



Australian Capital Territory

Crimes (Child Sex Offenders) Amendment Act 2015

A2015-35

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Purpose and outline	
Section 6 (2) (i)	2
5 Section 6 (2), new note	2
6 Registrable offender—exceptions	
Section 9 (1) (c) note, 3rd dot point	3
7 New section 9 (1A) and (1B)	3
8 Section 14	4
9 New division 2.2.3	4

J2014-587

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Contents

	Page	
10	Section 37	7
11	Exception—offender in government custody Section 38	8
12	Exception—offender outside ACT Section 39	9
13	Offence—offender in ACT must report change of details Section 54 (2) (b), new examples	9
14	Section 54 (2) (b), new note	9
15	What are <i>personal details</i> ? Section 59 (1) (h)	9
16	Section 78	10
17	Right to privacy when being photographed Section 79 (1)	12
18	New section 79 (1A)	12
19	Right to have support person when being photographed Section 80	12
20	When reporting period begins Section 83	13
21	New parts 3.10 and 3.11	14
22	New sections 122A to 122C	36
23	Class 2 offences Schedule 2, part 2.1	40
24	Schedule 2, part 2.2	40
25	Schedule 2, part 2.2	41
26	Dictionary, definition of <i>child sex offender registration order</i>	41
27	Dictionary, new definitions	41
28	Dictionary, definition of <i>offender's reporting month</i>	41
29	Dictionary, new definitions	41

		Page
Schedule 1	Consequential amendments	43
Part 1.1	Crimes Act 1900	43
Part 1.2	Crimes (Child Sex Offenders) Regulation 2005	45
Part 1.3	Director of Public Prosecutions Act 1990	48
Part 1.4	Ombudsman Act 1989	48
Part 1.5	Prostitution Act 1992	50
Part 1.6	Supreme Court Act 1933	50



Australian Capital Territory

Crimes (Child Sex Offenders) Amendment Act 2015

A2015-35

An Act to amend the *Crimes (Child Sex Offenders) Act 2005*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Crimes (Child Sex Offenders) Amendment Act 2015*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the *Crimes (Child Sex Offenders) Act 2005*.

Note This Act also amends the following legislation (see sch 1):

- *Crimes Act 1900*
- *Crimes (Child Sex Offenders) Regulation 2005*
- *Director of Public Prosecutions Act 1990*
- *Ombudsman Act 1989*
- *Prostitution Act 1992*
- *Supreme Court Act 1933*.

4 Purpose and outline
Section 6 (2) (i)

omit

5 Section 6 (2), new note

insert

Note The *Ombudsman Act 1989* authorises the ombudsman to monitor compliance with this Act, pt 3.11 (Entry and search warrants) and ch 4 (Child sex offenders register).

**6 Registrable offender—exceptions
Section 9 (1) (c) note, 3rd dot point**

omit

child pornography

substitute

child exploitation material

7 New section 9 (1A) and (1B)

insert

- (1A) A person is not a registrable offender if—
- (a) the person was a young person at the time the registrable offence was committed; and
 - (b) a court considers, on application by the defence, that including the person on the register is inappropriate in the circumstances of the case.
- (1B) In making a decision for subsection (1A) (b), the court must consider—
- (a) the severity of the offence and the seriousness of the circumstances surrounding the commission of the offence; and
 - (b) the age of the person at the time of the offence; and
 - (c) the level of harm to the victim and the community caused by the offence; and
 - (d) any attempts at rehabilitation by the person; and
 - (e) whether the person poses a risk to the lives or sexual safety of 1 or more people or of the community; and
 - (f) any other circumstances that the court considers relevant.

8 Section 14

substitute

Division 2.2.1 Child sex offender registration orders—generally

14 What is a *child sex offender registration order*?

A *child sex offender registration order*, in relation to a person, is—

- (a) an order made under section 15 (1) or section 18C; or
- (b) a corresponding child sex offender registration order.

Division 2.2.2 Orders for offenders guilty of offence other than class 1 or class 2 offence

9 New division 2.2.3

insert

Division 2.2.3 Orders for certain previous offenders

18A Meaning of *previous offender*—div 2.2.3

For this division, a person is a *previous offender* if the person has been found guilty of a class 1 offence before the commencement of this Act.

18B Application for child sex offender registration order in relation to previous offender

- (1) The chief police officer may apply to the Magistrates Court for a child sex offender registration order in relation to a person if the chief police officer believes on reasonable grounds that—
 - (a) the person is a previous offender; and

- (b) the person poses a risk to the lives or sexual safety of 1 or more people or of the community.
- (2) For subsection (1) (b), it is not necessary for the court to be satisfied of a risk to a particular person or class of people.
- (3) The application must include—
 - (a) any information or material relevant to the application (regardless of whether the information or material supports the application); and
 - (b) details of whether an application under this section has previously been made in relation to the person.

18C Court may make child sex offender registration order in relation to previous offender

- (1) The Magistrates Court may, on application under section 18B, make a child sex offender registration order in relation to a person if, by evidence on oath and after taking into account anything it considers appropriate, the court is satisfied that—
 - (a) the person is a previous offender; and
 - (b) the person poses a risk to the lives or sexual safety of 1 or more people or of the community; and
 - (c) making the order will reduce the risk; and
 - (d) having regard to the matters in section 18D, the order is appropriate.
- (2) The application for the order may be heard, and the order made, in the person's absence if the court is satisfied that the application was served—
 - (a) personally on the person; and
 - (b) on anyone else as directed by the court.

