2015

THE LEGISLATIVE ASSEMBLY FOR THE

AUSTRALIAN CAPITAL TERRITORY

CRIMES (CHILD SEX OFFENDERS) AMENDMENT BILL 2015

REVISED EXPLANATORY STATEMENT

Presented by
Simon Corbell MLA
Attorney-General

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

Crimes (Child Sex Offenders) Amendment Bill 2015

Outline

The Crimes (Child Sex Offenders) Amendment Bill 2015 (the Bill) amends the *Crimes (Child Sex Offenders) Act 2005* (the CSO Act) and the *Crimes (Child Sex Offenders) Regulation 2005* (the CSO Regulation) and makes a number of consequential amendments to ACT legislation.

The purpose of the CSO Act is to reduce the likelihood of convicted child sex offenders re-offending, and to facilitate the investigation and prosecution of future offences that they may commit by requiring them to keep police informed of their whereabouts and other personal details for a period of time. The purpose is also to prevent registrable child sex offenders from working in child related employment and prohibit registrable offenders from engaging in conduct that poses a risk to the lives or sexual safety of children.

To achieve this, chapter 4 of the CSO Act establishes the Child Sex Offenders Register (the Register) that requires certain offenders who are, or have been, sentenced for registrable offences to report specified details to police for inclusion in the Register. These offenders must then report to police annually. If there is a change in an offender's personal details, these changes must also be reported to police. The Register is established and maintained by the Chief Police Officer (CPO).

Chapter 4 of the CSO Act also regulates who can access the Register and for what purpose the information contained on the Register can be disclosed. Section 118 of the CSO Act provides that the personal information in the Register can only be accessed by a person authorised by the CPO or under a regulation, for law enforcement functions or activities, and can only be provided to an entity prescribed by regulation.

The amendments contained in the Bill fall into six broad categories – amendments to introduce entry and search powers (including access to encrypted information on an electronic device) in relation to registrable offenders; amendments to provide a power for the CPO to apply for the registration of a certain previous offender; amendments to provide a power for the CPO to apply to remove an offender from the Register in limited circumstances; amendments to allow a young offender to apply to a sentencing court to not be registered; amendments to provide powers for the CPO to issue public notices about registrable offenders in limited circumstances; and 'general amendments' to streamline administration of the Register. The Bill makes amendments to address issues raised by ACT Policing relating to the operation of the Register, the ACT experience of child sex offending issues, and matters arising from national discussions about the best way to effectively monitor of child sex offenders, including:

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

- the introduction of police powers of entry and search based on a specialised warrant application, to verify personal details reported by a registrable child sex offender or their compliance with a prohibition order;
- the introduction of powers allowing police to request a registrable offender's details relating to encrypted information (including passwords and other access details) under an entry and search warrant;
- new offences punishable by five years imprisonment and/or 500 penalty units where an offender does not comply with entry and search warrant conditions;
- providing a power for the CPO to apply to a court for the registration of certain previous offender;
- introducing a power for the CPO, in limited circumstances, to issue a public notice with the name, description and photograph of a registrable offender;
- amending section 37 of the CSO Act (Offence—offender must report annually) to:
    - change the fault element for failing to report; and
    - allow reporting of changes in personal details rather than reporting of each individual personal detail;
- allowing, in limited circumstances:
    - the CPO to apply to the court to remove a registrable offender from the register; and
    - a young offender to apply to a sentencing court to not be registered;
- amending section 59(1)(h) of the CSO Act to require the reporting of modifications to a vehicle owned or driven by a registrable offender and removing s 9 of the CSO Regulation for clarity;
- clarifying that reporting requirements include a requirement to report that certain activities, such as employment, have ceased;
- introducing provisions to provide that a police officer may order that photographs be taken of a registrable offender in certain circumstances;
- a new offence punishable by five years imprisonment and/or 500 penalty units where an offender does not comply with a police order to be photographed;
- amending section 17 of the CSO Regulation to prescribe relevant documents for the purpose of verifying or supporting details provided during a report;
- amending sections 7 and 8 of the CSO Regulation to reflect updated reporting requirements;
- prescribing an approved way of reporting for the purposes of section 64 of the CSO Act; and

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

- amending other legislation to ensure that all references to ‘child pornography’ read ‘child exploitation material.

These proposals were subject to consultation with a broad range of stakeholders, including via public submissions, private briefings with key stakeholders, discussions with subject matter experts, and ongoing discussions with ACT Policing and the Human Rights Commission about operational and human rights issues.

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

Purpose of the Bill

Background

The primary rationale for the introduction of the amendments in this Bill is to enhance ACT Policing's ability to protect the lives and sexual safety of children in the ACT.

As outlined in the Explanatory Statement to the *Crimes (Child Sex Offenders) Amendment Act 2012*, this rationale aligns with the *Convention on the Rights of the Child* (CROC) which was adopted by the United Nations General Assembly in November 1989 and ratified by Australia in December 1990. Two articles in the CROC are directly relevant to the purposes of the CSO Act - article 3 states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration, and article 34 states that parties shall undertake to protect children from all forms of sexual exploitation and sexual abuse. The proposed amendments support these articles as they support the overarching objective of protecting the lives and sexual safety of children in the ACT.

The amendments in this Bill build on the commitment outlined in the 2012 amendments to supporting the 'doctrine of positive obligations' which has been discussed in European human rights jurisprudence and defined as the responsibility of governments to undertake measures to protect their citizens. This encompasses the notion that governments not only have the responsibility to ensure that human rights are free from violation, but that governments are required to provide for the full enjoyment of rights[1]. This doctrine has been interpreted as requiring states to put in place legislative and administrative frameworks designed to deter conduct that infringes human rights and to undertake operational measures to protect an individual who is at risk of suffering treatment that would infringe their rights[2].

In the context of the proposed amendments, these positive obligations apply to children and their families in the ACT, to the broader community, to registrable child sex offenders and to members of ACT Policing who monitor and enforce the obligations under the CSO Act and the registration scheme. The amendments protect the rights and interests of these groups within the Territory's human rights scheme.

The purpose of this Bill is to address a number of matters raised during national and international discussions and issues raised by ACT Policing relating to child sex offender laws in the ACT, with a specific focus on the operation and administration of the Register.

For example, the efficacy of the available tools to monitor sex offenders has recently been the subject of ongoing national discussion. At the Law, Crime and Community Safety Council

[1] Colvin, M & Cooper, J, 2009 'Human Rights in the Investigation and Prosecution of Crime' Oxford University Press, p. 424-425.

[2] Ibid, p.425.

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

meeting of 3 October 2014 Ministers agreed not to support a proposal to publish a national public register including the personal details of all convicted sex offenders.

This is because available empirical evidence demonstrates that public registers are largely ineffective to prevent child sex offences and other sex offences. Megan's Law, an amendment to a series of laws passed in the United States, was introduced to initiate compulsory "community notification" by providing public access to information about convicted sex offenders. While the laws aim to improve community safety by increasing community awareness of sex offenders considered to be at risk of reoffending, Megan's Law has not had any demonstrable effect in reducing sexual re-offending, the type of sexual re-offence or first time sexual offence, and has not reduced the number of victims involved in sexual offences[3].

In addition, since the CSO Act was notified on 29 June 2005, ACT Policing and their counterparts in other Australian jurisdictions have had the opportunity to assess the effectiveness of their registration schemes in the context of work on the Australian National Child Offender Register, and with the benefit of information about operational experience in their local contexts. This has resulted in some jurisdictions making amendments to their child sex offender laws to address monitoring and reporting issues unique to them.

These conversations have provided ACT Policing with the opportunity to assess the effectiveness of the ACT legislative scheme and identify potential amendments that would support their efforts to ensure and maintain the safety of children in the ACT. They have also offered policy makers and legislators in the ACT crucial information and tools about how best to ensure that the purposes of the CSO Act are being met.

The last substantive amendments to the CSO Act were made in 2012 by the *Crimes (Child Sex Offenders) Amendment Act 2012* (the 2012 Act). These amendments introduced a new prohibition order scheme into chapter 5A of the CSO Act which provides a power to prohibit some registrable offenders, in certain circumstances, from engaging in certain conduct for a period of time. The 2012 Act also made a number of 'general amendments', including inserting offence provisions relating to reporting requirements and contravention of conditions.

