

2005

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

CRIMES (CHILD SEX OFFENDERS) BILL 2005

EXPLANATORY STATEMENT

Circulated with the authority of
Jon Stanhope MLA
Attorney General

General

The purpose of this Bill is to reduce the likelihood of offenders, who commit certain sexual offences against children, re-offending by requiring that they keep police informed of their whereabouts and other personal details for a period of time. The Bill also prevents registered child sex offenders working in child-related employment by making it an offence for them to apply for or engage in such employment.

By providing for the establishment of a Register of Sex Offenders, the Bill 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. In addition, the Bill empowers a sentencing court to order offenders who commit certain sexual offences against children to comply with reporting obligations.

The provisions of the Bill are explained below.

CHAPTER 1 - PRELIMINARY

The formal parts of the Bill are contained in **clauses 1 to 5**. This part sets out the name of the Bill, arrangements for commencement of the Bill and the application of the dictionary and notes to the Bill. **Clause 5** also outlines the operation of the *Criminal Code 2002* to the Bill.

The purpose and outline in **clause 6** provides a legislative statement of the fundamental reasons for the Bill. The paramount consideration under the Bill is to reduce the likelihood that offenders will reoffend.

Clause 7 defines the meaning of “finding of guilt” for the purposes of the Bill.

CHAPTER 2 – OFFENDERS TO WHOM ACT APPLIES

Division 2.1.1 – Who is a *registrable offender*?

Clause 8 defines a “registrable offender” for the purposes of the Bill.

Clause 9 outlines exceptions to who is a “registrable offender”.

Clause 10 defines the meaning of “registrable offence” for the purposes of the Bill.

Clause 11 sets out who is a “prescribed corresponding offender” for the purposes of the Bill.

Clause 12 provides that in determining who is a “registrable offender” it is irrelevant whether or not a person may begin, or has begun, an appeal for a finding of guilt, sentence, or sex offender registration order.

Clause 13 details when a person stops being a registrable offender.

Division 2.1.2 – Child sex offender registration orders

Clause 14 defines the meaning of “child sex offender registration order” for the purposes of the Bill.

Clause 15 sets out when a child sex offender registration order may be made and the reporting obligations of a person subject to such an order.

Clause 16 provides that a court may make a child sex offender registration order if satisfied that the person poses a risk to the sexual safety of one or more people in the community.

Clause 17 provides that the court may only make a child sex offender registration order concurrently with the imposition of a sentence.

Clause 18 provides that the court may make a child sex offender registration order only if an application for the order is made by the prosecution.

CHAPTER 3 – REPORTING

Part 3.1 – Definitions for ch 3

Clause 19 defines the meaning of “reporting obligation” for the purposes of the Bill.

Clause 20 details what is a “reporting offence” for the purposes of the Bill.

Part 3.2 – When initial report must be made

Division 3.2.1 – When registrable offender must make initial report of personal details

Clause 21 provides that an offender in the ACT at commencement of the Act must make an initial report of personal details.

Clause 22 provides that it is an offence if a registrable offender enters government custody in the ACT and stops being in government custody and does not take all reasonable steps to report to the Chief Police Officer within seven days after the offender stops being in government custody or if the offender leaves the ACT, within the seven days before leaving the ACT.

Clause 23 provides that it is an offence if a registrable offender is sentenced in the ACT for a registrable offence and does not take all reasonable steps to report to the Chief Police Officer after sentencing.

Clause 24 provides that it is an offence if a registrable offender enters government custody in the ACT and stops being in government custody in the ACT, and does not take all reasonable steps to report to the Chief Police Officer.

Clause 25 provides that it is an offence if a prescribed corresponding offender enters the ACT and remains in the ACT for seven or more consecutive days and does not take all reasonable steps to report to the Chief Police Officer.

Clause 26 provides for an exemption from the requirement to comply with reporting obligations if the registrable offender's reporting obligations are suspended because of a suspension order.