18D Matters court must consider before making registration order in relation to previous offender

- (1) For section 18C (1) (d), the matters are as follows:
- (a) for each offence for which the person is a previous offender—
 - (i) the seriousness of the offence; and
 - (ii) the period since the offence was committed; and
 - (iii) the person's and victim's ages, and the difference in age between them, when the person committed the offence;
 - (b) the person's age;
 - (c) the seriousness of the person's criminal history;
 - (d) whether the level of risk that the person may commit another registrable offence outweighs the effect of the order on the person;
 - (e) the person's circumstances, to the extent that they relate to the order sought.

Examples

- 1 the person's accommodation, employment, health, cultural and social needs
- 2 the need to integrate the person into the community

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) The court may have regard to anything else the court considers relevant.
- (3) In this section:

criminal history, about a person, means a finding of guilt against the person for a class 1 or class 2 offence.

18E Keeping documents connected with order

If the Magistrates Court makes a child sex offender registration order in relation to a previous offender, the chief police officer must, for the duration of the order, keep a copy of—

- (a) the application made under section 18B; and
- (b) any document relied upon for the application.

10 Section 37

substitute

37 Offence—offender must report annually

- (1) A registrable offender must—
 - (a) attend, at a relevant time each year, an approved reporting place; and
 - (b) report any changes to the offender's personal details to the chief police officer at the approved reporting place; and
 - (c) if the offender has been in government custody since the offender last reported under this Act—report to the chief police officer details of when and where the custody happened.

Note 1 For the offender's personal details, see s 59.

Note 2 A registrable offender reports in person at a place only if the offender reports by personally attending at the place (see dict, def *in person*). However, special provision has been made for young offenders and offenders with a disability (see s 65 and s 66).

Note 3 For approved reporting places, see s 64.

- (2) A registrable offender commits an offence if the offender—
 - (a) is required to report under subsection (1); and
 - (b) is reckless as to whether the offender is required to report; and

(c) fails to report as required.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (3) Strict liability applies to subsection (2) (c).
- (4) This section does not apply if the offender's reporting period has ended before the relevant time for the offender's report in the year.
- (5) In this section:

relevant time, in relation to a report by a registrable offender in a year, means before the end of the month in the year when the anniversary of the day the offender first reported under this Act or a corresponding law falls.

Example

J first reported his personal details to the chief police officer on 14 October 2015. J must make a further report of any changes to J's details on or before 31 October 2016, 31 October 2017 (and so on).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

**11 Exception—offender in government custody
Section 38**

omit

offender's reporting month

substitute

relevant time for the offender's report

**12 Exception—offender outside ACT
Section 39**

omit

of the offender's reporting month

substitute

before the relevant time for the offender's report

**13 Offence—offender in ACT must report change of details
Section 54 (2) (b), new examples**

before the notes, insert

Examples—other changes in personal details

- 1 ceasing employment with a particular employer
- 2 starting new employment

14 Section 54 (2) (b), new note

insert

Note 5 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

**15 What are *personal details*?
Section 59 (1) (h)**

after

registration number,

insert

details of any modifications made,

16 Section 78

substitute

78 Photographing offender

- (1) A police officer receiving a report made in person by or for a registrable offender may require the offender—
- (a) to be photographed; or
 - (b) to expose any part of the offender's body to enable that part of the body to be photographed by the officer or another person authorised by the officer.

Note See s 79 (1A) for a restriction relevant to par (b).

- (2) Force may not be used in photographing a registrable offender except in accordance with an order of a magistrate under section 78A.
- (3) Before a registrable offender's photograph is taken, the police officer must tell the offender, in language likely to be understood by the offender—
- (a) why the photographs are being taken; and
 - (b) that it is an offence not to comply with the requirement to be photographed; and
 - (c) that the photographs will be kept by the chief police officer.
- (4) A registrable offender commits an offence if—
- (a) a police officer requires the offender to be photographed under this section; and
 - (b) the offender does not comply with the requirement.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

78A Order allowing use of force for photographing offender

- (1) A magistrate may, on application by a police officer, order the photographing of a registrable offender if satisfied on the balance of probabilities that—
 - (a) a police officer has required the offender to be photographed under section 78 and the offender has failed to comply with the requirement; and
 - (b) there are reasonable grounds to believe that photographing the offender is likely to assist law enforcement, crime prevention or child protection purposes; and
 - (c) allowing reasonable force to be used in photographing the offender is justified in all the circumstances.
- (2) For subsection (1) (c), the magistrate must consider the following:
 - (a) the seriousness of the circumstances surrounding the commission of each offence that resulted in the offender being on the register and the severity of each offence;
 - (b) the age, mental health and cultural background of the offender, to the extent that they are known by the magistrate;
 - (c) if the offender gives any reasons for not complying with the requirement—the reasons;
 - (d) any other circumstances that the magistrate considers relevant.
- (3) An application under this section must be—
 - (a) made in writing; and
 - (b) supported by evidence on oath or by affidavit dealing with the matters mentioned in this section.

**17 Right to privacy when being photographed
Section 79 (1)**

after

section 78

insert

or section 78A

18 New section 79 (1A)

insert

(1A) A police officer cannot require an offender who is to be photographed under section 78 or section 78A to expose for that purpose—

- (a) the offender's genitals; or
- (b) the anal area of the offender's buttocks; or
- (c) if the offender is female, or a transgender or intersex person who identifies as female—the offender's breasts.

**19 Right to have support person when being photographed
Section 80**

after

section 78

insert

or section 78A

20 **When reporting period begins**
Section 83

substitute

83 **When reporting period begins**

- (1) A registrable offender's (other than a previous offender's) reporting period for a registrable offence begins at the later of the following times:
 - (a) when the offender is sentenced for the offence;
 - (b) if the offender is in, or begins, full-time government custody on the day the offender is sentenced for the registrable offence—when the offender stops being in full-time government custody.
- (2) A previous offender's reporting period for a registrable offence begins at the later of the following times:
 - (a) when the offender was sentenced for the offence;
 - (b) if the offender was in full-time government custody on the day the offender was sentenced for the registrable offence—when the offender stopped or stops being in full-time government custody.

