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Submissions at Strategy and Support
 Department of Police, Fire and Emergency Management

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Submission – Consultation on the Community Protection (Offender Reporting) Amendment Bill 2023

1. Introduction

- 1.1 This submission has been prepared by us on behalf of The Grace Tame Foundation (GTF), in relation to the proposed amendments to the *Community Protection Offender Reporting Act 2005* (Tas) (Act) in the draft *Community Protection (Offender Reporting) Amendment Bill 2023* (Tas) (Bill).
- 1.2 In summary, GTF is alarmed by the proposed insertion of s 34A into the Act, pursuant to s 30 of the Bill. The concessions announced by the Tasmanian Government regarding the inclusion of 'animosity' do not go far enough.¹ Proposed s 34A should be removed from the Bill entirely.
- 1.3 To include proposed s 34A in the Act would create a 'double offence'. To breach s 34A, you must have distributed or published the identifying information in some way. This is already a breach of proposed s 34B of the Bill. Further, any serious conduct which would be a breach of s 34A could be prosecuted under appropriate provisions of the *Criminal Code Act 1924* (Tas) (Tas Criminal Code) and the *Criminal Code Act 1995* (Cth) (Cth Criminal Code).

2. Relevant provisions of the Bill and the Act

- 2.1 In the current Act, there are several ways in which a person could be informed of the existence of a reportable offender, and it is already an offence for that person to disclose the information to anyone else.

¹ Media Release, *Sex Offender draft Bill to be amended to improve it and make it stronger* (9 January 2023), Felix Ellis, Minister for Police, Fire and Emergency Management. Available online at: https://www.premier.tas.gov.au/site_resources/2015/additional_releases/sex-offender-draft-bill-to-be-amended-to-improve-it-and-make-it-stronger.

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2.2 Section 44C(1) of the Act provides that the Commissioner:

may disclose to the parent, guardian or carer of a child that a person who has reportable contact with the child is a reportable offender, if the Commissioner ... considers on reasonable grounds that it is necessary and appropriate for the purpose of ensuring the safety and wellbeing of a child or children.

2.3 Section 44D(1) of the Act currently provides that it is an offence if that parent, guardian or carer, who has been provided the information under s 44C:

- (a) makes a record of the provision or disclosure of that information and produces that record to any other person, or is reckless about whether or not any other person can access that record; or
- (b) recklessly divulges or communicates that information to another person.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

2.4 The Bill would provide a new way in which a person could come across the information that a person is a reportable offender. Proposed s 44CA would allow a parent, guardian or carer of a child to apply to the Commissioner to find out whether a person, who has regular unsupervised contact with a child for at least 3 days in a 12-month period, is a reportable offender. Sub-s (5) of proposed s 44CA also requires the Commissioner to inform the person of their obligation to keep the information secret under s 44D, and the Bill intends to amend the current s 44D to relevantly include "or s 44CA" in the chapeau, to make clear that it is also an offence to disclose information obtained under s 44CA.²

2.5 It appears that the Tasmanian Government intends to insert proposed s 34A into the Act to balance against the proposed new ability of further persons being able to apply for the protected information that a person is a reportable offender. Proposed s 34A is in the following terms:³

34A. Conduct intended to incite ... harassment of ... reportable offenders

...

- (3) A person must not engage in any conduct, otherwise than in private, by which the person intends to create, promote or increase ... harassment of ... a person who is an identified offender.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

² See s 37 of the Bill.

³ Note that references to 'animosity' have been removed.



- (4) 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 who is an identified offender.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

2.6 The proposed section therefore creates an offence for both intentional and reckless conduct. Given that the offences outlined at sub-ss (3) and (4) appear, at first glance, to necessarily imply the disclosure that the identified offender is, in fact, an identified offender, the purpose of the proposed section is to prohibit, in public, the disclosure of the personal information of the person in such a manner as to incite harassment of that person.⁴

2.7 Proposed s 34B is in the following terms:

34B. Publication, display and distribution of identifying information of reportable offender

- (1) In this section —

...

identifying information means information in respect of a reportable offender, or a person who has been charged with a reportable offence, that identifies the person or that the person is a reportable offender;

...

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

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

2.8 This proposed section therefore also applies to the disclosure of the identifying information, and carries the same penalty as proposed s 34A, rendering one or the other otiose. In effect, it creates an unnecessary 'double offence'.

⁴ It is also noteworthy, as an aside, to point out that the words of proposed s 34A do not actually require that the person inciting the harassment of the reportable offender knows that the person is a reportable offender. The section therefore could lead to the nonsensical result that a person is prosecuted for having the poor luck of inciting harassment of a person who coincidentally happens to be a reportable offender. The section does not even specify that the harassment has to be *about* the fact that the person is a reportable offender.

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2.9 In fact, it could be said to create a 'triple offence', because the amended s 44D *also* makes it an offence to disclose the information (although the penalty in s 44D is slightly lower).⁵

3. **The insertion of proposed s 34A is unnecessary**

3.1 Furthermore, if one is concerned about the harassment of reportable offenders then the person doing or inciting the harassment can simply be charged under the relevant sections of the Tas Criminal Code or the Cth Criminal Code.

