



Tasmanian Council of Social Service Inc.

# Community Protection (Offender Reporting) Amendment Act 2023

February 2024



INTEGRITY  
COMPASSION  
INFLUENCE

## About TasCOSS

TasCOSS's vision is for one Tasmania, free of poverty and inequality where everyone has the same opportunity. Our mission is two-fold: to act as the peak body for the community services industry in Tasmania; and to challenge and change the systems, attitudes and behaviours that create poverty, inequality and exclusion.

Our membership includes individuals and organisations active in the provision of community services to Tasmanians on low incomes or living in vulnerable circumstances. TasCOSS represents the interests of our members and their service users to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

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## Introduction

TasCOSS welcomes the opportunity to provide feedback to the Department of Police, Fire and Emergency Management ('the Department') in relation to the Community Protection (Offender Reporting) Amendment Bill 2023 ('the Bill'). The Bill proposes changes to the existing *Community Protection (Offender Reporting) Act 2005 (Tas)* ('the Act'), in order to 'ensure that appropriate and adequate information is recorded on the register and able to be disclosed for the purpose of monitoring offenders, protect children and mitigate the risk of the serious harm'.<sup>1</sup>

TasCOSS strongly supports the strengthening of safety and wellbeing measures for Tasmanian families and children. Following the findings and recommendations of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings ('the Commission of Inquiry'), and considering the Government's formal response,<sup>2</sup> we believe there is an urgent need to address the underlying issues contributing to the ongoing abuse of children in Tasmania and the difficulties experienced by Tasmanian children and families in receiving the care and support they need.

We are supportive of some elements of the Bill, particularly those which provide a more nuanced and evidence-based response to how the Act should be amended to reduce the criminalisation of marginalised groups, such as young people and people with disability. Many studies and reports have raised concerns about the impact of children being further criminalised by their registration as a sex offender.<sup>3</sup> We are therefore supportive of the provisions of the Bill which seek to limit the situations in which children will be considered 'reportable offenders' under the Act – this includes clause seven of the Bill,<sup>4</sup> and clause eight of the Bill.<sup>5</sup> We also support provisions of the Bill which increase judicial discretion in relation to adults who are found guilty of reportable offences.<sup>6</sup>

<sup>1</sup> Tasmania Police, Consultation on the Community Protection (Offender Reporting) Amendment Bill 2023, <https://www.police.tas.gov.au/consultation/offender-reporting/>.

<sup>2</sup> Tasmanian Government, 'Keeping Children Safe and Rebuilding Trust - Government Response to the Report of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings' (December 2023).

<sup>3</sup> See, for example, Law Reform Commission of Western Australia, 'Community Protection (Offender Reporting) Act 2004 : Final Report' (January 2021), pp28-30; Victorian Law Reform Commission, 'Sex Offenders Registration: Final Report' (November 2011), pp76-79.

<sup>4</sup> Clause 7 amends s5 of the Act to include the following subsection and ensures that children won't be placed on the register for committing a single offence (or adults for having committed a single offence when they were children):

*(4A) A person is not a reportable offender merely because the person, as a child, committed a single offence (including an offence under the laws of a foreign jurisdiction) that falls within a class of offences that are prescribed by the regulations to be offences for the purposes of this subsection.*

<sup>5</sup> Clause 8 amends s6 of the Act and introduces an additional subsection providing judicial discretion in relation to children:

*(1A) Despite subsection (1), if the person is a child, the court may omit to make such an order if the court is satisfied that the child does not pose an unreasonable risk of committing a reportable offence against another child, an adult or the community.*

<sup>6</sup> Clause 8 amends s5 of the Act to include the following subsections:

*(1B) Despite subsection (1), the court may omit to make such an order in the following circumstances:*

- (a) if the reportable offence is a Class 1 offence and the court is satisfied that the person does not pose an unreasonable risk of committing a reportable offence against a child, an adult or the community;*
- (b) if the reportable offence is a Class 2 or Class 3 offence and the court is satisfied that exceptional circumstances exist that indicate that the person does not pose a risk of committing a reportable offence against a child, an adult or the community.*