21 **New parts 3.10 and 3.11**

insert

Part 3.10 **Failure to comply with reporting obligations—public notices**

116A **Chief police officer may issue public notice in certain circumstances**

- (1) The chief police officer or a deputy chief police officer may publish a notice about a registrable offender if—
 - (a) satisfied that the offender—
 - (i) has failed to comply with a reporting obligation under this chapter; and
 - (ii) cannot be located; and
 - (b) the offender is not a young person; and
 - (c) the officer believes on reasonable grounds that—
 - (i) the offender poses a risk to the lives or sexual safety of 1 or more people or of the community; and
 - (ii) publishing the notice will reduce the risk.
- (2) For subsection (1) (c) (i), it is not necessary for the officer to identify a risk to particular people, or a particular class of people.
- (3) The notice must—
 - (a) include 1 or more of the following:
 - (i) the offender's name;
 - (ii) a photograph of the offender;
 - (iii) a description of the offender; and

- (b) state that the offender is required by police to answer questions; but
- (c) not state that the offender is a registrable offender.

Part 3.11 Entry and search warrants

Division 3.11.1 Preliminary

116B Definitions—pt 3.11

In this part:

entry and search warrant means a warrant authorising entry and search of the premises of a registrable offender for the purpose of verifying—

- (a) the offender's personal details; or
- (b) if the offender is subject to an order under chapter 5A (Orders prohibiting offender conduct)—whether the offender has breached, or is likely to breach, the order.

executing officer, of an entry and search warrant, means—

- (a) the police officer named in the warrant as the police officer authorised to execute the warrant; or
- (b) if that police officer does not intend to be present at the execution of the warrant—another police officer whose name has been written in the warrant by the police officer named under paragraph (a); or
- (c) another police officer whose name has been written in the warrant by the police officer named in the warrant under paragraph (b).

occupier, of a premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

offensive weapon—see the [Crimes Act 1900](#), dictionary.

person assisting, in relation to an entry and search warrant, means a person who has been authorised by an executing officer to assist in executing the warrant.

premises includes the following:

- (a) land (whether vacant or occupied);
- (b) any structure, building, vehicle or place (whether built or not);
- (c) any part of a structure, building, vehicle or place.

public official—see the [Criminal Code](#), section 300.

Division 3.11.2 Entry and search warrants—general

116C Entry and search warrant—application

- (1) The chief police officer, a deputy chief police officer or a police officer of or above the rank of sergeant may apply to the Magistrates Court for an entry and search warrant.
- (2) The application must—
 - (a) state—
 - (i) the name of the applicant; and
 - (ii) the name of the executing officer; and
 - (iii) the nature and duration of the warrant sought; and

- (iv) whether the registrable offender has previously been subject to a search authorised under a territory law in relation to similar information or material; and
 - (v) whether a previous application has been made under this section in relation to the offender; and
 - (b) subject to subsection (3), be supported by an affidavit setting out the grounds on which the warrant is sought.
- (3) The application may be made without a supporting affidavit if the applicant believes that—
 - (a) the immediate use of an entry and search warrant is necessary for the purpose of verifying the offender’s personal details; and
 - (b) it is impracticable for an affidavit to be prepared or sworn before the application is made.
- (4) If subsection (3) applies, the applicant must—
 - (a) give as much information as the court considers reasonably practicable in the circumstances; and
 - (b) if the court issues the warrant—send the supporting affidavit to the court as soon as practicable; and
 - (c) if the court refuses to issue the warrant—make a written record of the application and the reasons for the warrant not being issued.

116D Application for entry and search warrant—supporting information

- (1) In making an application under section 116C, the applicant must, as part of the affidavit, provide the Magistrates Court with any information or material relevant to the application (regardless of whether the information or material supports the application).

- (2) The applicant must keep a copy of any affidavit or information or material relied on under this part for 1 year after the registrable offender stops being subject to a reporting obligation.

116E Entry and search warrant—remote application

- (1) If the applicant believes that it is impracticable for an application for an entry and search warrant to be made in person, the application may be made by telephone, fax, email or any other means of communication.
- (2) As soon as practicable after making a remote application, the applicant must make a written record of the application.
- (3) If practicable, the Magistrates Court must fax or email a copy of the warrant to the applicant.

116F Entry and search warrant—deciding application

The Magistrates Court may issue an entry and search warrant if satisfied on reasonable grounds that—

- (a) either—
 - (i) the registrable offender has incorrectly reported, or is likely to incorrectly report, personal details; or
 - (ii) if the registrable offender is subject to an order under chapter 5A (Orders prohibiting offender conduct)—the offender has breached, or is likely to breach, the order; and
- (b) for an application without affidavit—it would have been impracticable for an affidavit to have been prepared and sworn before the application was made; and
- (c) for a remote application—it would have been impracticable for the application to have been made in person.

116G Content of entry and search warrant

- (1) An entry and search warrant must include statements of the following matters:
 - (a) a description of the premises, or the name or description of the registrable offender to which the warrant relates;
 - (b) the kinds of material to be searched for under the warrant;
 - (c) the name of the police officer who is to be responsible for executing the warrant;
 - (d) the period, not exceeding 7 days, for which the warrant remains in force;
 - (e) the times when the search is authorised;
 - (f) any conditions subject to which premises may be entered under the warrant;
 - (g) the things under section 116H the warrant authorises the executing officer or an assisting officer to do.
- (2) For subsection (1) (e), an entry and search warrant must not authorise a search during the period beginning at 9 pm on a day and ending at 6 am on the next day unless the Magistrates Court is satisfied that—
 - (a) it is necessary to prevent the concealment, loss or destruction of evidential material in relation to an offence; or

- (b) it would not be practicable to conduct the search at another time.