Clause 27 provides for an exemption from the requirement to comply with reporting obligations if the registrable offender is a protected registrable offender and has already reported to the Chief Police Officer in a way authorised by the Chief Police Officer.

Division 3.2.2 – When registrable offender must make new initial report of personal details

Clause 28 sets out the period within which a registrable offender, whose previous reporting obligations have ceased but who is then sentenced for a new registrable offence, must report to the Chief Police Officer.

Clause 29 sets out the period within which a registrable offender, whose previous reporting obligations have ceased but who later becomes a prescribed corresponding offender must report to the Chief Police Officer.

Clause 30 sets out the period within which a registrable offender, whose previous reporting obligations are suspended by an order, but who later re-offends, must report to the Chief Police Officer.

Clause 31 provides for an exemption from the requirement to comply with reporting obligations (outlined in the division), if the registrable offender's reporting obligations are suspended because of a suspension order.

Clause 32 provides for an exemption from the requirement to comply with reporting obligations, (outlined in the division), if the registrable offender is a protected registrable offender and has already reported to the Chief Police Officer in a way authorised by the Chief Police Officer.

Division 3.2.3 – People required to report under corresponding law

Clause 33 provides that a person required to report under a corresponding law who enters and remains in the ACT must take all reasonable steps to contact someone to report.

Clause 34 makes it an offence if a registrable offender who has at any time been previously required to report, enters the ACT and remains in the ACT for seven or more consecutive days and does not take all reasonable steps to make contact or report personal details to the Chief Police Officer.

Clause 35 provides an exception to the application of the division to a person if the person who enters and remains in the ACT has previously contacted a person in relation to that entry.

Clause 36 provides that clause 34 does not apply to registrable offender whose reporting obligations are suspended by a court order.

Part 3.3 – Ongoing reporting

Division 3.3.1 – Annual reporting

Clause 37 provides that a registrable offender must report his or her personal details annually to the Chief Police Officer. The provision also provides that if the offender has been in government custody since last reporting, the offender must also report to the Chief Police Officer the details of when and where that custody happened. A registrable offender must make the report by the end of the calendar month of the anniversary of the date of first reporting.

Clause 38 provides an exception from reporting obligations for a period during which the offender is in government custody.

Clause 39 provides for an exception from reporting obligations for a period during which the offender is outside the ACT.

Clause 40 provides for in cases where the offender's reporting obligations are suspended.

Clause 41 provides that it is sufficient compliance with the annual reporting requirements if the offender is a protected registrable offender and reports such of the required information as the Chief Police Officer requires at times and in a manner authorised by the Chief Police Officer.

Division 3.3.2 – Reporting of travel

Clause 42 provides that it is an offence for a registrable offender who has had a change to personal detail while in the ACT, to fail to take all reasonable steps to report the change to the Chief Police Officer within seven days after the change occurs.

Clause 43 provides that it is a defence to a prosecution under clause 42 if circumstances make it impracticable for the registrable offender to make the report at least seven days before leaving the ACT and the offender makes the report at least twenty-four hours before leaving the ACT.

Clause 44 provides that a registrable offender is not liable to be punished twice for failing to report travel.

Clause 45 provides that it is an offence for a registrable offender who is outside the ACT, and decides to stay outside the ACT but within Australia for seven or more days, and does not take all reasonable steps to report the offender's travel details to the Chief Police Officer within seven days after the day the decision is made.

Clause 46 provides that it is an offence for a registrable offender who is outside the ACT, and decides to change any of the travel plans given to the Chief Police officer and does not take all reasonable steps to report the change of plans to the Chief Police Officer within seven days after the day the decision is made.

Clause 47 requires an offender to report return to the ACT following a period of travel.

Clause 48 requires an offender who has previously reported travel details from the ACT, to report a decision not to leave the ACT.

Clause 49 requires an offender to report regular travel details.

Clause 50 provides that the division applies to a protected registrable offender.