Whilst we appreciate some community groups have raised concerns about the provisions protecting against inciting harassment towards reportable offenders,<sup>7</sup> we are supportive of provisions which guard against vigilantism or vilification of people who are placed on the register, noting there have been many reported instances of violence and harassment directed at people convicted of sex offences in Australia and overseas,<sup>8</sup> and that people with lived experience of criminalisation (including those convicted of sexual offences) face significant stigma across Australia.<sup>9</sup>

However, whilst we support additional measures (including legislative reform) to better protect and support families and children, we are concerned that many elements of the Bill will not address any of the issues raised in the Commission of Inquiry or respond to the issues identified by our Tasmanian community service organisations who are supporting families and children who are impacted by sexual abuse. We also have concerns about the potential unintended consequences of the provisions of the Bill, and do not believe the potential benefit outweighs the risk for adverse outcomes if the Bill were to be implemented.

The following is an overview of our key concerns:

#### **Lack of evidence on the effectiveness of public or community notification schemes**

Although the Bill purports to align Tasmania with 'contemporary national and international principles', there is so far only one Australian jurisdiction with any kind of public notification scheme, Western Australia. The provisions relating to community notification are relatively recent,<sup>10</sup> and were not included in the most recent review of the Western Australian legislation.<sup>11</sup> While there is limited research about these new provisions, one study highlighted the need for more comprehensive and nuanced research before making any determinations about the effectiveness of the scheme, noting that their study did not provide 'compelling evidence that it has had any observable positive effects',<sup>12</sup> and that '[i]n light of this and the evident costs involved – both fiscal and human – in implementing such schemes, it would perhaps be prudent for other jurisdictions to consider carefully their overall benefits before proceeding further'.<sup>13</sup>

<sup>7</sup> Adam Holmes, 'Plans to make 'inciting animosity' towards sex offenders a criminal offence faced a backlash — now it's being scrapped' ABC News (10 January 2024), accessed at <https://www.abc.net.au/news/2024-01-10/animosity-towards-sex-offenders-in-new-tasmanian-laws/103299622>.

<sup>8</sup> Ronken, C and Lincoln, R, 'Deborah's Law: The Effects of Naming and Shaming on Sex Offenders in Australia' (2001) *Australian & New Zealand Journal of Criminology* 34(3), 235-255.

<sup>9</sup> Justice Reform Initiative, 'Alternatives to Incarceration in Australia: the Justice Reform Initiative submission to the Inquiry into Adult Imprisonment and Youth Detention Matters' (March 2023), p78.

<sup>10</sup> Information about this legislation, including a copy of the Bill and Explanatory Memoranda, can be found on the website of the Parliament of Western Australia:

<https://parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?oOpenForm&ParentUNID=A608411927EBAA9548257943001BCD50>.

<sup>11</sup> Law Reform Commission of Western Australia, 'Community Protection (Offender Reporting) Act 2004 : Final Report' (January 2021).

<sup>12</sup> Whitting, L, Day, A and Powell, M, 'An Evaluation of the Impact of Australia's First Community Notification Scheme' (2017) *Psychiatry, Psychology and Law* Vol. 24, No. 3, 339–355.

<sup>13</sup> *Ibid*, 353.

Community notifications in relation to people convicted of sexual offences are more common in international jurisdictions such as the United States of America – however, despite these schemes being in place for a number of years, there is little evidence demonstrating that public notification is an effective tool to reduce offending, protect communities from sexual harm or alleviate public concerns relating to sexual abuse. According to the Australian Institute of Criminology, ‘while public sex offender registries may have a small general deterrent effect on first time offenders, they do not reduce recidivism... despite having strong public support, they appear to have little effect on levels of fear in the community’.<sup>14</sup>

#### **Registration as an effective tool to address crime and promote safety**

The provisions of the Bill, as well as the underlying principles related to the Act, rely on the effectiveness of the registration of those convicted of sexual offences as a measure to address community safety. However, as with community notification schemes, there is little evidence to demonstrate that registration schemes – with or without public notification elements – prevent sexual offences, reduce crime and promote public safety.<sup>15</sup>

We do not believe there is sufficient evidence that community notification schemes (and sex offender registration schemes in general) are effective tools to promote public safety. Research demonstrates that most child victims are sexually abused by someone they know, with a recent study citing ‘only 10% of child victims are assaulted by a stranger’.<sup>16</sup> Given the high cost of registration and monitoring schemes generally, we are not convinced that expanding the existing registration regime and introducing a public notification element is an effective use of money, time and resources – which could be far better spent by investing in primary prevention initiatives to support safe families and communities, as well as early intervention programs to intervene and protect against child sexual abuse.

