
Around the Nation: Tasmania

Editor: Justice Stephen Estcourt AO

SOCIAL AMPLIFICATION OF THE RISK OF SEX OFFENDING

Yet to be proclaimed amendments to the *Community Protection (Offender Reporting) Act 2005* (Tas) permit for the first time in Tasmania the release of information from the Community Protection Offender Register kept under the Act and allow magistrates to make orders known as “community protection orders”.

The amendments allow the Commissioner of Police to publish any or all of a reportable offender’s personal details, including photographs or digital images of him or her, in the event of a failure by that person to comply with his or her reporting obligations. The Commissioner may also release any information on the register to prescribed entities such as government departments, and may disclose the identity of a reportable offender to parents, guardians or carers of a child who may have any form of contact with that offender. Further disclosure by those entities or persons of any of the information provided to them constitutes a summary offence.

The legislative changes also authorise the Commissioner to apply to a magistrate for a community protection order if he or she is satisfied that a reportable offender poses a risk to the safety or *wellbeing* of any child or children. The magistrate may make such an order if he or she is satisfied that such a risk is posed, and is satisfied that the making of the order will *reduce* that risk.

A community protection order may prohibit a reportable offender from associating or communicating with any person or class of persons or from being present at any place. Indeed it may prohibit any movement or conduct, including employment and residence. Failure to comply with a community protection order is also a summary offence.

While these amendments were being debated in the Tasmanian Parliament in September 2016 residents of the small town of Ellendale in Tasmania’s beautiful Derwent Valley were, to use the words of the local print media, “up in arms over the presence of three convicted sex offenders in their community”. The three men, including 61-year-old Mr Sonny Day, had been living in housing provided by an entity known as The Freedom Centre until Mr Day was “assisted” to relocate to what Tasmania’s then Attorney-General, the Hon Dr Vanessa Goodwin MHA, described as “suitable alternative accommodation”. Notably, this was only after a suspected vigilante arson attack on The Freedom Centre.

Mr Day, who had been twice convicted for possession of child exploitation material in 2012 and 2014 but who otherwise had no prior convictions, was found dead in his relocated accommodation on 16 May 2017 in circumstances euphemistically described by police as “not suspicious”. In 2012 his name had been placed on the Community Protection Offender Register for life.

Also in May 2017, while the amendments to the *Community Protection (Offender Reporting) Act* awaited proclamation, the UTas Women’s Collective at the University of Tasmania gathered 1,600 signatories to a petition calling on the University to terminate the PhD studies of a convicted sex offender, former girls’ school teacher, Mr Nicolaas Bester, and to ban him from all of the University’s campuses. The former Tasmanian University Union President and Women’s Collective member who commenced the petition said that she and others were most disappointed that the University of Tasmania had not removed Mr Bester. The University responded, as one might expect, that there was nothing in the University or government rules which precluded Mr Bester from continuing his research.

In 2011 Mr Bester’s name had been placed on the Community Protection Offender Register for eight years after his conviction and sentence on charges of maintaining a sexual relationship with a 15-year-old student and possession of child exploitation material.

I relate these two recent lamentable instances of vigilantism in Tasmania, not merely because they are, from a rule of law perspective, most regrettable, but also because they herald the challenge for the gatekeepers of the new amendments to the *Community Protection (Offender Reporting) Act*. That

challenge will include being wary of the experience in the United States and the United Kingdom of the social amplification of the risk of sex offenders re-offending when governments accommodate the right to know demands of members of communities and institutions, genuinely enough, concerned with the safety and wellbeing of the children in their care.

The phenomenon was exposed in the case of the proliferation of Megan's Laws throughout the United States by M V Rajeev Gowda in a paper presented at the 1999 conference on the Social Amplification of Risk Framework, Cumberland Lodge, UK, which is now contained in Ch 13 of N Pidgeon, R E Kasperon and P Slovic (eds), *The Social Amplification of Risk* (CUP, 2003).

The first Megan's Law, which does not as yet have a parallel in Australia, was passed in New Jersey in 1994 after Jesse Timmendequas, a convicted sex offender, raped and killed his neighbour, seven-year-old Megan Kanka.