Previously, amendments to ACT's child sex offender laws have ensured consistency with the schemes across all Australian jurisdictions. Although the reforms outlined in this Bill are tailored to the ACT experience of child sex offence issues, they will not affect the overall integrity of the national scheme in relation to child sex offender laws. This approach recognises that although it is important that public policy initiatives to prevent or respond to child sexual abuse (or both) are based on the available evidence about child sex offenders, the profiles that characterise this cohort of offenders are varied and non-homogenous[4]. It also

[3] Farkas, M and Stichman, A (2002) "Sex Offender Laws: Can Treatment, Punishment, Incapacitation, and Public Safety be Reconciled?" *Criminal Justice Review, Vol. 27, No. 2*, Autumn 2002, pp. 256-283.

[4] Richards, K 'Misperceptions about child sex offenders' *Trends and Issues in Crime and Criminal*

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

recognises that child sex offender registration is one aspect of monitoring and law enforcement and that there are a broad range of child protection measures that can be adopted by governments.

A picture of child sex offending

Sexual offending against children is a complex issue that needs to be explored in greater detail, but there is evidence to suggest that both predation and opportunity play a role in child sexual offences[5]. For example, research indicates that opportunity (situational and environmental factors) can play a key role in the commission of sexual offences against children. One study of child sex offenders found that there was a low incidence (less than one-quarter) of chronic sexual offending, a low incidence of stranger abuse (94 per cent abused their own child or a child who they already knew), and a low incidence (approximately 10 per cent) of child pornography use[6].

It is also well documented in international and Australian studies that most child sex offenders are known to their victims. The Australian Bureau of Statistics' (2005) *Personal Safety Survey* indicated that of those who reported having been victimised sexually before the age of 15 years, 11.1 per cent were victimised by a stranger[7]. More commonly, child sexual offences were committed by a relative (primarily male), a family friend, an acquaintance or neighbour, or another known person. However, it should be noted that male children are abused by strangers at a much higher rate than female children (18.3 per cent for males, 8.6 per cent for females)[8].

The incidence and prevalence of child sexual abuse are difficult to quantify as the offences are often underreported and difficult to investigate[9]. The rate of recidivism of offenders is also difficult to measure and researchers use different definitions and methodologies to determine the rates they calculate, which are not necessarily comparable (rates of re-conviction, or re-arrest, or self-reported re-offending can be used)[10]. Problems are caused by the period of time over which recidivism is measured, and that the definition of child sex offender in the studies includes a diverse range of offenders with diverse motivations[11].

Justice, issue number 429, Australian Institute of Criminology, September 2011.

[5] Ibid page 2.

[6] Ibid page 2.

[7] Ibid page 3.

[8] Ibid page 3.

[9] Stephen Smallbone, William Marshall and Richard Wortley, *Preventing Child Sexual Abuse: Evidence, Policy and Practice* (Willan Publishing, 2008) 20.

[10] Richards above, n 4 in Victorian Law Reform Commission, 'Sex offenders registration', Final Report 2012, 4.42 page 52.

[11] Richards above, n 4 foreword, pages 4-5.

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

Despite these difficulties, criminological literature indicates that child sex offenders have low rates of recidivism compared with other types of offenders[12]. Studies have shown that most serious violent and sexual criminals do not have previous convictions for violent or sexual offences and are not reconvicted for violent and sexual offending[13].

Further, the diverse range of offenders and varied motivations also impact on the study results, which show that some subgroups of child sex offenders also have higher rates of recidivism than others. For example, for those who target male victims outside of their family, reoffending in the long term is far more likely than for child sex offenders who target female and/or family member victims[14].

However, the public and media often present child sex offenders as recidivists who will almost certainly reoffend. The research shows that the community overestimates the actual rate of recidivism for child sex offenders and indicates that generally child sex offenders are in fact less likely to reoffend than many other types of offenders[15].

The research suggests '...legislative responses to the risk that a sex offender will re-offend should be responsive to different levels of risk and not be based on the common assumption that recidivism is inevitable in all cases'[16]. Research also shows that 'registration does reduce sexual offending by registered sex offenders against people who are close to them, but not strangers'[17].

In an overwhelming majority of cases, victims of child sexual abuse are either family members or are known to their offender. As most sex offending against children occurs in families, the research also indicates that community notification laws fail to impact significantly on the problem of child abuse. The research indicates that community notification laws may prevent victims from reporting abuse, can have prejudicial impacts on criminal trials and can place burdens on courts by reducing guilty pleas.

---

[12] Ibid.

[13] Karen Gelb, *Recidivism of Sex Offenders* (Sentencing Advisory Council, 2007) 4 in Victorian Law Reform Commission, 'Sex offenders registration', Final Report 2012, 4.41 page 52.

[14] Richards above, n 4 foreword, pages 4-5.

[15] Sample, L and Bray, T (2006) "Are Sex Offenders Different? An Examination of Rearrest Patterns", *Criminal Justice Policy Review*, Vol. 17, No. 1, pp. 83 - 102.

[16] Victorian Law Reform Commission, 'Sex offenders registration', Final Report 2012, 4.48 page 53.

[17] J J Prescott and Jonah E Rockoff, 'Do Sex Offender Registration and Notification Laws Affect Criminal Behaviour?' (2011) 54(1) *Journal of Law and Economics* 161,163 in Victorian Law Reform Commission, 'Sex offenders registration', Final Report 2012, 4.62 page 55.

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

Purpose of the amendments

The amendments in this Bill have been developed based on experiences of monitoring offenders and administering the Register in the ACT, and with reference to the information outlined above about the nature and prevalence of child sex offending.

As previously mentioned, the amendments contained in the Bill fall into six broad categories – amendments to:

- introduce entry and search powers (including access to encrypted information on an electronic device) in relation to registrable offenders;
- provide a power for the CPO to apply for the registration of a certain previous offender;
- provide a power for the CPO to apply to remove an offender from the Register in limited circumstances,
- allow a young offender to apply to a sentencing court to not be registered;
- provide powers for the CPO to issue public notices in limited circumstances; and
- make 'general amendments' to streamline administration of the Register.

The purpose of the amendments to introduce entry and search powers (including access to encrypted information on an electronic device) in relation to registrable offenders is to ensure that ACT Policing can verify the personal details reported by registrable child sex offenders, and confirm compliance with prohibition order conditions where applicable. This practical amendment will enhance ACT Policing's ability to monitor registrable offenders and provide a further significant protection for the lives and sexual safety of children in the ACT. These amendments support the purpose at section 6 (1) (a) (i) and (ii) to reduce the likelihood of reoffending and facilitate the investigation and prosecution of future offences that registrable offenders may commit. The amendments also support the purpose of prohibiting registrable offenders from engaging in conduct that poses a risk to the lives or sexual safety of children (CSO Act s 6 (1) (c)).

The purpose of the amendment to provide a power for the CPO to apply for the registration of a certain previous offender is to allow ACT Policing to address the situation where a person has convictions for child sex offences prior to the establishment of the register in the ACT, and there is strong evidence that the person continues to pose a broad risk to children. Where there is not enough intelligence to make a further conviction that could lead to the person becoming a registrable offender ACT Policing currently has no ability to monitor the person. The introduction of this power will support the purpose of reducing the likelihood that the person will reoffend and prohibiting conduct that poses a risk to the lives or sexual safety of children (CSO Act s 6 (1) (a) (ii) and (c)).

The amendment providing the power for the CPO to apply to remove an offender from the Register in limited circumstances will support the purposes outlined in section 6 of the CSO Act by ensuring that those offenders who are assessed as no longer likely to reoffend or

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

engage in conduct that poses a risk to the lives or sexual safety of children are no longer required to report. As a result, ACT Policing will better use existing resources to monitor those registrable offenders who continue to present a risk to the community. Similarly, the purpose of the amendments to allow a young offender to apply to a sentencing court to not be registered is to ensure that registration is consistent with the intent of the legislative scheme, and is sensible and consistent with rights. When sentencing a young offender for an offence that deems them a registrable offender, the circumstances of the offending often indicate that an ongoing risk is non-existent. This purpose of this provision is to recognise that registration may not be appropriate in all circumstances.

The purpose of the amendment to provide the CPO with a power to issue public notices with the name, photograph and a description of a registrable offender in limited circumstances is to ensure that registrable offenders who are avoiding their reporting obligations and pose a threat to the community are quickly located. This will enhance ACT Policing's ability to monitor registrable offenders and ensure that the safety of children and the community is maintained. This amendment will support the purposes of reducing the likelihood of a registrable offender reoffending and facilitating the investigation and prosecution of any future offences that the registrable offender may commit.