#### **Potential unintended consequences**

We are concerned about the potential unintended consequences of the provisions allowing for parents, guardians and carers to confirm whether or not an adult is on the register and/or has been charged with a reportable offence. Community organisations who work with families and children (including specialist family and sexual violence services) are concerned these provisions could potentially be ‘weaponised’ against parents and carers – for example, a failure to apply for confirmation that a person who is having unsupervised contact with their children could be used against a mother in a child protection or family law proceeding as evidence that they are not acting protectively towards that child.

Parents, carers and guardians may be confused about how they can use or respond to information or disclosures from the Commissioner, and there are different provisions in the Bill dealing with how

<sup>14</sup> Napier, S, Dowling, C, Morgan, A and Talbot, D, ‘Trends and Issues in Crime and Criminal Justice: What impact do public sex offender registries have on community safety?’ (May 2018), accessed at [https://www.aic.gov.au/sites/default/files/2020-05/ti\\_what\\_impact\\_do\\_public\\_sex\\_offender\\_registries\\_have\\_on\\_community\\_safety\\_220518\\_0.pdf](https://www.aic.gov.au/sites/default/files/2020-05/ti_what_impact_do_public_sex_offender_registries_have_on_community_safety_220518_0.pdf).

<sup>15</sup> Zgoba, K and Mitchell, M ‘The effectiveness of Sex Offender Registration and Notification: A meta-analysis of 25 years of findings’ (2021) *Journal of Experimental Criminology* 19 <https://doi.org/10.1007/s11292-021-09480-z>.

<sup>16</sup> Bartels, L, Gelb, K, Spiranovic, C, Warner, K, Roberts, L, and Davis, J ‘What does the public think about sex offender registers? Findings from a national Australian study’ (2021) *Psychiatry, Psychology and Law* 28: 4, 560–575, pp. 571–572.

information can be disclosed to third parties when parents/carers/guardians receive information.<sup>17</sup> Whilst we appreciate these provisions are attempting to balance the role of parents and guardians in protecting children in their care and the rights and dignity of those on the register, we are concerned about the consequences for parents who are provided with information by the Commissioner who may not understand how or when they can lawfully use that information.

#### **Concerns around the consultation process and the prioritisation of this reform**

Numerous community organisations have raised concerns with us about the consultation process relating to this Bill, highlighting the lack of involvement with victim-survivors or specialist services in the drafting of the Bill, and confusion around why this reform has been prioritised at a time when the Government has committed to implementing the legislative reform identified as ‘urgent’ by the Commission of Inquiry.

Given the above, we make the following recommendations:

- The Government should prioritise the legislative reform identified by the Commission of Inquiry to strengthen its responses to the safety and wellbeing of children and families;
- The Government should also prioritise the reform priorities intended to strengthen community safety and wellbeing, including comprehensive primary prevention training and initiatives supporting healthy, safe and strong families and communities;
- In the absence of comprehensive and compelling evidence relating to the effectiveness of community notification schemes (such as a review of the existing model in Western Australia) and careful consideration of whether and how such a scheme could be implemented in Tasmania, we strongly recommend the provisions relating to the notification of parents, carers and guardians be removed from the Bill;
- Alongside legislative reform to improve the sex offender registration scheme aligned with best-practice and evidence from other jurisdictions, the Government should also prioritise investment in programs promoting public safety and the rehabilitation of offenders;

Policy and legislative reform focused on prevention of child sexual abuse should be developed in consultation with specialist services, including community organisations providing services and support to Tasmanian children and families.

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<sup>17</sup> For example, Clause 15 introduces a new section (15E) allowing for the Commissioner of Police to disclose to a parent/guardian/carer that a person has been charged with a reportable offence and the details of that offence – people who have been provided with this information allowed to share/divulge the information certain circumstances (outlined in 15(F) (2)). However, Clause 36 of the Bill also introduces a new section, 44CA, allowing parents/guardians/carers to apply to the Commissioner to be informed ‘whether or not a person specified in the application... is a reportable offender or has been charged with a reportable offence’. People who apply for and are provided with information under this section are not able to share this information in the circumstances outlined in s15(F)(2), but are bound by s44D, which prohibits making a recording or disclosing the information.