Community Protection (Offender Reporting) Amendment Bill 2016

PAPER OUTLINING CONCERNS

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

This Paper seeks to draw attention to a number of concerns that the ALA has with the abovementioned Bill. The concerns are outlined in bullet points below. In particular, we are concerned about provisions that have the potential to put reportable offenders at risk by releasing their names without any suggestion of wrongdoing on the part of the offender. We are also extremely concerned about powers contained in the Bill that would allow for detention without charge or judicially sanctioned warrant of reportable offenders. Powers for search without judicially sanctioned warrant are also enormously concerning. Finally, a number of proposed powers seriously and unacceptably infringe reportable offenders’ rights to privacy.

All of these provisions have the potential to be abused by those enforcing the law and put reportable offenders at serious physical and reputational risk.

In addition to our concerns regarding the risks to reportable offenders under this Bill, we are very concerned about the potential that the powers proposed in the Bill could be adopted in other areas of criminal law. The extension of the key principles of anti-terrorism laws into other areas such as organisations is an example of this troubling trend.
Our specific concerns relate to the following clauses and listed proposed sections of the Bill:

- **7(c) (amending s17 of the Act):** proposed subsection (1)(id) requires reportable offenders to provide details of passwords or other information to assist in the access to data stored on computers, mobile telephones or other electronic devices. This would constitute a serious and unreasonable invasion of privacy in the absence of any suspected wrongdoing on the part of the reportable offender. Such detail should not be required to be provided, other than under a judicially sanctioned warrant.

- **7(d) (amending s17 of the Act):** proposed subsection (1B) requires reportable offenders to present for inspection any computer, mobile telephone or other electronic device for inspection. This would constitute a serious and unreasonable invasion of privacy in the absence of any suspected wrongdoing on the part of the reportable offender. Such presentation should not be required, and inspection should not be permitted, other than under a judicially sanctioned warrant.

- **9 (amending s21 of the Act):** proposed amended subsection (3) adds a power, namely to detain a reportable offender, to the existing power to use reasonable force in respect of a reportable offender to enable the collection of details about the reportable offender’s physical characteristics. While it would not be appropriate to continue to allow the use of reasonable force in public to exercise the powers in s21, it is not reasonable to detain or use force without any suspicion of wrongdoing. Section 21 should be repealed in its entirety.

- **11 (inserting ss 23B, 23C and 23F into the Act):** proposed subsection (2) of these proposed sections allows a change in the obligations of a young reportable offender to be given to their
parent, guardian or carer. All changes to obligations should be given directly to the individual concerned, regardless of their age, unless there is a reason that the individual is not capable of receiving or understanding the notice.

- **14 (inserting s36A into the Act):** this proposed section allows for the detention of a person without warrant or charge if there are reasonable grounds to suspect that the person is a reportable offender who is not aware of their reporting requirements, whether or not these suspicions are true or not. This is a draconian power which is self-evidently open to serious abuse. There is no accountability built in to this power to detain, such as the requirement of a judicially sanctioned warrant. There is no guidance as to what ‘reasonable grounds’ would be adequate to allow detention under this section, meaning that a police officer effectively would have the power to detain anyone they like, so long as they could make some argument that they believed that the detained individual met the conditions in the proposes subsection (2)(a). The ALA strongly believes that this proposed section should not be implemented. If it is implemented we are extremely concerned about the abuses that could result.

- **16 (inserting s44B into the Act):** this proposed section allows the Commissioner to provide information on the Register in respect to a reportable offender to a ‘prescribed entity’, being an entity prescribed by the regulations. There is no guidance as to the type of entity that may be so prescribed. Such information may be released to a ‘prescribed entity’ for a number of reasons, including if the Commission believes on reasonable grounds that it ‘is necessary and appropriate to ensure the safety and wellbeing of a child or children’. None of the grounds permitting release of such information require any suspicion of wrongdoing or potential wrongdoing on the part of the reportable offender.
This proposed section exposes reportable offenders to unacceptable risks of violence, persecution or other attacks from community members and constitutes an unacceptable invasion of privacy for the reportable person concerned. Further, subsection (3) grants the Commissioner immunity from civil or criminal liability attaching to the provision of such information, with subsection (4) clarifying that no breach of confidentiality, secrecy or professional ethics or standards can attach to the release of such information. There are no safeguards to ensure that the preconditions for releasing information set out in (2) have in fact been met for (3) or (4) to apply. The ALA strongly believes that this proposed section should not be implemented.