Examples—when not practicable to conduct search at another time

- 1 conducting the search during normal hours may increase the risk to the safety of officers
- 2 conducting the search during normal hours may compromise another investigation

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) In deciding any conditions under subsection (1) (f), the Magistrates Court must have regard to the personal privacy of a third party who may be affected by the warrant.
- (4) Subsection (1) (d) does not prevent the issue of successive warrants in relation to the same premises or person.

116H What an entry and search warrant may authorise

- (1) An entry and search warrant may authorise the executing officer or an assisting officer to—
 - (a) enter the warrant premises, by force if necessary, and to remain at the premises for as long as reasonably necessary (but not longer than 2 hours) to exercise any power authorised under the warrant; and
 - (b) if the premises is a vehicle—enter the vehicle, by force if necessary, wherever it is; and
 - (c) search the premises for the kinds of material specified in the warrant, and anything else relevant to the purpose of the warrant, and to seize things of those kinds found at the premises; and

- (d) seize other things found at the premises in the course of the search that the executing officer or an assisting officer believes on reasonable grounds to be connected to an offence punishable by imprisonment for 12 months or longer; and
- (e) conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or an assisting officer suspects on reasonable grounds that the person has any evidential material in relation to an offence or seizable items in the person's possession, and to seize things of that kind; and
- (f) seize other things found in the course of searching the person that the executing officer or an assisting officer believes on reasonable grounds to be connected to an offence punishable by imprisonment for 12 months or longer; and
- (g) seize a thing found while searching the person or premises that may be used as an offensive weapon, if the executing officer or an assisting officer believes on reasonable grounds that seizure of the thing is necessary to prevent an imminent risk of harm to a person or property; and
- (h) take a photograph of a thing found while searching the person or premises that the executing officer or assisting officer believes on reasonable grounds to be evidential material in relation to an offence, material that may assist an investigation, or a seizable item; and
- (i) stop and detain a person at the premises for as long as reasonably necessary (but not longer than 2 hours) to assist the executing officer or an assisting officer to exercise any power authorised under the warrant; and
- (j) if a registrable offender has refused access to data on an electronic device under section 116Q—access the information for as long as reasonably necessary (but not longer than 4 hours) to assist the executing officer or assisting officer to exercise any power authorised under the warrant; and

- (k) exercise a power under this section in relation to part of a premises occupied exclusively by a person other than a registrable offender, if the executing officer or assisting officer believes on reasonable grounds that the part of the premises is used by the offender; and
- (l) do anything else authorised by the Magistrates Court.
- (2) If a transgender or intersex person is searched under this section, the person may require that the search be conducted by either a male or a female.
- (3) Despite paragraphs (1) (a), (i) and (j), an entry and search warrant may authorise the executing officer or an assisting officer to—
 - (a) remain at the premises or stop and detain a person at the premises for up to 4 hours if the court is satisfied that the warrant cannot be executed within 2 hours; and
 - (b) access data on a registrable offender’s electronic device for up to 8 hours, and remain at premises for that purpose, if satisfied that the warrant cannot be executed within 4 hours.
- (4) An entry and search warrant may not authorise a strip search or a search of a person’s body cavities.

116I Extension and amendment of entry and search warrant

- (1) The chief police officer, deputy chief police officer or police officer of or above the rank of sergeant to whom an entry and search warrant has been issued may apply, at any time before the expiry of the warrant, for an—
 - (a) extension of the warrant; or
 - (b) amendment of any condition of the warrant.
- (2) The application need not be made to the same magistrate who first issued the warrant.

- (3) Section 116C (Entry and search warrant—application), section 116D (Application for entry and search warrant—supporting information) and section 116E (Entry and search warrant—remote application) apply, with any necessary changes, to an application under this section as if it were an application for the warrant.
- (4) The Magistrates Court may grant an application under this section only if satisfied that the warrant requires extension or amendment to be properly executed.
- (5) If the court grants the application, it must endorse the new expiry date or the other amended condition on the original warrant.
- (6) An application may be made more than once under this section.
- (7) However, an application may only be made once under this section for an extension of time under section 116G (4) or section 116H (3).

116J Revocation of entry and search warrant

- (1) An entry and search warrant may be revoked at any time before the end of the period of validity stated in it by the Magistrates Court.
- (2) The court may revoke the warrant if satisfied that—
 - (a) the information supporting the application for the warrant was false or misleading; or
 - (b) the warrant contains an error; or
 - (c) the grounds for issue of the warrant no longer exist; or
 - (d) revoking the warrant is in the interests of justice.
- (3) The court must give notice of the revocation of an entry and search warrant to the executing officer to whom the warrant was issued.

- (4) If the chief police officer, a deputy chief police officer or a police officer of or above the rank of sergeant is satisfied that the grounds for issue of an entry and search warrant to an executing officer no longer exist, the officer must ensure that an application is made for the revocation of the warrant under this section.
- (5) If the executing officer to whom an entry and search warrant has been issued, or who is primarily responsible for executing an entry and search warrant, believes that the grounds for issue of the warrant no longer exist, the officer must tell the chief police officer, a deputy chief police officer or a police officer of or above the rank of sergeant immediately.

Division 3.11.3 Executing entry and search warrants

116K Use of force and availability of assistance in executing entry and search warrant

- (1) An executing officer, assisting officer or a person assisting who is not a police officer may use force in executing an entry and search warrant against people and things that is necessary and reasonable in the circumstances.
- (2) An executing officer may obtain the assistance in executing the warrant that is necessary and reasonable in the circumstances.

116L Announcement before entry

- (1) An executing officer must, before anyone enters premises under an entry and search warrant—
 - (a) announce that the person is authorised to enter the premises; and
 - (b) give anyone at the premises an opportunity to allow entry to the premises; and
 - (c) if the occupier of the premises is present—identify themselves to that person.

