

Australian Capital Territory

# Crimes (Child Sex Offenders) Amendment Regulation 2012 (No 1)

Subordinate law SL2012–39

made under the

**Crimes (Child Sex Offenders) Act 2005, sections 118 and 137**

## EXPLANATORY STATEMENT

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### Outline

The Crimes (Child Sex Offenders) Amendment Regulation 2012 (No 1) amends the *Crimes (Child Sex Offenders) Regulation 2005* (the CSO Regulation).

The CSO Regulation is made under the *Crimes (Child Sex Offenders) Act 2005*. The CSO Regulation supports the *Crimes (Child Sex Offenders) Act 2005* by providing specific operational information. This information includes how registrable offenders are to report certain information to ACT Policing, the approved reporting places under the *Crimes (Child Sex Offenders) Act 2005* and the details that are to be included in a reporting obligations notice.

These amendments support the operation of the child sex offender monitoring scheme and the prohibition order scheme inserted by the *Crimes (Child Sex Offender) Amendment Act 2012*.

The amendments will update the address details for ACT Policing, will ensure that the corresponding legislative schemes in South Australia and Tasmania are recognised in the ACT and will allow information on the child sex offender register to be disclosed to the Commissioner for Fair Trading. The need for these amendments has arisen due to developments in jurisdictions outside the ACT, further legislative development in the ACT and changes to ACT Policing's reporting details.

This Regulation will support the operation of the *Working with Vulnerable People (Background Checking) Act 2011* and the child sex offender prohibition

order scheme as it will provide information sharing arrangements between the Chief Police Officer (CPO) and the Commissioner for Fair Trading.

The Regulation will prescribe the Commissioner for Fair Trading as a prescribed entity which will allow the CPO to disclose information, including information about prohibition orders, on the child sex offender register to the Commissioner of Fair Trading.

The prohibition order scheme allows the CPO to apply to the ACT Magistrates Court for an order to prohibit a registrable child sex offender from engaging in conduct that poses a risk to the lives or sexual safety of a child or children. Conduct that may be prohibited under an order includes associating with, or otherwise contacting, stated people or a stated kind of person and being in stated places or a stated kind of place.

### **Human Rights Considerations**

Amendments to reporting details for registrable offenders engage and support the right to liberty and security of the person (section 18, *Human Rights Act 2004*). It does this by providing clear guidance on how registrable offenders are to report to police including reporting personal and travel details.

Clause 7 engages and limits the right to privacy and reputation (section 12 *Human Rights Act 2004*). The human rights analysis for this provision appears under the summary of clause 7 below.

### **Summary of Clauses**

**Clause 1- Name of regulation-** this clause is a formal provision to set out the name of the regulation. The name of this regulation is the *Crimes (Child Sex Offenders) Amendment Regulation 2012 (No 1)*.

**Clause 2- Commencement-** this clause is a formal provision that provides the commencement date for this regulation. The regulation will commence on the day after it is notified.

**Clause 3- Legislation amended-** this is a technical clause stating that the regulation being amended is the *Crimes (Child Sex Offenders) Regulation 2005*.

**Clause 4- Section 7 (a) to (c) -** this clause substitutes a new email and postal address at section 7. Section 7 provides how a registrable offender may report their travel details to ACT Policing.

**Clause 5- Section 8 (a) to (c) –** this clause substitutes a new email and postal address at section 8. Section 8 provides how a registrable offender may report changes to their travel details.

**Clause 6- Section 10 (1) –** this clause updates the street address for the Woden Police Station.

**Clause 7- Section 16A (1) (o)** - this clause inserts section 16A (1) (o). This amendment to the regulation is made under section 118 of the *Crimes (Child Sex Offenders) Act 2005* (Access to child sex offenders register restricted). The section will include the Commissioner for Fair Trading exercising functions under the *Working with Vulnerable People (Background Checking) Act 2011* as an entity that is prescribed to receive personal information on the child sex offenders register under section 118 (1) (b) (i) of the *Crimes (Child Sex Offenders) Act 2005*.

### Human Rights Considerations

*The nature of the right affected (section 28 (2) (a))*  
Section 12 of the *Human Rights Act 2004* provides:  
everyone has the right-

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- (b) not to have his or her reputation unlawfully attacked.

As noted in the explanatory statement for the *Crimes (Child Sex Offenders) Amendment Act 2012*, the right to privacy and reputation has been described as protecting a broad range of personal interests that include physical or bodily integrity, personal identity and lifestyle (including sexuality and sexual orientation), reputation, family life, the home and home environment and correspondence (which encompasses all forms of communication).<sup>1</sup>

General comment 16 from the Office of the High Commissioner for Human Rights describes this right as the right of every person to be protected against arbitrary or unlawful interference with their privacy, family, home or correspondence as well as unlawful attacks against a person's honour and reputation. The comment notes that the term 'unlawful' means that no interference can take place except in cases envisaged by the law.<sup>2</sup>

The term 'arbitrary interference' is described by General comment 16 as intending to guarantee that even interference provided by law should be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances.<sup>3</sup>

Therefore, it is reasonable to suggest that a person's right to privacy can be interfered with, provided that the interference is provided by law and is reasonable in the circumstances.<sup>4</sup>

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<sup>1</sup> Lester, QC., Pannick QC (General editors), 2005, *Human Rights Law and Practice*, Second edition, LexisNexis UK, p.261.

<sup>2</sup> Office of the United Nations High Commissioner for Human Rights, Human Rights Committee, 1988 'General Comment No.16: the right to respect of privacy, family, home and correspondence, and protection of honour and reputation', para.3. Available: <http://www.unhchr.ch/tbs/doc.nsf/0/23378a8724595410c12563ed004aeeed>

<sup>3</sup> Ibid, para.4.

<sup>4</sup> Explanatory Statement for the *Crimes (Child Sex Offenders) Amendment Bill 2012*, page 9.

*The importance of the purpose of the limitation (section 28 (2) (b))*

The purpose of this provision is to allow the Chief Police Officer to disclose information on the child sex offenders register to the Commissioner for Fair Trading for the purposes of assessing the registered offender's suitability for registration under the *Working with Vulnerable People (Background Checking) Act 2011*.

*Nature and extent of the limitation (section 28 (2) (c))*

This amendment will limit a registrable offender's right to privacy because it will allow the CPO to disclose information on the child sex offenders register, including the existence of a prohibition order and the contents of the prohibition order, to the Commissioner for Fair Trading.

*Relationship between the limitation and its purpose (section 28 (2) (d))*

The purpose of this amendment is to ensure that the Commissioner for Fair Trading considers the existence of a prohibition order or other relevant information on the child sex offenders register when assessing an application of a registered offender for registration under the *Working with Vulnerable People (Background Checking) Act 2011*.

*Any less restrictive means reasonably available to achieve the purpose (section 28 (2) (e))*

This provision will ensure that the Commissioner for Fair Trading is provided with information that is critical for an assessment of a registered offender under the *Working with Vulnerable People (Background Checking) Act 2011*. There is no less restrictive means of achieving this purpose.

**Clause 8- New section 18 (da) and (db)** - this clause will include a child sex offender registration order under South Australia's *Child Sex Offenders Registration Act 2006* and offender reporting orders under Tasmania's *Community Protection (Offender Reporting) Act 2005* as corresponding child sex offender registration orders.

**Clause 9- New section 19 (da) and (db)** - this clause will include the *Child Sex Offenders Registration Act 2006* (SA) and the *Community Protection (Offender Reporting) Act 2005* (TAS) as corresponding laws.