Clause 51 provides that the division does not apply to a registrable offender if the offender is a protected registrable offender and makes the report when, where, and in a way approved by the Chief Police Officer.

Clause 52 provides that the division does not apply to a registrable offender if the offender is in government custody when the report is required to be made.

Clause 53 provides that the division does not apply to a registrable offender during any period when the offender's reporting obligations are suspended.

Division 3.3.3 – Other reporting

Clause 54 provides that a registrable offender commits an offence if any of the offender's personal details change while the offender is in the ACT and the offender does not take all reasonable steps to report the change (within seven days after the day the change happens) to Chief Police Officer.

Clause 55 provides that a registrable offender commits an offence if any of the offender's personal details change while the offender is outside the ACT and the offender enters the ACT and remains in the ACT for seven or more consecutive days, and does not take to take all reasonable steps to report the change to Chief Police Officer.

Clause 56 provides that a registrable offender commits an offence if the offender is in government custody for seven or more consecutive day, leaves government custody in the ACT, and does not take all reasonable steps to report the offender's personal details, in person, to the Chief Police Officer.

Clause 57 provides that the division does not apply to a registrable offender during any period when the offender’s reporting obligations are suspended.

Clause 58 provides that the division does not apply to a registrable offender if the offender is a protected registrable offender and makes the report when, where, and in a way approved by the Chief Police Officer.

Part 3.4 –Provisions applying to all report

Division 3.4.1 – What information is to be reported

Clause 59 lists the personal details that must be initially reported by the registrable offender.

Clause 60 defines the meaning of the concepts in clause 59.

Clause 61 defines when a person is said to be “employed” and an “employer”.

Clause 62 applies the provision in clause 59 to a protected registrable offender as if a reference to the ACT were a reference to the jurisdiction in which the offender generally lives.

Division 3.4.2 – How report is to be made

Clause 63 provides that a registrable offender makes a report in an “approved way” if the offender makes the report either in person or in any other way permitted by the regulations or by the Chief Police Officer.

Clause 64 defines an “approved reporting place”.

Clause 65 provides that a registrable offender who is a young offender is considered to have taken reasonable steps to make a report in person if another person (including for example, an accompanying parent or guardian of the child) makes the report on

the offender's behalf and the offender accompanies the person when the report is made.

Clause 66 provides that a registrable offender who has a disability that makes it impossible or impracticable for the offender to make a report is considered to have taken reasonable steps to make a report in person if another person (including for example, the offender's carer) makes the report on the offender's behalf.

Clause 67 allows for reports to the Chief Police Officer that are not made in person, to be prescribed by regulation.

Clause 68 provides that only a police officer may receive a report for the purpose of the division.

Clause 69 provides that a police officer receiving a report may arrange for an interpreter to be available.

Division 3.4.3 – Additional provisions for reports made in person

Clause 70 provides that it is an offence if a registrable offender who is required to make a report in person makes the report in person and does not take all reasonable steps to present for inspection identification, supporting documents and provide a photograph of the offender's head and a face of a kind suitable for use in an Australian passport.

Clause 71 provides that it is an offence if a person reporting in person for an offender does not take all reasonable steps to present for inspection his or her drivers licence or any other form of identification prescribed by regulation.

Clause 72 allows the police officer receiving a report to copy a document presented to the member as required under clauses 70 or 71.

Clause 73 provides that there is a right to privacy when reporting.

Clause 74 provides a right to have a support person when reporting.

Clause 75 sets out the power to take fingerprints to confirm the identity of a registrable offender.

Clause 76 provides that before a registrable offender's fingerprints are taken the police officer must tell the offender the reason for taking the fingerprints.

Clause 77 provides that a registrable offender commits an offence if he or she does not allow fingerprints to be taken.

Clause 78 enables photographs of a registrable offender to be taken by consent and outlines what cannot be photographed.

Clause 79 establishes a right to privacy when being photographed.

