considers relevant.

In making his application to the Minister, the Commissioner must provide any information available to the Commissioner that is relevant to the Minister's determination whether to authorise publication.

The proposed section also states that the fact that an offence in respect of which a person had been found guilty becomes spent does not affect the Minister's consideration of the offence as part of the person's total criminal record.

Proposed section 85H

Proposed section 85H states that the Commissioner may at any time remove the photograph and locality of a person from the website on which they are published under this section. The Commissioner may also re-publish under this section if the circumstances permitting publication pursuant to proposed section 85G are still applicable.

It is also stated that if the Commissioner has published a photograph and the locality of a person and the person ceases to be subject to DSO supervision; or the person's reporting obligations expire; then the Commissioner must, as soon as is practicable, remove the photograph and locality from the website on which they are published, unless they fall into either of the two remaining categories permitting publication under proposed section 85G

Proposed section 85I

This section sets out matters the Commissioner may have regard to when determining whether or not to:

- publish any identifying information under proposed sections 85F or 85G; or

- remove identifying information from a website under proposed sections 85F or 85H.

These matters are as follows:

- whether the publication of the identifying information about a person would interfere with an investigation by police officers in relation to the person; or the person's compliance with the reporting obligations of the Act; or 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;
- 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 that person;
- the effect that publication of the identifying information about the person might have on a victim of an offence committed by that person;
- whether, in statements made by the victim to the Commissioner, the publication of the identifying information about the person has been supported or opposed by a victim of an offence committed by that person;
- whether the publication of the identifying information about the person would increase the risk of that person committing offences;
- the Commissioner's assessment of the benefit to the community of the publication of the identifying information about that 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 the person; and
- any other matter that the Commissioner considers relevant.

Proposed section 85J

Proposed section 85J sets out the process by which persons may be informed by the Commissioner that a particular person with access to their children is a reportable offender.

A parent or guardian may apply to the Commissioner to be informed whether or not a person, other than a person who is a child, is a reportable offender.

The application is required to be made in a manner approved by the Commissioner and must be accompanied by any information required by the Commissioner to be satisfied that

the person who is the subject of the application has regular unsupervised contact with a child of whom the applicant is a parent or guardian. 'Regular unsupervised contact' is defined to mean any unsupervised contact with the child for at least 3 days (whether consecutive or not) in any period of 12 months.

If the Commissioner is satisfied that the person has regular unsupervised contact with a child of whom the applicant is a parent or guardian, he may advise the applicant whether or not the person is a reportable offender.

Proposed section 85K

The proposed section states that if the Commissioner determines to publish or provide information under this proposed Division or not to publish or provide information under this proposed Division then no civil or criminal liability attaches to the Commissioner or the State by reason of that decision.

In this section 'information' is defined to include the 'identifying information' referred to in proposed section 85I.

If information is published or provided by the Commissioner under this proposed Division then this section provides that it cannot be regarded as a breach of any duty of confidentiality or secrecy imposed by law or as a breach of professional ethics or standards or as unprofessional conduct.

Division 3 - Offences

Proposed section 85L

Proposed section 85L establishes two offences in relation to conduct intended incite animosity towards or harassment of identified offenders.

The following key definitions have been created for use in this proposed section:

- 'animosity towards' means hatred of or serious contempt for;
- 'harassment' includes threat, serious and substantial abuse and severe ridicule;
- 'identified offender' means:

- a person whose personal details are published by the Commissioner under proposed section 85F; or
- a person whose photograph and locality are published by the Commissioner under proposed section 85G; or
- a person in relation to whom the Commissioner gives the information under proposed section 85J that the person is a reportable offender;
- 'public place' includes:
 - a place to which the public, or any section of the public, has or is permitted to have access, whether on payment or otherwise;
 - 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
 - a school, university or other place of education, other than a part of it to which neither students nor the public usually have access.

Reference in this proposed section to 'conduct' includes a reference to conduct occurring on a number of occasions over a period of time.

For the purposes of this proposed section, 'conduct' is taken not to occur in private if it:

- consists of any form of communication with the public or a section of the public; or
- occurs in a public place or in sight or hearing of people who are in a public place.

The first offence created by this section specifies that a person must not engage in any conduct, otherwise than in private, by which the person intends to create, promote or increase animosity towards, or harassment of, a person as an identified offender. The penalty is imprisonment for 10 years and is designated as a crime.

The second offence created by this section specifies that a person must not engage in any conduct, otherwise than in private, that is likely to create, promote or increase animosity towards, or harassment of, a person as an identified offender. The penalty is imprisonment for 2 years.

Proposed section 85M

This proposed section establishes an offence in relation to publication, display and distribution of identifying information.

It creates the following key definitions for use in this proposed section:

- ‘display’ means display in or within view of a public place, as defined in proposed section 85L;
- ‘distribute’ means distribute to the public or a section of the public;
- ‘identifying information’ means information that is identifiable as —
 - the personal details of a person published by the Commissioner under section 85F; or
 - the photograph and locality of a person published by the Commissioner under proposed section 85G; or
 - the information that a person is a reportable offender given by the Commissioner under proposed section 85J;
- ‘publish’ means publish to the public or a section of the public.

The offence provides that a person must not, without having first obtained the written approval of the Minister, publish, distribute or display any identifying information. The penalty is imprisonment for 2 years.

Clause 6. Section 115 amended

Section 115 of the Act provides for a statutory review of the Act. This clause will insert a review provision after section 115(1) of the Act requiring the Minister to carry out a review of the operation and effectiveness of the amendments made to the Act by this Bill as soon as is practicable after the third anniversary of the coming into operation of section 4 of this Bill.

Part 3 — Other Acts amended

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

Clause 7. Act amended

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

Clause 8. Section 73 amended

This clause will amend the *Criminal Investigation (Identifying People) Act 2002* so that identifying information obtained under that Act can be used for the purposes of proposed sections 85F or 85G.

Division 2 — *Dangerous Sexual Offenders Act 2006* amended

Clause 9. Act amended

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

Clause 10. Section 18 amended

This clause will amend the *Dangerous Sexual Offenders Act 2006* so that the Supreme Court, when making a supervision order, may provide that the photograph and locality of the person are not to be published under proposed section 85G.