

# Crimes (Child Sex Offenders) Amendment Regulation 2010 (No 1)

Subordinate law SL2010–27

made under the

**Crimes (Child Sex Offenders) Act 2005, section 137**

## EXPLANATORY STATEMENT

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### Outline

The purpose of the *Crimes (Child Sex Offenders) Act 2005* (the Act) is to reduce the likelihood of convicted child sex offenders re-offending by requiring them to keep police informed of their whereabouts and other personal details for a period of time.

The Act also prevents registered child sex offenders from working in child-related employment by making it an offence for them to apply for or engage in such employment. To achieve this, Chapter 4 of the CSO Act establishes a Child Sex Offenders Register (the Register) that requires certain offenders who are, or have been, sentenced for registrable offences to report specified details to police for inclusion in the register. These offenders must then report annually to police, unless there is a change in their personal details beforehand, in which case such change must also be reported.

Chapter 4 of the Act also regulates who can access the Register and for what purpose the information contained on the Register can be disclosed. Section 118 provides that information on the Register can only be accessed by people authorised by the Chief Police Officer (CPO) or by Regulation. It also provides that information on the Register can only be disclosed to entities prescribed by Regulation or by authority of an Act or other law.

Section 118(1) (b) (i) of the Act requires that personal information kept on the Register can only be disclosed by an entity prescribed by Regulation for the purpose of law enforcement. Previously under the *Crimes (Child Sex Offenders) Regulation 2006*, no entities were prescribed.

The purpose of this Regulation is to prescribe a series of entities under section 118(1) (b) (i) of the Act to ensure that any disclosures made from the Register to the entities listed are made in accordance with the Act.

The AFP has advised that most of the disclosures to the entities prescribed in this Regulation would arise due to ongoing investigations where the registered child sex offender is a person of interest or where they are thought to have breached the Act and the information they have provided to ACT Policing and contained on the Register needs to be verified. Disclosures may also be made in the process of intelligence gathering for the investigation and prosecution of offences by repeat offenders.

To remove any doubt about disclosure between police agencies, the Regulations prescribe interstate police agencies, Australian Customs and Border Protection Service, agencies with access to the Police Real-time Online Management System (PROMIS) database used by the AFP, and other specific entities as being authorised for the purposes of section 118 (1) (b) (i) of the Act.

By prescribing all Australian State and Territory Law Enforcement Agencies (including State and Territory Crime Commissions and the Australian Crime Commission), these law enforcement officers will not be in breach of the requirements of the Act when information held on the Australian National Child Offender Register (ANCOR) database (which is maintained by CrimTrac), is not disclosed to AFP members.

#### Impact on Human Rights:

The disclosure of personal information engages the right to privacy contained in section 12 of the *Human Rights Act 2004*, which states that “Everyone has the right not to have his or her privacy . . . interfered with unlawfully or arbitrarily”.

However, the right to privacy is not an absolute right. It is a qualified right, which means that while the right can first be asserted, permissible restrictions to that right can be applied where it can be shown that it is necessary in a democratic society to do so and if there is a legal basis for such an interference. Indeed, there are many instances where the needs of a democratic society naturally affect the right to privacy.

This is one such instance. Prescribing the entities that personal information contained on the Register can be disclosed to ensures that the disclosure does not happen unlawfully, or arbitrarily.

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## Summary of clauses

**1 – Name of Regulation** – this regulation is the *Crimes (Child Sex Offenders) Amendment Regulation 2010 (No 1)*.

**2 – Commencement** – provides for the Regulation to commence on the day after it is notified.

**3 – Legislation amended** – this Regulation amends the *Crimes (Child Sex Offenders) Regulation 2005*.

**4 – New section 16A** – this clause inserts new section 16A into the Regulation and prescribes entities that law enforcement officers can disclose personal information to. These entities are:

- a court, tribunal or special commission of inquiry;
- a legal representative of a registered offender including;
  - the legal aid commission; and
  - the Aboriginal Legal Service (NSW/ACT) Limited (ACN 118 431 066);
- a person who is entitled to report in person for a registered offender under the *Crimes (Child Sex Offenders) Act 2005*, section 65 (Reports by young offenders) or section 66 (Reports by offenders with disability).
- the chief officer (however described) of an entity providing an employment service in relation to a registered offender;
- the chief executive officer of Australian Customs and Border Protection Service;
- the chief executive of the Department of Disability, Housing and Community Services;
- the chief executive of the Department of Education and Training;
- the chief executive of the Department of Justice and Community Safety exercising functions under the *Corrections Management Act 2007*;
- the chief officer (however described) of a law enforcement agency;
- the registrar-general exercising a function under the *Births, Deaths and Marriages Registration Act 1997*;
- the secretary of the Department of Health and Ageing (Cwlth);
- the secretary of the Department of Immigration and Citizenship (Cwlth).
- the Attorney-General for the Territory, the Commonwealth, or a State;
- the director of public prosecutions, or a person performing a similar function under a Commonwealth or State law.

Clause 4 further defines an ‘employment service’ to include a pre-employment service; an employment screening service; or finding, or helping to find, employment.

Under this clause, a ‘law enforcement agency’ means any of the following:

- the Australian Crime Commission established by the *Australian Crime Commission Act 2002* (Cwlth);

- the Australian Federal Police;
- the CrimTrac Agency, established under the *Public Service Act 1999* (Cwlth), section 65 (Establishment etc. of Executive Agencies);
- the New South Wales Crime Commission or a similar entity established under the law of another State;
- the New South Wales Independent Commission Against Corruption or a similar entity established under the law of another State;
- the police service or force of a State, or another territory;
- a government department of the Commonwealth or a State or the Territory whose primary functions are the beginning or conduct of proceedings for offences.