- (2) The executing officer is not required to comply with subsection (1) if the officer believes on reasonable grounds that immediate entry to the premises is required to ensure—
 - (a) the safety of anyone (including any police officer or person assisting); or
 - (b) that the effective execution of the warrant is not frustrated.

116M Details of warrant to be given to occupier etc

- (1) If an entry and search warrant in relation to premises is being executed and the occupier of the premises is present at the premises, the executing officer or an assisting officer must make available to that person a copy of the warrant.
- (2) The executing officer or an assisting officer must provide the registrable offender in relation to whom the warrant relates with a copy of the warrant.
- (3) If a person is searched under a warrant in relation to premises, the executing officer or an assisting officer must show the person a copy of the warrant.
- (4) The executing officer must identify themselves to the person at the premises or the person being searched.
- (5) The copy of the warrant mentioned in subsections (1) and (2) need not include the signature of the magistrate.

116N Occupier entitled to be present during search etc

- (1) If an occupier of premises is present at the premises while an entry and search warrant is being executed, the occupier is entitled to observe the search being conducted.

Note The *Crimes Act 1914* (Cwlth), pt 1C applies in relation to the investigation of certain ACT offences.

- (2) However, the occupier is not entitled to observe the search if to do so would impede the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

1160 Use of equipment to examine or process things

- (1) An executing officer or an assisting officer may bring to the premises equipment reasonably necessary for the examination or processing of a thing found at the premises, to determine whether it is a thing that may be seized under an entry and search warrant.
- (2) The thing may be moved to another place for examination or processing if—
 - (a) it is not practicable to examine or process it at the premises; or
 - (b) the occupier of the premises consents in writing.
- (3) If a thing is moved to another place under subsection (2), the executing officer must, if practicable—
 - (a) tell the occupier the address of the place, and when the examination or processing will be conducted; and
 - (b) allow the occupier or occupier's representative to be present during the examination or processing.
- (4) The executing officer or an assisting officer may operate equipment already at the premises to examine or process a thing to determine whether it is a seizable item, if the officer believes on reasonable grounds that—
 - (a) the equipment is suitable for the examination or processing; and
 - (b) the examination or processing can be conducted without damage to the equipment or thing.

116P Use of electronic equipment at premises

- (1) An executing officer or an assisting officer may operate electronic equipment at the premises to access data (including data not held at the premises) if the officer believes on reasonable grounds that—
 - (a) the data may assist the officer in verifying—
 - (i) the registrable offender's personal details; or
 - (ii) if the offender is subject to an order under chapter 5A (Orders prohibiting offender conduct)—whether the offender has breached, or is likely to breach, the order; and
 - (b) the equipment can be operated without damaging it.
- (2) If the executing officer or assisting officer believes that any data accessed by operating the electronic equipment may assist the officer under subsection (1) (a), the officer may—
 - (a) copy the data to a storage device brought to the premises; or
 - (b) if the occupier of the premises agrees in writing—copy the data to a data storage device at the premises.
- (3) The executing officer or assisting officer may take the device from the premises.
- (4) The executing officer or assisting officer may do the following things if the officer finds that any material that may assist the officer under subsection (1) (a) is accessible using the equipment:
 - (a) seize the equipment and any data storage device;
 - (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents produced.

- (5) A police officer may seize equipment under subsection (4) (a) only if—
 - (a) it is not practicable to copy the data as mentioned in subsection (2) or put the material in documentary form as mentioned in subsection (4) (b); or
 - (b) possession of the equipment or material could be an offence.

116Q Order requiring registrable offender to assist with access to data etc

- (1) The chief police officer, a deputy chief police officer or a police officer of or above the rank of sergeant may apply to the Magistrates Court for an order requiring the registrable offender to provide any information or assistance that is reasonably necessary to allow the executing officer or an assisting officer to do any of the following:
 - (a) access data held in or accessible from electronic equipment that is on the premises;
 - (b) copy the data to a data storage device;
 - (c) convert the data into documentary form.
- (2) The court may make an order if satisfied on reasonable grounds that—
 - (a) the registrable offender has failed to provide the information or assistance; or
 - (b) evidential material in relation to an offence is held in or accessible from the equipment and subject to subsection (4), it is likely that the material would be admissible in a criminal proceeding.
- (3) A registrable offender commits an offence if the offender—
 - (a) is ordered to provide information or assistance under this section; and

(b) is reckless as to the requirement to provide information or assistance; and

(c) fails to provide the information or assistance as ordered.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (4) Any material obtained, directly or indirectly, because of accessing, copying or converting data under this section is not admissible in evidence against the registrable offender in a proceeding, other than a proceeding—
- (a) under this Act; or
 - (b) under the [Criminal Code](#), part 3.4 (False or misleading statements, information and documents).
- (5) The provisions of this part relating to the issue of entry and search warrants apply, with any necessary changes, to the making of an order under this section.

116R Damage etc to be minimised

- (1) In the exercise, or purported exercise of a function in relation to electronic equipment under section 116O, section 116P or section 116Q, a police officer must take all reasonable steps to ensure that the officer, and any person assisting who is not an officer, causes as little damage as practicable.
- (2) If the police officer or person assisting damages anything in the exercise or purported exercise of a function under section 116O, section 116P or section 116Q, the police officer or person assisting must give written notice of the particulars of the damage to the person the police officer or person assisting believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens on premises entered under this part in the absence of the occupier, the notice may be given by securing it in a conspicuous place on the premises.

116S Compensation

- (1) A person may claim reasonable compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function in relation to electronic equipment under section 116O, section 116P or section 116Q by a police officer or a person assisting who is not a police officer.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act or another territory law brought against the person making the claim for compensation.