Tas Criminal Code

3.2 We have identified the following sections of the Tas Criminal Code under which a person could be charged for the type of conduct identified in proposed s 34A (non-exhaustively):

Type of conduct	Section #	Section content
Approaching reportable offender in public, yelling, making threats, etc	s 140	<u>Common nuisance</u> A person who commits any common nuisance which endangers the lives, safety, or health of the public, or which occasions injury to the person of any individual, is guilty of a crime.
Harassment, stalking and bullying	s 192	<u>Stalking and bullying</u> Includes, over a course of conduct: following, surveillance, loitering, entering/interfering with property, making threats, directing abusive or offensive acts, sending offensive material, publishing/transmitting offensive material, using the internet (or other electronic communication) in a way that would cause the person to be apprehensive or fearful, contacting the person, acting in any other way that could reasonably be expected to cause the other person physical or mental harm, including self-harm, or extreme humiliation or to be apprehensive or fearful.
Arson	s 268	<u>Arson</u> Any person who unlawfully sets fire to any building, erection, or structure whatever, whether the same is completed or not, or to any stack or heap of cultivated vegetable produce, or of timber, or of mineral or vegetable fuel, or to any mine, or to any ship or vessel, whether completed or not, is guilty of a crime, which is called arson.
Property damage (eg, graffiti)	s 273	<u>Unlawful injuries in general</u>

⁵ We note that the amended s 44D would cover conduct only of parents, guardians or carers who have been informed by the Commissioner under specific circumstances, while proposed s 34B covers the conduct of all persons, whether they were informed by the Commissioner or not.

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		Any person who unlawfully destroys or injures any property is guilty of a crime.
Threats of danger, revenge, etc	s 276AA	<u>False threats of danger</u> A person who makes a statement or conveys information, being a statement or information that he knows to be false, to the effect that, or from which it could be reasonably inferred that, some act has been, will be, or is likely to be, done at any place that is of such a nature as to give rise, or be likely to give rise, to serious risk of danger to persons or property at or near that place, is guilty of a crime.
Assault	Chapter XIX	<u>s 182 – Definition of assault</u> (1) An assault is the act of intentionally applying force to the person of another, directly or indirectly, or attempting or threatening by any gesture to apply such force to the person of another if the person making the attempt or threat has, or causes the other to believe on reasonable grounds that he has, present ability to effect his purpose; or the act of depriving another of his liberty. (2) Words alone cannot constitute an assault. <u>s 184 – Common assault</u> Any person who unlawfully assaults another is guilty of a crime. See also s 183 – aggravated assault

3.3 It is clear that there are ample offences provided under the Tas Criminal Code which could be appropriate to prosecute in place of proposed s 34A.

Cth Criminal Code

3.4 Furthermore, a person engaging in the relevant conduct could also be charged under s 474.15 of the Cth Criminal Code. For example, if the person is making threats on the phone, by text or on social media. The section makes it an offence to use a carriage service to make a threat:

Threat to kill

- (1) A person (the first person) commits an offence if:
 - (a) the first person uses a carriage service to make to another person (the second person) a threat to kill the second person or a third person; and



- (b) the first person intends the second person to fear that the threat will be carried out.

Penalty: Imprisonment for 10 years.

Threat to cause serious harm

- (2) A person (the first person) commits an offence if:
- (a) the first person uses a carriage service to make to another person (the second person) a threat to cause serious harm to the second person or a third person; and
- (b) the first person intends the second person to fear that the threat will be carried out.

Penalty: Imprisonment for 7 years.

Actual fear not necessary

- (3) In a prosecution for an offence against this section, it is not necessary to prove that the person receiving the threat actually feared that the threat would be carried out.

4. Equivalent provisions in Western Australia (WA) and South Australia (SA)

- 4.1 It is especially noteworthy that each of WA and SA contain the same provision in their counterpart legislation: s 85L in the *Community Protection (Offender Reporting) Act 2004 (WA)* and s 66I in the *Child Sex Offenders Registration Act 2006*.
- 4.2 However, we have been unable to find any prosecutions brought against a person under these sections. This is unsurprising. It seems obvious that a decision to lay charges under s 34A would be staggeringly unpopular, given public perceptions of reportable offenders. More importantly, it underlines that the anticipated evil that s 34A seeks to address – vigilante conduct towards child sexual abuse offenders – has no evidentiary backing. If anything, it is a case of moral panic, which is always a bad basis for creating new criminal offences.
- 4.3 Parliament should also give careful consideration to the message that it would be sending to the community if it passed a law in terms of s 34A. Since the type of actions it addresses are already illegal, that message would be that child sexual abuse offenders need additional extraordinary protections from the community, and in particular from the parents and guardians of child sexual abuse victims. That would be a perverse outcome.

5. Conclusion

- 5.1 It is clear that the insertion of proposed s 34A into the Act would be unnecessary for the reasons outlined above.

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5.2 GTF welcomes the Bill so far as it introduces more stringent provisions for reportable offenders. GTF does not advocate extra-judicial punishment of, or vigilantism towards, child sexual abuse offenders. However, legislatures should be careful not to make laws that inadvertently afford protections or privileges to child sexual abuse offenders that go beyond those enjoyed by the rest of society, unless there is a solid evidence base for doing so. The messages that new laws send to the community go far beyond their technical terms.

Yours sincerely



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