Clause 80 provides that a registrable offender who is to be photographed has a right to be accompanied by a support person or if the registrable offender is a young person, must be accompanied by either a person with parental responsibility for the young person or someone else who can represent the interests of the young person.

Division 3.4.4 – Report to be acknowledged

Clause 81 provides that receipt of information must be acknowledged, a copy of the acknowledgement must be retained, and the acknowledgement must be in writing, given to the person who made the report, and must include:

- the name and signature of the police officer or other person who received the report;
- the date, time and place where the report was received; and
- a copy of the information that was reported.

Division 3.4.5 – Keeping material for certain purposes

Clause 82 provides that the Chief Police Officer may during a registrable offender's reporting period retain for law enforcement, crime prevention, or child protection purposes copies of any documents, fingerprints, or photographs.

Part 3.5 – Reporting period

Clause 83 outlines when the reporting period for a registrable offender begins.

Clause 84 sets out a reporting period of 15 years for a single class 1 offence.

Clause 85 sets out a reporting period of eight years for a single class 2 offence.

Clause 86 sets out a reporting period of 15 years for 2 class 2 offences.

Clause 87 sets out a reporting period of life for multiple offences.

Clause 88 provides that a reference to clauses 84, 85, 86, and 87 includes an offence committed before the commencement of the division.

Clause 89 provides for a reduced reporting period of seven and a half years if a registrable offender was a young person when each registrable offence was committed. However, if the only registrable offence the offender (as a young person) has ever been found guilty of is a single class 2 offence, the offender's reporting period is four years.

Clause 90 provides that two or more offences arising from the same incident are to be treated as a single offence and two or more offences arising from the same incident are to be treated as a single class 1 offence if one or more of the offences is a class 1 offence.

Clause 91 sets out the reporting period for a person subject to a child sex offender registration order.

Clause 92 applies an extended reporting period if the registrable offender is on parole.

Clause 93 applies an extended reporting period for the time a registrable offender spends in government custody.

Clause 94 sets out the reporting obligations in respect of a prescribed corresponding offender.

Part 3.6 – Suspension of reporting obligations

Clause 95 provides that part 3.6 only applies to an offender with a lifelong reporting period.

Clause 96 provides that a registrable offender is eligible to apply for an order suspending the offender's reporting obligations only if 15 years have passed since the offender was last sentenced or released from government custody for a registrable offence or a corresponding registrable offence, and the offender did not become the subject of a life-long reporting period under a corresponding law while in a foreign jurisdiction before becoming the subject of a life-long reporting period in the ACT.

Clause 97 empowers the Supreme Court to make an order for suspension of reporting obligations.

Clause 98 provides that the Chief Police Officer is a party to the offender's application for suspension.

Clause 99 provides that the Supreme Court may not award costs in respect of an appeal to the court for suspension of reporting obligations.

Clause 100 provides that if the Supreme Court refuses to make a suspension order in relation to the registrable offender, the offender is not eligible to reapply for a suspension order for five years after the day of the refusal, unless the court otherwise orders when making the refusal.

Clause 101 sets out when a suspension order ceases to have effect and the circumstances in which it is revived.

Clause 102 sets out when a registrable offender may apply for a new suspension order in circumstances where a previous suspension order ceases to have effect.

Part 3.7 – Notice of reporting obligations

Clause 103 defines a “reporting obligations notice”.

Clause 104 provides when and by whom a written notice is to be given to a registrable offender setting out his or her reporting obligations and the consequences that may arise for failure to comply with those obligations.

Clause 105 provides that the Chief Police Officer may at any time give a registrable offender a reporting obligations notice.

Clause 106 provides that upon certain orders being made or sentences imposed a court must ensure that the details of the order or sentence in respect of a registrable offender are given to the Chief Police Officer as soon as practicable after the making or imposition of the order or sentence.

Clause 107 provides that where a registrable offender’s reporting period has changed since he or she was last notified, the Chief Police Officer must give written notice to the registrable offender as soon as practicable after the change.