Division 3.11.4 Seized things

116T Copies of seized things to be provided

- (1) If the occupier is present at the premises while an entry and search warrant is executed, the occupier may ask a police officer to give the occupier a copy of a seized thing or information that is—
 - (a) a document, film, computer file or other thing that can be readily copied; or
 - (b) a data storage device in which the information can be readily copied.
- (2) The police officer must give the occupier a copy of a seized thing or information as soon as practicable after the seizure.
- (3) However, the police officer is not required to give the occupier a copy of a seized thing or information if—
 - (a) the thing was seized under section 116P (Use of electronic equipment at premises); or
 - (b) possession by the occupier of the thing or information could be an offence.

116U Receipt for things seized

- (1) As soon as practicable after a thing is seized under this part, the executing officer or assisting officer must give the person from whom it was seized—
 - (a) a receipt for the thing; and
 - (b) a summary of the process by which things can be seized and returned under this part.
- (2) The receipt must include a description of the thing seized.
- (3) The summary must give the information that a person reasonably needs to understand this part, including—
 - (a) a description of the process for seizure, forfeiture, return and destruction; and
 - (b) if an order is made under section 116Q (Order requiring registrable offender to assist with access to data etc)—a description of that section.

116V Return or destruction of things seized

- (1) A police officer who has seized a thing under this part must take reasonable steps to return the thing to the person from whom it was seized, or to the owner if that person is not entitled to possess it, if—
 - (a) the reason for the thing's seizure no longer exists or the thing is not required to be produced in evidence in a proceeding; or
 - (b) the thing has been seized for more than 1 year, and no further period has been authorised under subsection (2).
- (2) A police officer of or above the rank of superintendent may authorise the keeping of a seized thing for a further period, if the officer is satisfied on reasonable grounds that the thing—
 - (a) is likely to be required to be produced in evidence in a future proceeding; or

- (b) has evidential value in relation to an ongoing inquiry.
- (3) On application by a police officer, the Magistrates Court may approve the destruction of a seized thing or data contained in a seized thing under this part if satisfied on reasonable grounds that—
 - (a) a registrable offender is refusing to assist an executing officer or assisting officer with information or assistance in relation to data contained in the seized thing and the officer has been unable to access the data within 30 days of seizing the thing; or
 - (b) a registrable offender has been assisting an executing officer or assisting officer but the data contained in the seized thing cannot be accessed by the officer; or
 - (c) the seized thing or data contained in the seized thing contains material that is likely to constitute an offence.
- (4) Before a seized thing is returned under subsection (1), a police officer must remove any material that possession of which would be an offence under this Act or another law.

116W Application for order disallowing seizure

- (1) A person claiming to be entitled to anything seized under this part may apply to a court for an order disallowing the seizure.
- (2) In deciding whether to make an order under this section, the court must consider whether—
 - (a) the applicant has a legal or equitable interest in the thing; and
 - (b) the thing has evidential value in relation to a prosecution, including—
 - (i) the seriousness of any charge or likely charge; and

- (ii) whether evidence about the thing can be presented without tendering the thing (for example, by tendering a photograph of the thing); and

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (c) the thing has been replaced; and
 - (d) the applicant or another person requires the thing for business purposes or for the generation of income; and
 - (e) the seizure of the thing will cause hardship to the applicant or another person; and
 - (f) the thing has sentimental value to the applicant or another person.
- (3) However, the court must not make an order if—
- (a) possession of the thing by the applicant or another person would be an offence; or
 - (b) it would be dangerous or unsafe for the applicant or another person to possess the thing; or
 - (c) the thing is the subject of an application under the [Confiscation of Criminal Assets Act 2003](#); or
 - (d) the thing may be seized or forfeited under another territory law.
- (4) If the court refuses to make an order disallowing the seizure under this section, the court may order that the thing be destroyed.

116X Forfeiture and disposal of seized things

- (1) This section applies if—
 - (a) a police officer is required to return a thing under section 116V or another territory law, but the officer cannot locate the person from whom it was seized or the owner after taking reasonable steps having regard to—
 - (i) the estimated value of the thing; and
 - (ii) whether the thing can be easily replaced; and
 - (iii) the period of time that police have been in possession of the thing; and
 - (iv) the resources likely to be required to locate the person; and
 - (v) whether the thing has sentimental value to the person; and
 - (b) an application for disallowance of the seizure under section 116W has not been made, or has been refused or withdrawn before a decision in relation to the application had been made.
- (2) The seized thing—
 - (a) is forfeited to the Territory; and
 - (b) may be sold, destroyed or otherwise disposed of.
- (3) However, a police officer must attempt to sell the thing before destroying or disposing of it, unless—
 - (a) possession of the thing would be an offence; or
 - (b) it would be dangerous or unsafe for a person to possess the thing; or
 - (c) selling the thing would likely require more resources than destroying or disposing of it.

- (4) The police officer may recover the costs of carrying out the sale from the proceeds of the sale.
- (5) If the seized thing is a computer, data may be removed and destroyed before the computer is sold, destroyed or otherwise disposed of.
- (6) The Minister may, in writing, authorise the chief police officer to keep a forfeited item without selling, destroying or otherwise disposing of it.

Division 3.11.5 Miscellaneous

116Y Offence—refusal of entry to premises

A person commits an offence if the person—

- (a) is required to allow an executing officer, assisting officer or person assisting who is not a police officer entry to premises under this part; and
- (b) refuses entry to the premises to the officer, assisting officer or person assisting.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

116Z Admissibility of evidence

Any material obtained, directly or indirectly, in the exercise of a function under this part (other than under section 116Q) in relation to a registrable offender is not admissible in evidence against the offender in a proceeding, other than a proceeding—

- (a) under this Act; or
- (b) in relation to a class 1 or class 2 offence; or
- (c) under the [Criminal Code](#), part 3.4 (False or misleading statements, information and documents).