Megan's Law is now the name for a United States federal law, and an informal name for subsequent State laws which require law enforcement authorities to make information available to the public regarding registered sex offenders. The federal Megan's Law was enacted as a subsection of the *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act 1994* (US), which before that amendment, as hitherto was the case in Tasmania, had merely required sex offenders to register with local law enforcement authorities.

The United Kingdom, England and Wales and later Scotland rolled out more limited community notification schemes after a pilot project, first implemented by the Home Office in 2008 across four police areas, was judged to be successful.

As mentioned, until now the pre-amendment Wetterling Act state of affairs has been the position in Tasmania. Other Australian States have registration schemes with varying degrees of official and community notification. A Bill to emulate Megan's Law, the *Sex Offender and Child Homicide Offender Public Website (Daniel's Law) Bill 2015* was introduced into the Northern Territory Legislative Assembly in October 2015 but was subsequently withdrawn.

The potential problem with legislation such as the new Tasmanian provisions is, as was pointed out by Gowda, that the public will actively support and pursue these perceived risk reducing measures because there is a lack of consensus on the objective assessment of the risks involved. The community is likely to consider that every released sex offender is a definite candidate for recidivism and will thus seek to avail themselves of every measure to attempt, understandably, to ensure that their children are exposed to absolutely no risk.

That there is a lack of reliable assessment of the risks involved is equally true in Australia as elsewhere. Speaking in 2012, Melbourne University criminology fellow, Mayumi Purvis, cited a Canadian study in which sexual recidivism rates for child sex offenders was reported as 12.7% in a five-year follow-up and 9.9% for general non-sexual recidivism. An Australian Government report in 2007 put general recidivism rates between 35% and 41% on the basis of a two-year follow-up. Gowda argues that there is no objective measure of recidivism in the United States, and that the evidence on the subject is controversial, with one 1989 study reporting that the probability of recidivism ranges from practically zero to more than 50%.

If the disclosure of information permitted by the Tasmanian amendments is not discerning and precisely targeted, and further dissemination guarded against, and if the prohibition on movement and conduct by court order is not judiciously, as well as judicially, ordered with the greatest of care and for the clearest of cause, then the danger is that the pursuit by the community of these new rights may lead to clamour that results in the social amplification of the relevant risks.

In Georgia for example, one restriction banned registered offenders from living within 1,000 feet of a school bus stop. The sheriff of DeKalb County near Atlanta, mapped the bus stops and discovered that other than at the bottom of a lake or in the middle of a forest there was nowhere for any of the offenders registered in his county to legally reside.

In 2010, J J Prescott from the University of Michigan Law School and Jonah E Rockoff of the Columbia Business School, found that community notification may contribute to recidivism by imposing social and financial costs on registered sex offenders. Dr Kelly K Bonnar-Kidd, writing in

the *American Journal of Public Health* in March 2010, opined that community notification and residential restrictions had led to collateral consequences for offenders restricting reintegration and increasing the risk of recidivism.

Writing in the *International Journal of Police Science & Management* 2016, Laura Whitting, Andrew Day and Martine Powell of the School of Psychology at Deakin University reported, based on a survey of 21 Australian specialist police officers engaged in the monitoring of sex offenders and the management of the allied community notification scheme, that the results were largely consistent with the findings of a contemporary study to the effect that the consensus of other professionals working in the same jurisdiction, was that the scheme was detrimental to offenders' rehabilitation and of little or no benefit to the community.

Gowda believes that the untoward effects of notification causing communities to reject the relocation of released offenders can lead to more parole violations and the spreading of risks posed by released offenders if they are forced to move from place to place or if, finding it all too difficult, they cease reporting altogether. As already mentioned, under the new Tasmanian provisions if a reportable offender fails to comply with any of his or her reporting conditions, or if his or her whereabouts are not known, the Commissioner of Police may publish any or all of that offender's personal details including photographs or digital images of the person.

Gowda observes that developments such as these indicate how difficult it will be to simultaneously empower citizens, prevent crimes, and protect the civil rights of released offenders. It is to be hoped that Tasmania can achieve a just balance.

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