The primary purpose of the general amendments is to provide ACT Policing with modern tools to monitor registrable child sex offenders and to ensure the safety of children and the community. The general amendments will also ensure that the CSO Act distinguishes the nature of monitoring and administration activities in the ACT where appropriate and provide ACT Policing with administrative efficiencies where possible.

Human rights considerations – overview

The amendments made in this Bill have been carefully considered in the context of the purposes of the CSO Act. Specific attention was given to the overarching objective of protecting the lives and sexual safety of children in the ACT, and also to balancing the rights and interests of children, the community and offenders within the Territory's human rights scheme.

The purposes of the CSO Act are described at section 6 of the Act. The purposes are to:

- reduce the likelihood that certain offenders who commit sexual offences against children will reoffend;
- facilitate the investigation and prosecution of future offences that these offenders may commit;
- prevent registrable offenders from working in child related employment; and
- prohibit registrable offenders from engaging in conduct that poses a risk to the lives or sexual safety of children.

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

In order to achieve these purposes the Bill engages a number of the rights in the ACT's *Human Rights Act 2004* (the HR Act). The amendments outlined in the Bill provide a good example of the importance of balancing the human rights of a person affected by changes in the law against the rights and interests of the community to protect children from sexual assault and violence.

This Bill engages, and places limitations on, the following HR Act rights:

- section 8 - Recognition and equality before the law;
- section 11- Protection of family and children;
- section 12- Privacy and reputation;
- section 13- Freedom of movement;
- section 15- Peaceful assembly and freedom of association;
- section 16- Freedom of expression;
- section 18- Right to liberty and security of person;
- section 21- Fair trial;
- section 22- Rights in criminal process; and
- section 25- Retrospective criminal laws.

The Bill also engages, and supports, the following HR Act rights:

- section 11- Protection of family and children;
- section 12- Privacy and reputation;
- section 18- Right to liberty and security of person; and
- section 21- Fair trial.

Any engagement with these rights needs to be carefully considered with section 28 of the HR Act in mind to determine whether the engagement is proportionate and can be demonstrably justified in a free and democratic society, and the least restrictive means available to achieve the purposes of protecting the human rights of children and young people and their families.

As noted in the background section of this explanatory statement, the amendments in the Bill have also been developed in line with the 'doctrine of positive obligations' which encompasses the notion that governments not only have the responsibility to ensure that human rights are free from violation, but that governments are required to provide for the full enjoyment of rights[18]. Consideration of this responsibility supports the positive protection of the right of children, families, and the community to enjoy their human rights and supports the right to the protection of family and children and the right to liberty and security of person (HR Act, ss 11 and 18).

[18] Colvin, M & Cooper, J, above n 1, p. 424-425.

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

Limitations on human rights - section 28 (2) of the HR Act
The preamble to the HR Act notes that although human rights are necessary for individuals to live lives of dignity and value, few rights are absolute. However, they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society.

Section 28 (2) of the HR Act provides the framework that is used to determine the acceptable limitations that may be placed on human rights in the Territory. Section 28 requires that any limitation on a fundamental right must be authorised by a Territory law, be based on evidence, and be reasonable to achieve a legitimate aim. Whether a limitation is reasonable depends on whether it is proportionate. Proportionality requires that a limitation is necessary and rationally connected to the objective; the least restrictive in order to accomplish the object; and not have a disproportionately severe effect on the person to whom it applies.[19]

The Government acknowledges that the amendments in the Bill engage and limit the human rights of a section of the ACT community - namely registrable offenders. However, the Government believes that limitations are proportionate and justified in the circumstances because limits are the least restrictive means available to achieve the purpose and to protect the human rights of others – children and young people and their families. This view is based on the section 28 (2) analysis on the limitations for each human right that the Bill engages in the detail stage below.

Although greater analysis on the engagement of each human right is provided under the specific provisions, a number of the amendments in the Bill engage the section 8 right to recognition and equality before the law, section 12 right to privacy and reputation, section 18 right to liberty and security of the person, and section 22(2)(i) right to not self-incriminate. This warrants a general discussion of these rights.

Section 8- Recognition and equality before the law
Section 8 of the HR Act provides:

> (1) Everyone has the right to recognition as a person before the law.
> (2) Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.
> (3) Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.

The nature of the right affected (s 28 (2) (a))
The entry and search warrant provisions, amendments introducing the power to apply to register a certain previous offender and to issue a public notice, amendments to the fault

[19] *Human Rights Act 2004* Explanatory Statement page 4 http://www.legislation.act.gov.au/es/db_8294/20031120-9669/pdf/db_8294.pdf.

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

element for failing to report annually, and the amendment to provide a power for a police officer to photograph an offender engage section 8 of the HR Act because they only apply to a particular category of people. The limitations imposed by these provisions apply only to registrable offenders and certain previous offenders, and therefore limit the right of that group of people to enjoy their human rights without distinction or discrimination.

The right to equality and non-discrimination is a fundamental human right that is essential to the protection and respect of all human rights. In the context of policy and legislation development, equality before the law means that public officials and members of the judiciary must not act in a discriminatory way when enforcing the law. The right to equal protection of the law prohibits discrimination in law or in practice in any field regulated by public authorities.

Section 8 of the HR Act is based on article 26 of the *International Covenant on Civil and Political Rights* (ICCPR) which provides for the 'right to equality before the law'. The Office of the High Commissioner for Human Rights (UNHRC) has highlighted the importance of this provision in General Comment 18, stating that 'non-discrimination, together with equality before the law...constitute a basic and general principle relating to the protection of human rights'[20].

However, the committee also observes that:

> *'not every differentiation of treatment will constitute discrimination, if the criteria for such discrimination are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant'*[21].

Human rights law recognises that formal equality can lead to unequal outcomes, and that sometimes to achieve substantive equality differences in treatment may be necessary[22]. It also recognises that not every difference of treatment amounts to discrimination[23].

Any restrictions to registrable offenders' rights to equality before the law must be balanced with children's rights to equality and protection from torture and cruel, inhuman or degrading treatment. In addition, restrictions to the right to equality are permitted provided the

---

[20] Office of the United Nations High Commissioner for Human Rights, Human Rights Committee, 1989 'General Comment No.18, 'Non-discrimination' para 1. Available: http://ccprcentre.org/doc/ICCPR/General%20Comments/HRI.GEN.1.Rev.9(Vol.I)_(GC18)_en.pdf.

[21] Ibid, para 14.

[22] General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures; *Broeks v. the Netherlands*, (172/1984), Human Rights Committee, 9 April 1987, 2 Sel. Dec.196; Australian Human Rights Commission, *Guide to the Law – Special Measures* https://www.humanrights.gov.au/guide-law-special-measures

[23] Ibid.

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

distinction is reasonable and objective, and is designed to achieve a legitimate purpose: it will not infringe section 8[24].

In this case, the restrictions are clearly defined, reasonable and objective and are designed to achieve the purpose of ensuring the protection of children and young people.

In addition, while section 7 (1) (o) of the *Discrimination Act 1991* prohibits discrimination on the ground of a spent conviction, section 8 (2) provides that a person does not discriminate if the condition or requirement imposed on a person is reasonable in the circumstances.

The importance of the purpose of the limitation (s 28 (2) (b))
Please refer to the purpose section (p 3-5) for a detailed discussion on the broad purposes of this Bill. As discussed above, the limitations on the section 8 rights are important for the protection of children and minimising the incidence of reoffending by registrable offenders.

Nature and extent of the limitation (s 28 (2) (c))
The entry and search warrant provisions only apply to registrable offenders where they obstruct the verification of reporting details or compliance checking relating to prohibition orders in chapter 5A of the CSO Act. Similarly, the amendments introducing the power to apply to register a certain previous offender will only be available where the CPO believes on reasonable grounds that the person is a previous offender and poses a risk to the lives or sexual safety of 1 or more people or of the community. Accordingly, the limitation by these amendments on the section 8 right is restricted.

The amendments providing the power to issue a public notice, to change the fault element for failing to report annually, and to provide a power for a police officer to photograph a registrable offender, will enhance existing powers in the CSO Act and therefore will apply to all registrable offenders.

Relationship between the limitation and its purpose (s 28 (2) (d))
The purpose of the amendments is to enhance ACT Policing's abilities to protect the lives and sexual safety of children.

The entry and search warrant provisions will allow ACT Policing to monitor compliance with reporting obligations and protect children in circumstances where the registrable offender may have engaged in concerning conduct.

The amendment to introduce a power for the CPO to apply to register a certain previous offender will allow ACT Policing to reduce the likelihood of reoffending where there is strong evidence that the person continues to pose a broad risk to children and should be subject to reporting obligations and ongoing monitoring.