22 New sections 122A to 122C

in chapter 4, insert

122A Order for removal of registrable offender—application by chief police officer

- (1) The chief police officer may apply to the Magistrates Court for an order that a registrable offender be removed from the child sex offenders register.
- (2) The court may make the order if satisfied on reasonable grounds that it would be inappropriate for the offender to remain on the register.
- (3) In making a decision under subsection (2), the court must consider—
 - (a) the severity of each offence that resulted in the offender being on the register; and
 - (b) the age of the offender at the time of each offence; and
 - (c) the level of harm to the victim and the community caused by each offence; and
 - (d) the period for which the offender has been included on the register; and
 - (e) compliance by the offender with any reporting and sentencing obligations; and
 - (f) any attempts at rehabilitation by the offender; and
 - (g) whether the offender poses a risk to the lives or sexual safety of 1 or more people or of the community; and
 - (h) any other circumstances that the court considers relevant.
- (4) The director of public prosecutions may appear in the court on behalf of the victim.

122B Notice to victim of proposed application for order

- (1) Before making an application under section 122A, the chief police officer must take reasonable steps to identify, and give notice of the proposed application to, each victim of the registrable offender.
- (2) A notice must include the following:
 - (a) an invitation for the victim, a person nominated by the victim, or a member of the victim's family to make a written submission to the chief police officer about the offender being removed from the register, including the likely effect on the victim or the victim's family;
 - (b) a statement that any submission made in writing to the chief police officer within the period stated in the notice will be considered in deciding whether to make an application under section 122A;
 - (c) information about the offender to assist the victim, nominee or family member to make a submission;

Example—information

the registrable offender's conduct while the offender has been included on the register

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (d) information about any assistance available to the victim, nominee or family member to make the submission.
- (3) For subsection (2) (b), the period stated must be a reasonable time (not less than 7 days after the day the victim is given the notice) to allow the victim, nominee or family member to make a written submission.

- (4) The notice may include anything else the chief police officer considers appropriate.
- (5) Before giving notice to a victim under this section, the chief police officer must consult with the victims of crime commissioner.

122C Order for removal of registrable offender who was young offender at time of offence—application by offender

- (1) This section applies to an offender who was—
 - (a) immediately before the commencement day, a registered offender on the child sex offenders register; and
 - (b) a young offender at the time a registrable offence was committed.
- (2) The offender may apply to the Magistrates Court for an order that the offender be removed from the child sex offenders register.
- (3) The offender may apply only once.
- (4) A copy of the application must be served on—
 - (a) the victims of crime commissioner; and
 - (b) the chief police officer; and
 - (c) the director of public prosecutions.

Note For how documents may be served, see the [Legislation Act](#), pt 19.5.

- (5) After receiving a copy of the application, the chief police officer must take reasonable steps to identify, and give notice of the application to, each victim of the registrable offender.

- (6) A notice must—
- (a) state that the victim, a person nominated by the victim, or a member of the victim’s family may make a written submission to the court about the offender being removed from the register, including the likely effect on the victim or the victim’s family; and
 - (b) include information about the offender to assist the victim, nominee or family member to make a submission; and

Example—information

the registrable offender’s conduct while the offender has been included on the register

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (c) include information about any assistance available to the victim, nominee or family member to make the submission.
- (7) Before giving notice to a victim under this section, the chief police officer must consult with the victims of crime commissioner.
- (8) The director of public prosecutions may appear in the court on behalf of the victim.
- (9) The court may make the order if satisfied on reasonable grounds that it would be inappropriate for the offender to remain on the register.
- (10) In making a decision under subsection (9), the court must consider—
- (a) the severity of each offence that resulted in the offender being on the register and the seriousness of the circumstances surrounding the commission of each offence; and
 - (b) the age of the offender at the time of each offence; and
 - (c) the level of harm to the victim and the community caused by each offence; and

- (d) any attempts at rehabilitation by the offender; and
 - (e) whether the offender poses a risk to the lives or sexual safety of 1 or more people or of the community; and
 - (f) any other circumstances that the court considers relevant.
- (11) The chief police officer must take all reasonable steps to give written notice of this section to each offender to whom this section applies not later than 1 month after the commencement day.
- (12) In this section:

commencement day means the day the *Crimes (Child Sex Offenders) Amendment Act 2015*, section 3 commences.

**23 Class 2 offences
Schedule 2, part 2.1**

omit

child pornography

substitute

child exploitation material

24 Schedule 2, part 2.2

omit

child pornography material

substitute

child exploitation material

25 Schedule 2, part 2.2

omit

child pornography

substitute

child exploitation material

26 Dictionary, definition of *child sex offender registration order*

substitute

child sex offender registration order, in relation to a person—see section 14.

27 Dictionary, new definitions

insert

entry and search warrant, for part 3.11—see section 116B.

executing officer, of an entry and search warrant, for part 3.11 (Entry and search warrants)—see section 116B.

occupier, of a premises, for part 3.11 (Entry and search warrants)—see section 116B.

28 Dictionary, definition of *offender's reporting month*

omit

29 Dictionary, new definitions

insert

offensive weapon, for part 3.11 (Entry and search warrants)—see the *Crimes Act 1900*, dictionary.

person assisting, in relation to an entry and search warrant, for part 3.11 (Entry and search warrants)—see section 116B.

premises, for part 3.11 (Entry and search warrants)—see section 116B.

previous offender, for div 2.2.3 (Orders for certain previous offenders)—see section 18A.

public official, for part 3.11 (Entry and search warrants)—see the [Criminal Code](#), section 300.

relevant time, for a report by a registrable offender in a year—see section 37 (5).