• **16 (inserting s44C into the Act):** this proposed section allows the disclosure that an individual is a reportable offender to a parent, guardian or carer of a child with whom the individual has had contact for the purposes of ‘ensuring the safety and wellbeing of a child or children’. There is no requirement that there is suspected wrongdoing or potential wrongdoing on the part of the individual. Similarly to the proposed s44B, subsection (3) makes it clear that such disclosure is not to be regarded as a breach of a legal duty of confidentiality or secrecy, or as a breach of professional ethics or standards. While secrecy obligations are imposed on recipients of such information in the proposed s44D, these obligations are not sufficient to protect the safety or wellbeing of the reportable offender of the recipient chooses not to respect them. Given the strength of feeling that attach to the types of offences that reportable offenders have committed in some segments of the community, particular attention must be paid to the risks that such individuals may face if their identities are disclosed. The ALA strongly believes that this proposed section should not be implemented.
• 17 (inserting 45B into the Act): This proposed section allows a police officer, without a warrant and using reasonable force if necessary, to enter and search a reportable offender’s premises for the purpose of verifying personal details. There is no requirement that the reportable offender be suspected of not provided accurate personal details or has been involved in any wrongdoing or potential wrongdoing. This proposed section would constitute a serious invasion of privacy for the reportable offender and significant overreach considering the stated aim of the power. If there is reason to believe that a reportable offender has provided inaccurate personal details, the appropriate response would be to request them to verify the details that they have provided, by providing acceptable forms of identification. The ALA believes that this proposed section should not be implemented.

• 17 (inserting 45C into the Act): This proposed section allows a police officer, if they believe that a reportable offender is committed or has committed an offence against the Act, to enter and search a number of places that the police officer believes is being or has been used by the reportable offender. There is no need for a warrant and the police officer may use any reasonable force as is reasonably necessary during the entry and search. By virtue of the proposed s45D, all failures of a reportable offender to comply with the Act without reasonable excuse would constitute an offence and thus give rise to the powers arising under the proposed s45C. Further, under subsection (3) of the proposed s45C, passwords, codes or other information must be provided by the reportable offender to a police officer to access data stored in a computer, mobile telephone or other device being inspected or removed under the section. If the police officer seeks entry into a place solely being used for residential purposes by a person of than a reportable offender, a warrant is required if the person does not consent to providing access.
Similar to our concerns regarding the proposed s45B, this proposed section constitutes an unreasonable invasion of privacy. While the powers contained in the proposed s45C are premised on a reasonable suspicion that a reportable offender is or has committed an offence against the Act, such offences fall far below the usual level of wrongdoing that would accompany a criminal offence. Furthermore (while continuing to dispute the wrongdoing is sufficient to justify such powers of entry, search and use of force) if there is a suspicion that an offence under the Act is being or has been committed, it would be appropriate to require a judicially sanctioned warrant before such powers can be exercised. The ALA strongly believes that this proposed section should not be implemented.

- **17 (inserting 45D into the Act):** this section makes it an offence for a reportable offender to fail to comply with the Act, and allows for arrest without a warrant if a police officer suspects on reasonable grounds that such an offence has been committed. This is a draconian power, particularly given the minor and concerning nature of many of the requirements in the Act, many of which have been highlighted above. Arrest without a warrant is an unacceptable infringement on the right to liberty and is open to serious abuse. The ALA strongly believes that this proposed section should not be implemented.

This Bill represents a very dangerous assault on the rule of law. If passed in its current form then the Tasmanian Parliament will have created unprecedented powers for police to detain and search people and to release their names.

The ALA would be happy to discuss any of the issues raised in this Paper in further detail, in which case please direct correspondence to Anna Talbot, Legal and Policy Adviser, Australian Lawyers Alliance at anna@lawyersalliance.com.au.