---

[24] *Broeks v. the Netherlands*, (172/1984), Human Rights Committee, 9 April 1987, 2 Sel. Dec.196; *Zwaan-de Vries v. the Netherlands*, (182/1984), Human Rights Committee, 9 April 1987, 2 Sel. Dec. 209; Human Rights Committee General Comment 18, para 13.

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

The introduction of the power for the CPO to issue public notices in limited circumstances will ensure that ACT Policing can effectively monitor registrable offender activities and ensure that a registrable offender who is not meeting their reporting obligations is located, maintaining the safety of children and the community. Similarly, the amendments to change the fault element for failing to report annually, and to provide a power for a police officer to photograph a registrable offender, augment existing monitoring powers in the CSO Act and increase ACT Policing's ability to protect the lives and sexual safety of children in the Territory.

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

The ACT Government has concluded that, in balancing the respective rights of children and their families and registrable offenders, these amendments do not unreasonably or unnecessarily infringe on the human rights of convicted child sex offenders. This is because the ACT's children are entitled to the protection needed by the child because of being a child, without distinction or discrimination[25], and because there is a rational connection between the proposed amendments and the issues that they aim to combat.

Without these amendments, police are limited in the steps they can take with respect to verifying the personal details that have been reported by a registrable offender and compliance with any active prohibition order. Currently, where a registrable offender refuses access to premises for the purposes of confirming compliance with these obligations, their conduct does not attract a significant criminal sanction and may not provide sufficient evidence to apply for a search warrant under section 194 of the *Crimes Act 1900.* Accordingly, police are limited in their powers to respond to the concerning conduct of registrable child sex offenders in these circumstances.

Additionally, without the amendments to introduce a power to apply to register a certain previous offender, to issue a public notice, to change the fault element for failing to report annually, and to provide police with the power to photograph a registrable offender, there are restrictions on the steps that ACT Policing can take to monitor registrable offenders and reduce the likelihood of any reoffending. For example, due to the privacy limitations on releasing offender details, if a registrable offender fails to report and cannot be located, ACT Policing cannot seek community assistance to locate the person. This poses a risk to the lives and sexual safety of children and restricts ACT Policing's monitoring and protection capabilities.

There are no less restrictive means available to achieve increased protection for children in these circumstances. The introduction of the entry and search warrant provisions is the least restrictive measure available as it will only apply to certain registrable offenders and only in certain circumstances where there is a risk of non-compliance. The entry and search warrant

[25] *Human Rights Act 2004* s 11(2).

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

will be limited in application and will restrict the search to a manner which is the least intrusive necessary in order to fulfil the purpose of the warrant. Further, the application of derivative use immunity ensures that the limitation is appropriately restricted, and the ultimate decision lies with the Magistrates Court about whether the warrant is required or whether a different course of action should be taken to check compliance.

The remaining amendments will ensure that ACT Policing can effectively manage convicted child sex offenders using the least restrictive measures available to achieve the purposes of the CSO Act. The amendments engage the right to equality before the law in a proportionate and appropriate manner, and will allow the child sex offender register scheme to effectively address the ACT experience of child sex offence issues.

Section 11- Protection of the family and children

Section 11 of the HR Act provides that:

> (1) The family is the natural and basic group unit of society and is entitled to be protected by society.
>
> (2) Every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind.

The nature of the right affected (s 28 (2) (a))

Article 3 (1) of the CROC states that 'in all actions concerning children... the best interests of the child shall be a primary consideration'. General comment 19 from the UNHRC, which describes the right to the protection of the family at article 23 of the ICCPR, notes that when read with article 17 (right to privacy), the right to protection of the family establishes a prohibition on arbitrary or unlawful interference with the family unit[26].

In addition, general comment 17, notes that the rights of the child (at article 24 of the ICCPR) require states to adopt special measures to protect children, and that this responsibility for guaranteeing children necessary protection lies with the family, society and the state[27].

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

The importance of these amendments is discussed in the background section of the Explanatory Statement.

The inclusion of new division 2.2.3 may limit, in certain circumstances, the access of previous offenders to their families where a registration order is made. These amendments will, however, promote the protection of the family and children by reducing the contact

---

[26] 13 Office of the United Nations High Commissioner for Human Rights, Human Rights Committee, 1990 'General comment 19: Protection of the family, the right to marriage and equality of spouses, para 1. Available: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6f97648603f69bcdc12563ed004c3881?Opendocument

[27] Office of the United Nations High Commissioner for Human Rights, Human Rights Committee, 1989, General comment 17: Rights of the Child. Available:

http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/cc0f1f8c391478b7c12563ed004b35e3?Opendocument

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

between previous offenders and children where the previous offender poses an ongoing risk. This amendment is designed to protect children and their families and carers.

Nature and extent of the limitation (s 28 (2) (c))
The section 11 (1) right to the protection of the family unit is not an absolute right, but has been characterised as a protection against unlawful or arbitrary interference of the family unit. Arbitrariness does not necessarily mean against the law, and is interpreted to include elements of inappropriateness, injustice and lack of predictability[28].

The section 11 (1) right of certain previous offenders to the protection of the family unit is arguably engaged and limited by the introduction of the power to make registration orders where the court is satisfied that there is a risk that in certain circumstances would be reduced by making the order. However, this amendment also supports the protection of the family unit by providing for the protection of children within a family unit who have been identified as at risk as a result of contact with the previous offender.

The section 11 (2) rights of children to special protections because of their status as children is supported by this amendment. The ability to make a registration order in relation to a previous offender in certain circumstances will ensure that the person is subject to annual and ongoing reporting obligations under the CSO, which means that unsupervised contact with children and any child-related employment will be reported to ACT Policing.

Relationship between the limitation and its purpose (s 28 (2) (d))
The limitations on the rights of families at section 11 (1) against unlawful or arbitrary interference are intended to provide greater protection for children from sexual assault and violence.

The ability of the Magistrates Court to make a registration order against a previous offender, leading to the requirement to meet reporting obligations, will ensure that children are provided greater protection by monitoring those registrable offenders who have been deemed a risk to their lives or sexual safety from contacting or associating with them.

Any less restrictive means reasonably available to achieve the purpose (s 28 (2) (e))
There are no less restrictive means available to provide added protections for children in the circumstances where a previous offender was not subject to reporting obligations by virtue of the commencement date of the CSO Act. It is appropriate (and therefore not arbitrary) to limit the rights of certain previous offenders from having contact with children in circumstances where their conduct has been deemed a risk to the lives or sexual safety of a child or children.

Section 13- Freedom of movement

[28] *Hugo Van Alphen v The Netherlands* Communication No. 305/1988, 15 August 1990.

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

Section 13 of the HR Act provides that everyone has the right to move freely within the ACT, to enter and leave it, and the freedom to choose his or her residence.

The nature of the right affected (s 28 (2) (a))
The right to freedom of movement is linked to the right to liberty – a person's movement across borders should not be unreasonably limited by the state. It also encompasses freedom from procedural impediments, such as unreasonable restrictions on accessing public places.

The obligation requires not only that the state must not prevent people from moving freely, but also that the state must protect people from others who might prevent them from moving freely

The right to freedom of movement is not an absolute right. The right has inherent limitations, which are acknowledged at subsection (3) of article 12 of the ICCPR (the equivalent right to section 13 of the HR Act):

> *'the rights to liberty and freedom of movement shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights or freedoms of others and are consistent with the other rights recognised in the Covenant.'*

The importance of the purpose of the limitation (s 28 (2) (b))
This is discussed above in the outline section of the Explanatory Statement.

Nature and extent of the limitation (s 28(2) (c))
The reporting obligations in the CSO Act affect the freedom of registrable offenders to travel in Australia and overseas, live anywhere in the community, and associate and communicate with children. While registrable offenders are not prevented from engaging in these activities, they must report them to the police. They may be imprisoned for up to five years if they do not meet their obligations to keep the police informed of their movements and of some of their associations with children.

New division 2.2.3 allows the Magistrates Court to make a registration order against a previous offender where the court is satisfied that the person poses a risk to the lives or sexual safety of 1 or more people or of the community, and making the order will reduce the risk. Prior to making the order the court must consider a number of factors, including the seriousness of the previous offending and the person's age.

If the court makes a registration order under new section 18C the person will become a registrable offender and will be subject to reporting obligations under the CSO Act, which includes reporting the address of each of the premises where the offender generally lives, information about employment, and details relating to travel.