Schedule 1 Consequential amendments

Part 1.1 Crimes Act 1900

[1.1] Section 7A, note 1

omit

child pornography

substitute

child exploitation material

[1.2] Section 64 heading

substitute

64 Using child for production of child exploitation material etc

[1.3] Section 64 (1) (a) (i)

omit

child pornography

substitute

child exploitation material

[1.4] Section 64 (3) (a) (i)

omit

child pornography

substitute

child exploitation material

[1.5] Section 64 (5), definition of *child pornography*

substitute

child exploitation material means anything that represents—

- (a) the sexual parts of a child; or
- (b) a child engaged in an activity of a sexual nature; or
- (c) someone else engaged in an activity of a sexual nature in the presence of a child;

substantially for the sexual arousal or sexual gratification of someone other than the child.

[1.6] Section 64A heading

substitute

64A Trading in child exploitation material

[1.7] Section 64A (1)

omit

child pornography

substitute

child exploitation material

[1.8] Section 64A (2), definition of *child pornography*

substitute

child exploitation material—see section 64 (5).

[1.9] Section 65 heading

substitute

65 Possessing child exploitation material

[1.10] Section 65 (1) (b)

omit

child pornography

substitute

child exploitation material

[1.11] Section 65 (4), definition of *child pornography*

substitute

child exploitation material—see section 64 (5).

**Part 1.2 Crimes (Child Sex Offenders)
Regulation 2005**

[1.12] Sections 7 (c) and 8 (c)

substitute

- (c) by prepaid post to the following:
‘Registrar, ACT Child Sex Offender Registry
GPO Box 401
Canberra ACT 2601’.

[1.13] Section 9

substitute

9 How offender may report in an approved way—Act, s 63 (b)

A registrable offender may report in 1 of the following ways:

- (a) by telephoning 1800 031 722;
- (b) by email to csort@afp.gov.au;
- (c) by prepaid post to the following:
‘Registrar, ACT Child Sex Offender Registry
GPO Box 401
Canberra ACT 2601’.

[1.14] New section 16A (1) (q)

insert

- (q) an entity responsible for exercising a function or activity for an entity mentioned in paragraphs (a) to (p).

[1.15] Section 17

substitute

17 Verifying documentation or evidence to be provided in support of report—Act, s 137 (2) (a) (ii)

If a registrable offender is required under the Act to make a report that includes the offender’s personal details, the offender must provide the details required under the following table:

Table 17

column 1 item	column 2 provision of Act, s 59 (1), definition of <i>personal details</i>	column 3 verifying documentation or evidence
1	paragraph (a), (b) or (c)	a birth certificate
2	paragraph (a) or (b)	a document certifying a change of name
3	paragraph (d)	a utilities bill, contract of sale or lease
4	paragraph (f)	a payslip given to the offender in the last month
5	paragraph (g)	proof of membership
6	paragraph (h)	for each motor vehicle owner, or generally driven by, the offender— <ul style="list-style-type: none"> (a) if the vehicle is owned by the offender—the current vehicle registration certificate for the vehicle; or (b) if the vehicle is driven by the offender—a copy of the current vehicle registration certificate for the vehicle
7	paragraph (n)	an itinerary and any travel documents
8	paragraph (p) or (q)	<ul style="list-style-type: none"> (a) a copy of any contract between the offender and the service or provider; and (b) an invoice
9	paragraph (t)	the offender's passport

Part 1.3 Director of Public Prosecutions Act 1990

[1.16] New section 6 (1) (ia)

insert

- (ia) making applications for orders under the *Crimes (Child Sex Offenders) Act 2005*, chapter 5A, and conducting a proceeding for the application;

[1.17] Section 6 (1) (j)

omit

- (a) to (i)

substitute

- (a) to (ia)

Part 1.4 Ombudsman Act 1989

[1.18] New section 4C (ca)

insert

- (ca) to monitor compliance with the *Crimes (Child Sex Offenders) Act 2005*, part 3.11 (Entry and search warrants) by the chief police officer and other officers and people assisting in exercising functions under that part; and

[1.19] Section 17B

substitute

17B Police to give ombudsman reasonable assistance

- (1) The chief police officer, and other officers and people assisting in exercising functions under the *Crimes (Child Sex Offenders) Act 2005*, part 3.11 (Entry and search warrants) must give the ombudsman any assistance that the ombudsman reasonably requires to exercise the ombudsman's functions in relation to that part.
- (2) The chief police officer must ensure that police officers and other people authorised by the chief police officer to have access to the child sex offenders register give the ombudsman any assistance that the ombudsman reasonably requires to exercise the ombudsman's functions in relation to the *Crimes (Child Sex Offenders) Act 2005*, chapter 4 (Child sex offenders register).

[1.20] Section 17C (1)

before

chapter 4

insert

part 3.11 (Entry and search warrants) or

[1.21] New section 20A (1) (aa)

insert

- (aa) compliance with the *Crimes (Child Sex Offenders) Act 2005*, part 3.11 (Entry and search warrants) in the period to which the report relates by the chief police officer and other officers and people assisting in exercising functions under that part; and

Part 1.5 Prostitution Act 1992

[1.22] Schedule 1, item 26, column 3

omit

child pornography

substitute

child exploitation material

[1.23] Schedule 3, section 3.1 (1) (e)

substitute

(e) child exploitation material; or

Part 1.6 Supreme Court Act 1933

[1.24] Schedule 2, part 2.2, items 24 to 26, column 4

omit

child pornography

substitute

child exploitation material

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 13 August 2015.

2 Notification

Notified under the [Legislation Act](#) on 1 October 2015.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Crimes (Child Sex Offenders) Amendment Bill 2015, which was passed by the Legislative Assembly on 22 September 2015.

Acting Clerk of the Legislative Assembly

© Australian Capital Territory 2015