Clause 108 requires the supervising authority to notify the Chief Police Officer of registrable offenders who stop being in government custody, under supervision, or subject to a community service or parole order.

Clause 109 provides that procedural defects do not affect offender’s obligations.

Part 3.8 – Protected witnesses

Clause 110 defines who is a “protected registrable offender”.

Clause 111 provides that in the case where a registrable offender is a participant in the witness protection program and stops being a participant in the program, the Chief Police Officer must declare the offender is either a protected registrable offender or not a protected registrable offender.

Clause 112 allows a registrable offender who is aggrieved by a decision of the Chief Police Officer in relation to the making of a declaration under clause 111 to apply in writing to the Chief Police Officer for a review of that decision.

Clause 113 provides that if the Chief Police Officer decides to confirm an unprotected registrable offender declaration under section 112, the notice of the decision must comply with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*.

Clause 114 provides for AAT review of the Chief Police Officer’s decision.

Clause 115 outlines when protected and unprotected registrable offender declarations take effect.

Part 3.9 – Reasonable steps to comply with reporting obligations

Clause 116 outlines those matters to which a court is to have regard in determining whether a person took all reasonable steps to comply with his or her reporting obligations.

CHAPTER 4 – CHILD SEX OFFENDERS REGISTER

Clause 117 provides for the establishment of a Child Sex Offenders Register.

Clause 118 sets out who may access and disclose information held in the Register.

Clause 119 restricts access to information about protected witnesses.

Clause 120 provides that it is an offence for an unauthorised person to access the sex offender register.

Clause 121 outlines the secrecy provisions relating to the disclosure of information in the register.

Clause 122 sets out the rights of a registrable offender to correct information, relevant to them, that is entered on the register.

CHAPTER 5 – REGISTERED OFFENDERS PROHIBITED FROM CHILD-RELATED EMPLOYMENT

Clause 123 defines “employment” in relation to the prohibition of registered sex offenders from child-related employment.

Clause 124 defines “child-related employment” in relation to the prohibition of registered sex offenders from employment that is child-related.

Clause 125 details when a person is “engaged” in child-related employment.

Clause 126 provides that a registered sex offender commits an offence if he or she applies for employment and the employment is child-related employment.

Clause 127 provides that a registered sex offender commits an offence if he or she engages in employment and the employment is child-related employment.

Clause 128 provides that a person commits an offence if the person is engaged in child-related employment, is charged with a registrable offence, and does not disclose the charge to his or her employer within seven days after the day the charge is filed.

Clause 129 provides that it is an offence for a person in child-related employment at commencement of the Act to not disclose charges to his or her employer.

Clause 130 provides that it is an offence for a person applying for employment to not disclose charges to his or her prospective employer.

Clause 131 provides that it is an offence for a person applying for child-related employment not to disclose charges pending at commencement of the Act to his or her prospective employer.

Clause 132 provides that a person commits an offence if the person gives information to someone else, whether directly or indirectly and the information was acquired by the person under clauses 127, 128, 129, or 130.

CHAPTER 6 – MISCELLANEOUS

Clause 133 grants the chief executive the power to approve forms for the Act.

Clause 134 provides for the exclusion of liability under the Bill in respect of certain persons.

Clause 135 provides that the fact that an offence in respect of which a registrable offender has been found guilty becomes spent, does not affect the status of the offence as a registrable offence for the purposes of the Bill or the reporting obligations of the registrable offender.

Clause 136 provides for the use of evidentiary certificate in proceedings under the Bill.

Clause 137 grants the Executive the power to make regulations for the Act.

CHAPTER 7 – CONSEQUENTIAL AMENDMENTS

Clause 138 consequentially amends the *Ombudsman Act 1989*.

Schedule 1 details the Class 1 offences against ACT legislation and against other legislation.

Schedule 2 details the Class 2 offences against ACT legislation and against other legislation.

Schedule 3 details the consequential amendments to the *Ombudsman Act 1989*.

End.