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

Any limitations on freedom of movement must pursue legitimate aims, be necessary in a democratic society to achieve those aims and in the context of child sex offenders, demonstrate that there is a real risk of reoffending.[29] The requirement for the CPO to meet a reasonable belief standard to make an application under this division mitigates any concerns that a limitation would be arbitrary. The requirement on the court to consider the matters at new section 18D, and only make an order if satisfied of the matters outlined in new section 18C, will ensure that the individual circumstances of a previous offender are considered in order to determine if a registration order is necessary and appropriate. A further measure to ensure that this limitation is proportionate and that consideration is given to the individual circumstances of previous offenders is at section 18D (2). This section provides the court with the discretion to have regard to anything else that it considers relevant.

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

The requirement for registrable offenders to report their personal details, including details of travel and employment, is a fundamental aspect of the child sex offender registration scheme. It allows ACT Policing to monitor registrable offenders in order to protect and maintain the lives and sexual safety of children in the Territory and across other Australian jurisdictions, and is thereby rationally connected to the legitimate legislative aim of protecting children and their families.

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

This amendment is necessary to give effect to the protective and preventive purposes of the CSO Act, and is justified as it protects the rights and freedoms of others. This is the least restrictive option available to address concerns that previous offenders who are not subject to reporting obligations (and therefore monitoring activities) may pose an ongoing risk to children and the community.

The limitation on freedom of movement that may arise from registration is mitigated by the fact that a registrable offender must report details, but may not be subject to actual limitations in movement within the ACT and across borders. This provision has been drafted to ensure that the individual circumstances of previous offenders are appropriately considered and that an order is only made if the Magistrates Court is satisfied that it will reduce the risk that the previous offender is posing to the lives and sexual safety of 1 or more people in the community.

Section12- Privacy and reputation

Section 12 of the HR Act 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.

---

[29] *Labita v Italy* 26772/95, European Court of Human Rights, April 6, 2000.

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

The nature of the right affected (s 28 (2) (a))
The amendments which introduce the entry and search warrant and access to encrypted information, provide a power to issue a public notice, provide for the registration of a previous offender, and allow for photographs to be taken of registrable offenders, engage section 12 of the HR Act. This is because the amendments require registrable offenders to disclose certain personal details, provide police with the power to disclose certain personal details publicly, and provide police access to the registrable offender's home, home environment and potentially family life. The amendments will also affect the privacy of certain previous offenders as they will become subject to reporting obligations if registered.

The right to privacy is a fundamental right that encompasses the idea that individuals should have a separate area of autonomous development, dignity and freedom from arbitrary, unreasonable or oppressive government interference.

The right to privacy and reputation is 'one of the broadest and most flexible of human rights'[30] and has been described as protecting a wide 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)[31].

Section 12 of the HR Act gives effect to article 17 of the ICCPR and protects individuals from unlawful and arbitrary interference with privacy relating to their family, home or correspondence. An interference that is lawful may still be arbitrary if it is unreasonable or unjustified in all the circumstances of the case.

The UNHRC's General Comment 16 notes:

> *'as all persons live in society, the protection of privacy is necessarily relative. However, the competent public authorities should only be able to call for such information relating to an individual's private life the knowledge of which is essential in the interests of society...'*[32].

Accordingly, the right to privacy requires that the state does not itself arbitrarily or capriciously invade a person's privacy in a manner not based on demonstrable evidence, and adopts legislative and other measures to protect people from arbitrary interference with their privacy from others.

---

[30] Gans et al, Criminal Process and Human Rights, 2011, The Federation Press, Sydney, para 8.1, p 301.

[31] Lester QC., Pannick QC (General editors), 2005, *Human Rights Law and Practice'*, Second edition, LexisNexis UK, p 261.

[32] UN Human Rights Committee, *General Comment 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art 17*), UN Doc CCPR General Comment 16 (1988), para.7.

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

The right to privacy needs to be balanced against other rights, particularly the right to freedom of expression, and it can be limited as long as it can be demonstrated that the limitation is necessary, reasonable and proportionate.

The concept of arbitrariness requires that any interference with privacy, even when provided for by law, should be reasonable in the particular circumstances. Whether an interference with privacy is permissible will depend on whether a person has a reasonable expectation of privacy in the circumstances, and reasonableness implies that any interference with privacy must be proportionate to the end sought and must be necessary in the circumstances of any given case[33].

Therefore, a person's right to privacy can be interfered with provided the interference is both lawful and not arbitrary (reasonable in the circumstances).

The engagement of the right to privacy is justified in this instance. The common purpose of the amendments outlined in the Bill is to protect the lives and sexual safety of children where there may be a risk posed to them by a registrable offender. This purpose supports the right to liberty and security of person and the right to protection of family and children at sections 18 and 11 of the HR Act by implementing measures to minimise the risk of harm to children by registrable offenders.

Certain provisions in the Bill also support the right to privacy and reputation. For example, new section 9 (1A) supports the right by allowing a young offender to apply to a sentencing court to not be registered, and therefore not be subject to reporting obligations.

The importance of the purpose of the limitation (s 28 (2) (b))
Please refer to the purpose section (pp 3-5) for a detailed discussion on the broad purposes of this Bill. As discussed above, the limitations on the section 12 rights are important for the protection of children and the community, and minimising the incidence of reoffending.

The reporting requirements of the CSO Act are a fundamental aspect of this monitoring scheme. The scheme depends on registrable offenders providing information to police, and the verification of this information by police.

Nature and extent of the limitation (s 28 (2) (c))
The proposals in this Bill both limit and support the registrable offender's right to privacy and reputation. They also support the rights of victims of child sexual offences committed by the registrable offender and children who may be at risk if the registrable offender commits further offences.

---

[33] Toonen v Australia, Communication 4888/1992, UN Doc CCPR/C/50/D/488/1992 (1994), para 8.3.

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

The entry and search warrant provisions and the powers allowing access to encrypted information in certain circumstances, issue a public notice, provide for the registration of a previous offender, and allow for photographs to be taken of registrable offenders, all engage section 12 of the HR Act. This is because the amendments require registrable offenders to disclose certain personal details, provide police with the power to disclose certain personal details publicly, and provide police access to the registrable offender's home, home environment and potentially family life. The amendments may also engage and limit the privacy of certain previous offenders as they will become subject to reporting obligations if registered.

The amendments provide a careful balance between the limitation and the right to privacy. Most of the new powers can only be initiated after the chief police officer makes an application, supported by evidence on oath or by affidavit, to a magistrate who must then take all of the circumstances into consideration before authorising the requested activity. In order to issue a public notice about a registrable offender the chief police officer or a deputy police officer must be satisfied of a number of things including that the offender poses a risk to the lives or sexual safety of one or more people or the community.

The prevention of crime and the protection of the rights of others is a legitimate ground for placing restrictions on the right to privacy.[34]

The new sections that require registrable offenders to provide additional personal information to police are not an arbitrary interference with a person's privacy. They are clearly set out in the legislation and the warrant itself must specify what is authorised.

The existing provisions in the CSO Act protecting a registrable offender's right to privacy (when reporting in person or when being photographed) are maintained and continue to apply alongside the amendments.

Relationship between the limitation and its purpose (s 28 (2) (d))
Requiring registrable offenders to report the contact that they have with children is a fundamental aspect of the CSO Act. The purpose of this requirement is to ensure that ACT Policing can monitor that the contact is appropriate within the terms of the person's registration. It will allow ACT Policing to take protective measures where they have concerns for a child's safety.

The use of search and seizure powers is a common example of ACT law that engages the right to privacy. Searches can be compatible with human rights if they are reasonable and proportionate in the circumstances surrounding the search. Firstly, laws and policies should be clear in regards to their intention, scope, and what enforcement officers can or cannot do. Factors such as express authorisation by a warrant, the need to provide community protection

[34] Starmer, K, 1999, *European Human Rights Law: the Human Rights Act 1998 and the European Convention on Human Rights*, p. 416.

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

and the purpose of the search are considered when assessing what is reasonable in the circumstances.

A seizure may involve the compulsory or non-consensual removal of property from a person's home, work or vehicle. The extended retention or continued deprivation of property following its initial taking is also covered by section 12. For a seizure to be lawful, it must be grounded in valid law and not arbitrary. The same test for reasonableness in relation to searches is used to determine if a seizure is arbitrary.

The amendments provide that a person claiming to be entitled to anything seized can apply to a court for its return if certain conditions are satisfied. Permanent deprivation of property is limited to things the possession of which would be an offence, dangerous or unsafe, or subject to lawful confiscation or forfeiture.

Any less restrictive means reasonably available to achieve the purpose (s 28 (2) (e))
The reporting of this information is the least restrictive effective measure to reduce the likelihood that registrable offenders will reoffend, and to facilitate the investigation of any future offences. In particular, the requirement that registrable offenders report their electronic communication identifiers is the least restrictive as this reporting does not provide the authority for police to monitor the electronic correspondence of registrable offenders. Further examination of anything belonging to the person may only take place after a warrant has been issued.

In terms of the power to apply to register certain previous offenders, the right to privacy is engaged in the least restrictive means possible to achieve the stated purposes. Anything short of registration in these circumstances would be of little effect and would likely involve surveillance and monitoring activities. This would also be unrealistic and would run a real risk of an arbitrary and/or improper use of powers. The amendment as proposed ensures that the use of powers is transparent and that appropriate safeguards on the limitation of human rights are in place.
Where police believe a criminal offence may have been, or is likely to be, committed existing police criminal investigation powers apply.

The scope of the amendments is subject to specific limitations, similar to those applied to search and seizure provisions in other legislation. These include the requirement to describe the location and types of material to be searched for, naming the police officer responsible for executing the warrant, limiting the times and time period for the search, and the conditions subject to which the premises may be entered.

A police officer executing a warrant must announce their intentions before entering the premises, provide details including a copy of the warrant to the registrable offender, and allow that person to be present while the warrant is being executed.

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

A warrant may authorise the police to stop and detain a person at the premises (for no longer than 2 hours) to assist officers to execute the warrant. This time can be extended to 4 hours on further application to the court.

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

Section 18- Right to liberty and security of person
Section 18 of the HR Act provides that:

> (1) Everyone has the right to liberty and security of person. In particular, no-one may be arbitrarily arrested or detained.
> (2) No-one may be deprived of liberty, except on the grounds and in accordance with the procedures established by law.

The nature of the right affected (s 28 (2) (a))
The prohibition against arbitrary detention requires that the state should not deprive a person of their liberty except in accordance with law and that the law, and the enforcement of it, must not be arbitrary under human rights law.

Arbitrary detention can include elements of inappropriateness, injustice and lack of predictability. Therefore, in addition to being lawful, any detention must also be reasonable, necessary and proportionate in all the circumstances.

Detention that may initially be necessary and reasonable may become arbitrary over time if the circumstances no longer require the detention. Therefore regular reassessment is required to ensure detention remains appropriate. The amendments provide that a search and entry warrant may authorise police to stop and detain a person at the premises for no longer than 2 hours to assist the person carrying out the warrant, or up to 4 hours if a court is satisfied that the warrant cannot be executed in 2 hours.

The importance of the purpose of the limitation (s 28 (2) (b))
The detention powers give officers the ability to validate information that has been reported with the registrable offender's assistance. This includes the ability to access data that may not otherwise be accessible.

The power requiring registrable offenders to assist police to access to electronic data complements existing requirements to provide certain details in relation to online profiles and activities. As encrypted data is almost impossible to access without passwords, codes, or other means, this power allows police to address evolving technological advancements that provide offenders with secure access to potentially illegal material on the Internet. The power to detain a person to assist police access data reflects the serious nature of the material being sought, and the time critical aspects relating to access, due to the ease with which such material can be hidden or deleted.

The amendments in clause 16 relating to photographing an offender will ensure that ACT Policing has up to date personal details in relation to a registrable offender. They recognise the importance of photographing an offender for the purposes of reducing the likelihood of further reoffending and assisting in investigation and prosecution of any further offences.

These powers provide a further significant protection for the lives and sexual safety of children in the ACT.

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

Nature and extent of the limitation (s 28 (2) (c))
The new powers that include detention can only be accessed via a comprehensive application process. The authority to make an application is limited to the chief police officer and deputy chief police officer. An application needs to demonstrate that there is some evidence that a registrable offender is obstructing the verification of personal details. The issuing court must also be satisfied that the registrable offender has or is likely to report incorrectly or has breached or is likely to breach an order prohibiting certain conduct.

This limitation is also relevant to the new section 78A which provides authorisation on application to a court for use of force in relation to photographing an offender.

An order may contain relevant restrictions and time limits on the exercise of the powers and allows police to enter the premises of a registrable offender and conduct a search in the least intrusive manner necessary in order to verify details on the register. Detention under a warrant is limited to 2 hours, or up to 4 hours if a court is satisfied that the warrant cannot be executed in 2 hours.

Relationship between the limitation and its purpose (s 28 (2) (d))
The limitation on the right to liberty is targeted at specific registrable offenders and only available by order of the court on application by the most senior police officers.

Detention and the use of force in these circumstances have many objectives. Most importantly, they may facilitate access to the data required or to a photograph of an offender for the purposes of maintaining personal details on the register. They may also be used to prevent a registrable offender from absconding to hide or destroy the material remotely from another location. They will also act to deter registrable offenders from refusing to assist police executing a warrant.

Any less restrictive means reasonably available to achieve the purpose (s 28 (2) (e))
Where police are seeking to verify information provided by a registrable offender, there are some other means of investigation available including entry by consent or routine avenues of inquiry. While other search powers are available, for example in emergency situations,[35] authority to use these powers is based on imminent danger to life or property. This may not be the case in situations where access is required to electronic data, which does not involve immediate threat of harm. In some circumstances, detention of a registrable offender is the only means for police to access the information.

Where an offender refuses to be photographed or provide a photograph there are no less restrictive means available to police to achieve the purpose. The use of force, and therefore

[35] *Crimes Act 1900*, pt 10.2 – Preventative action.

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

the limitation on the right to security of the person, is the least restrictive means available in these circumstances.

Section 22(2)(i)- Right not to self-incriminate

Section 22(2)(i) of the HR Act provides:

> (2) Anyone charged with a criminal offence is entitled to the following minimum guarantees, equally with everyone else:
>
> > (i) not to be compelled to testify against himself or herself or to confess guilt.

The nature of the right affected (s 28 (2) (a))

The right to a fair hearing for those charged with a criminal offence also includes the right of a person not to be compelled to testify against themselves or to confess guilt. This is also known as the prohibition against self-incrimination and together with the right to be presumed innocent, provides for a right to silence during investigations or in pre-trial questioning as well as at trial. These rights also include the right not to have adverse inferences drawn from remaining silent.

The amendments which compel registrable offenders to provide personal details, access to their home and access to encrypted information engage section 22 of the HR Act.

Section 22 of the HR Act gives effect to article 14(2) and (3) of the ICCPR by providing specific rights that apply when a person has been charged with a criminal offence. These rights are in addition to the general fair hearing rights set out in the section 21 of the HR Act.

The privilege against self-incrimination has long been recognised by the common law and applies unless expressly abrogated by statute. The amendments further safeguard this right by including an express provision that prohibits the use of information obtained under compulsion in any proceeding (other than a proceeding under the CSO Act or one regarding false or misleading statements, information and documents).

The 'common law of human rights' is explained by Murphy J in *Hammond v The Commonwealth of Australia* 152 CLR 188, 199-200 (Gibbs CJ, Mason, Brennan and Deane JJ agreeing) as including the privilege against self-incrimination, which:

> ...is part of our legal heritage where it became rooted as a response to the horrors of the Star Chamber (see *Quinn v United States* (1955) 349 US 155). In the United States it is entrenched as part of the Federal Bill of Rights. In Australia it is a part of the common law of human rights. The privilege is so pervasive and applicable in so many areas that, like natural justice, it has generally been considered unnecessary to express the privilege in statutes which require persons to answer questions. On the contrary, the privilege is presumed to exist unless it is excluded by express words or necessary implication, that is, by unmistakable language (citations as in original).

The importance of the purpose of the limitation (s 28 (2) (b))

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

The limitations on the section 12 rights are fundamental for the protection of children and the community, and minimising the incidence of reoffending under this scheme. The scheme cannot operate effectively without mechanisms to ensure offenders report all necessary information and police are able to verify these details.

Reporting of certain information is central to allowing registrable offenders to enjoy living in the community. The ability of police to proactively verify this information is reasonable and proportionate and lessens the risks offenders may pose to the community.

Nature and extent of the limitation (s 28 (2) (c))
The rationale behind the privilege against self-incrimination is that those who allege the commission of a crime should prove it themselves and not be able to compel the accused to prove it for them (*Re an application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381 para 42).

This is relevant as a registrable offender will be compelled to allow police to enter and potentially search their premises. For example, if the warrant is for entry and search for a thing connected to an offence under the Act, but the officer finds evidence of another offence, the privilege will ensure that the person is not compelled to testify against himself or herself (s 22(2)(i) HR Act).

A safeguard for this privilege is the amendment providing derivative use immunity to the registrable offender. This immunity means that any information, document or thing obtained, directly or indirectly, because the person was required to facilitate access to the contents of the information are not admissible in evidence against the registrable offender in a civil or criminal proceeding (other than a proceeding for an offence against the CSO Act or part 3.4 of the *Criminal Code 2002* (false or misleading statements, documents etc.)).

However, police will still have the power to seize a thing that constitutes evidence of an offence and potentially destroy the thing with the court's approval.

Relationship between the limitation and its purpose (s 28 (2) (d))
The amendments allow the chief police officer or deputy chief police officer to apply to the court for an order requiring a registrable offender to provide information that will allow access to electronic data in certain circumstances. A registrable offender who does not comply with the order is guilty of an offence. The purpose of the amendment is for police to verify that the offender is complying with the terms of their registration. The limitation ensures that the registrable offender can continue to enjoy life in the community while protecting the community against potential risks.

The limitation in this case is balanced by the common law privilege against self-incrimination and an express provision restricting the use of information obtained under an order.

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

The limitation is justified because of the serious nature of the crimes being investigated and the exercise of the powers is subject to appropriate safeguards (such as applications for an order having to be made by the chief police officer or deputy chief police officer, and the court having to be satisfied of a number of matters). Oversight by the court will ensure the orders are issued appropriately.

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

The amendments give police a power to apply for an order requiring a registrable offender to provide passwords and access codes to electronic devices. However, to ensure that this power does not trespass on the privilege against self-incrimination, it is accompanied by derivative use immunity.

Before applying for an order, police will have to consider other avenues to obtain the information protected by the password or access code. To issue an order, the court must be satisfied on reasonable grounds that the registrable offender has failed to provide the information or assistance to access the material, that the material relates to an offence, and that it is likely that the material would be admissible in a criminal proceeding.

This requirement reflects both the serious nature of the material sought and lack of agreement from the registrable offender to access the information by means of consent.

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

Crimes (Child Sex Offenders) Amendment Bill 2015

Detail

Clause 1 — Name of Act
This is a technical clause that names the title of the Act. The name of the Act is the *Crimes (Child Sex Offenders) Amendment Act 2012*.

Clause 2 — Commencement
This clause states that the Act will commence on the day after its notification day.

Clause 3 — Legislation amended
This is a technical clause stating that the Act being amended is the *Crimes (Child Sex Offenders) Act 2005* (CSO Act). The Act also makes technical amendments to the:

- *Crimes Act 1900*;
- *Crimes (Child Sex Offenders) Regulation 2005*;
- *Confiscation of Criminal Assets Act 2003*;
- *Director of Public Prosecutions Act 1990*;
- *Ombudsman Act 1989*;
- *Prostitution Act 1992*;
- *Supreme Court Act 1933.*

Clause 4 — Purpose and outline Section 6 (2) (i)
This clause removes section 6 (2) (i) which provides that the CSO Act authorises the ombudsman to monitor compliance with chapter 4 (Child sex offenders register). This is a minor amendment to ensure that it is clear that the *Ombudsman Act 1989*, and not the CSO Act, authorises the ombudsman to monitor compliance.

Clause 5 — Section 6 (2), new note
This clause clarifies that the Ombudsman Act authorises the ombudsman to monitor compliance with new part 3.11 (Entry and search warrants) and existing chapter 4 (Child sex offenders register).

Clause 6 – Section 9 (1) (c) note, 3rd dot point
This clause replaces the term ‘child pornography’ with ‘child exploitation material’ in this provision. This amendment ensures that the CSO Act and the child sex offender scheme remains up to date and reflects legislative and academic practice across other jurisdictions.

Clause 7 — Registrable offender—exceptions—New section 9 (1A) and (1B)
This clause inserts a new section 9 (1A) of the CSO Act to include a further definition outlining when a person is not a *registrable offender*. This clause provides that a person is not a *registrable offender* if the person is a young person at the time that the registrable offence

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

was committed, and the court considers, on application by the defence, that including the person on the register is inappropriate in the circumstances of the case.

New section 9 (1B) provides criteria that the court must consider in making a decision under this provision and includes the severity of the offence and seriousness of the surrounding circumstances, the age of the person at the time of the offence, the level of harm to the victim and the community, attempts at rehabilitation, whether the person poses a risk to the lives or sexual safety of one or more people in the community, and any other circumstances that the court considers relevant.

The purpose of this amendment is to provide young people subject to sentencing for a registrable offence with the opportunity to apply to not be registered, and thereby not be subject to the reporting obligations under the CSO Act. This amendment will ensure that registration is consistent with the intent of the legislative scheme, and is sensible and consistent with rights. When sentencing a young offender for an offence that deems them a registrable offender, the circumstances of the offending may indicate that an ongoing risk is non-existent. The purpose of this provision is to recognise that registration may not be appropriate in all circumstances.

The Victorian Law Reform Commission report, '*Sex Offenders Registration: Final Report*' (December 2011) addressed the issue of young people on child sex offender registers and recommended that the court should be permitted to alter the reporting obligations of offenders who are under the age of 18, as appropriate in the circumstances[36]. The Commission noted that it would be overly burdensome on registered sex offenders who are under the age of 18 to require them to report all contact of this nature that they have with other children. The Commission also argued that it is 'desirable that registration orders do not unnecessarily interfere with a child's or young person's education, training, or housing'[37].

Furthermore, the Commission noted that adding a child as a friend on social media (such as Facebook) would be considered unsupervised contact, which could potentially lead to a requirement for almost daily reporting[38].

This issue was also recently considered by Justice Refshauge in the ACT Supreme Court in *OH v Driessen* [2015] ACTSC 148. Justice Refshauge notes the potential for serious problems to arise from the requirement to report the names and ages of children with whom the registrable offender has regular unsupervised contact[39]. Although the Judge did not comment on the appropriateness of a young person being subject to reporting obligations

[36] Victorian Law Reform Commission n 16, para 7.35.

[37] Ibid para 6.36.

[38] Ibid para 7.35.

[39] *Crimes (Child Sex Offenders) Act 2005* s 59(e).

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

under the CSO Act, he stated that '[t]he difficulty is to give content to this obligation in the context of a child at school'[40].

Given the overarching legislative objective of protecting the lives and sexual safety of children in the ACT, this amendment will allow the court to hear an application for non-registration and exercise some discretion, within strict limits, as to whether a young person should be subject to the obligations imposed by registration.

This clause outlines the factors that the court must consider when making a decision about whether registration is appropriate. The factors are:

(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 the sexual safety of 1 or more people or of the community; and

(f) any other circumstances that the court considers relevant.

This application is a matter for the defence at sentencing, and requires the court to turn its mind to a set of considerations different to those outlined in the *Crimes (Sentencing) Act 2005*. Accordingly, the question of whether a young person should be registered will not affect the sentencing process.

This amendment aligns with the purposes for which a young offender may be sentenced in sections 7 and 133C of the Crimes (Sentencing) Act, highlighting the importance of promoting rehabilitation, and providing that in sentencing a young offender the court must have particular regard to the common law principle of individualised justice.

Human Rights Considerations

New section 9 (1A) engages and supports the right of a child who is charged with a criminal offence to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation in section 22 (3) of the HR Act. As noted in the discussion of the right to privacy under the overview of human rights, by allowing a young offender to apply to a sentencing court to not be registered, and therefore not be subject to reporting obligations, this amendment also supports section 12 of the HR Act. Additionally, the rights to protection because of being a child in section 11 (2) of the HR Act and to freedom of movement in section 13 of the HR Act are engaged and supported by this amendment, as non-registration

[40] *OH v Driessen* [2015] ACTSC 148, para 89, Refshauge J.

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

would mean that a young person would not be subject to reporting obligations relating to travel and movement. These latter two rights are discussed in further detail under clause 9.

Clause 8 — Section 14

This clause amends the definition of a *child sex offender registration order* to include reference to an order made under the new division 2.2.3, section 18C. A *child sex offender registration order* now includes an order made in relation to a certain previous offender for the purposes of the CSO Act. This amendment is addressed in detail below in the explanatory material for clause 9.

Clause 9 — New division 2.2.3

Part 2.2 of the CSO Act defines child sex offender registration orders and outlines in which circumstances they may be made. A *child sex offender registration order* may only be made where the person is a registrable offender under the CSO Act or a corresponding child sex offender, or where the court considers that the person poses a risk to the sexual safety of 1 or more people or of the community[41].

This clause introduces a new class of people, being previous offenders, who may be subject to a *child sex offender registration order* in certain circumstances.

The registration and reporting obligations in the CSO Act only apply to those offenders who were convicted of an offence after the commencement date of 29 December 2005. In contrast, all provisions in the CSO Act apply to a person who has been sentenced by a court for a registrable offence before the commencement of the CSO Act if they are a prescribed corresponding offender[42].

A number of other Australian jurisdictions apply child sex offender provisions to certain offenders retrospectively. Victoria, New South Wales, Queensland and South Australian registration legislation applies retrospectively[43]. Tasmanian legislation provides that a court may make an order that a person is subject to registration if the court is satisfied that the person poses a risk of committing a reportable offence in the future[44].

The purpose of this amendment is not to apply CSO Act provisions retrospectively to all ACT child sex offenders who were convicted prior to the commencement of the registration scheme. Rather, the intention is to provide ACT Policing with tools to protect children and their families in specific circumstances where a person has been found guilty of a class 1

---

[41] CSO Act , ss 15 and 16.

[42] CSO Act, s 8(2).

[43] *Sex Offenders Registration Act 2004* (Vic) s 6(1); *Child Protection (Offenders Registration) Act 2000* (NSW) s 3A(1)(a); *Child Protection (Offender Reporting) Act 2004* (Qld)) ss 5 & 6; *Child Sex Offenders Registration Act 2006* s 6(1).

[44] *Community Protection (Offender Reporting) Act 2005* (Tas) ss 5 & 9.

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

offence prior to the commencement of the CSO Act, and continues to pose a risk to the lives or sexual safety of one or more people or of the community. This is clarified in new section 18B which provides the power and outlines the application process for the CPO to apply for a registration order in relation to a previous offender.

If a registration order is made against a previous offender, it will also allow ACT Policing to apply for a prohibition order under chapter 5A of the CSO Act in order to prohibit certain activities and behaviours.

New section 18D outlines the matters that the court must consider before making a registration order in relation to a previous offender. The matters are:

> (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.

The court may also regard anything else that is considered relevant, and for the purposes of this section criminal history means a finding of guilt against the person for a class 1 offence.

New section 18C provides that the Magistrates Court may make a child sex offender registration order where:

> (a) the person is a previous offender; and
>
> (b) the person poses a risk to lives or the 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.

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 personally on the person and on anyone else as directed by the court.

If a registration order is made in relation to a previous offender, they will be subject to the reporting periods outlined in part 3.5 of the CSO Act relevant to class 1 offences (ss 84 and

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

87) minus the period of reporting that would have lapsed had reporting been required from the date of convictions. For example, if an offender was convicted in 2002 for a single class 1 offence, the reporting period would have been 15 years (s 84). However, given that 13 years have passed since the conviction, the offender would now only be subject to a two-year reporting period.

If a registration order is made in relation to a previous offender the CPO must keep a copy of the application and any document relied on for the application for the duration of the order.

Human Rights Considerations

This amendment engages a number of rights in the HR Act, including the right to privacy (s 8), the right to protection of the family and children (s 11), and the right to freedom of movement (s 13). The engagement with these rights is discussed in the human rights overview at the beginning of this explanatory statement. Engagement with rights relating to retrospective criminal laws is discussed below.

Section 25- Retrospective criminal laws

Section 25 of the HR Act provides that:

> (1) No-one may be held guilty of a criminal offence because of conduct that was not a criminal offence under Territory law when it was engaged in.
> (2) A penalty may not be imposed on anyone for a criminal offence that is heavier than the penalty that applied to the offence when it was committed. If the penalty for an offence is reduced after anyone commits the offence, he or she benefits from the reduced penalty.

New division 2.2.3 in the CSO Act will provide a power for the Magistrates Court to make a registration order against a previous offender in certain circumstances. Although section 25 (2) of the HR Act states that a penalty may not be imposed on anyone for a criminal offence that is heavier than the penalty that applied to the offence when it was committed, the European Court of Human Rights has found that retrospective registration is reasonable as registration is not a penalty[45]. Rather, registration is considered to be a preventative measure separate from sentencing, which only applies after a person has been convicted.

The Government is of the view that section 25 of the HR Act is not engaged by this amendment and is reasonable and justified in all the circumstances.

Clause 10 — Offence—offender must report annually—Section 37

This clause amends section 37 to replace the element of intention with the more appropriate and workable elements of recklessness and strict liability.

[45] *Ibottson v Uk* (1999) 27 EHRR CD332.

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

Clause 10 amends section 37 to provide that a registrable offender commits an offence if the offender is required to report annually, and is reckless as to this requirement, and fails to report as required. Section 37 (3) clarifies that strict liability applies to the failure to report.

The purpose of this amendment is to provide sufficient clarity for registrable offenders about what is required in relation to their annual reporting obligations, and to assist in the prosecution of this offence where relevant. Specifically, the current element of intention relating to an omission to 'take all reasonable steps' to report annually is almost impossible to prove. For example, a registrable offender may state that they forgot to report, which proves to be a complicating factor in demonstrating that intention is present.

Registrable offenders are provided with a Notice of Reporting Obligations (NORO) when they make their first report after conviction for a relevant offence. The NORO outlines the reporting obligations of each registrable offender and requires that they sign an acknowledgement that they have:

- been provided with a copy of the NORO;
- read and understood their reporting obligations; and
- been reminded of the month they are next required to report as well as when their reporting obligations end.

This amendment engages the right to equality before the law in section 8 of the HR Act. An analysis of this engagement is outlined in the human rights overview at the beginning of this explanatory statement.

Clause 11 – Exception – offender in government custody
Section 38
This clause amends the 'offender's reporting month' to the 'relevant time for the offender's report' to clarify this provision applies if the offender is in government custody when their reporting period, whatever its length, expires.

Clause 12 – Exception – offender outside ACT
Section 39
This clause amends the 'offender's reporting month' to the 'relevant time for the offender's report' to clarify this provision applies if the offender is not in the ACT when their reporting period, whatever its length, expires.

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

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

This clause amends section 54 of the CSO Act to provide further examples that make it clear that changes in details includes something ceasing. For example, a change in personal details for a registrable offender includes not only starting new employment, but also the end of employment.

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

This clause inserts a new technical note in section 54 (2) (b) that clarifies that examples are part of the Act and may extend but not limit the provision in which they appear, as per sections 126 and 132 of the Legislation Act.

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

This clause amends section 59 (1) (h) to clarify that information about any modifications to a motor vehicle that a registrable offender owns, or generally drives, are reported as personal details. For example, if a registrable offender alters the colour of the motor vehicle, gets the windows tinted, or changes the wheel rims, this information is a personal detail for the purposes of the CSO Act.

Clause 16 — Section 78

This clause substitutes section 78 and inserts new section 78A to introduce updated requirements into the CSO Act relating to photographing registrable offenders. The amendment makes it clear that section 78 relates to photographing a registrable offender with their consent, and section 78A provides a power for police to seek an order allowing the use of force for photographing an offender.

Given the importance of photographing registrable offenders in certain circumstances (for example, where an offender has a distinct tattoo on their back or a birth mark on their upper arm that could be used for identification and further investigation purposes where appropriate) the amendment to section 78 removes the ability for a registrable offender to refuse to consent to the requirement. If the registrable offender does not comply with the requirement to be photographed, they have committed an offence under section 78 (5) and are subject to 5 years imprisonment, 500 penalty units or both.

New section 78A (1) provides that 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 police officer has required the offender to be photographed under section 78 and the offender has failed to comply with the requirement; and there are reasonable grounds to believe that photographing the offender is likely to assist law enforcement, crime prevention or child protection purposes; and allowing reasonable force to be used in photographing the offender is justified in all the circumstances. In making this order the magistrate must consider a number of factors under section 78A (2), including the seriousness of the circumstances

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

surrounding the commission of each offence, the age, mental health and cultural background of the offender, and any other circumstances that the magistrate considers relevant.

These amendments, which are based on similar provisions in parts 2.4 and 2.5 of the *Crimes (Forensic Procedures) Act 2000*, recognise the importance of photographing certain offenders for monitoring and potential future investigation activities. The amendments are also a reasonable limitation on the rights of registrable offenders as photographs will only be taken at annual reports, and if the registrable offender needs to report a changed tattoo or birth mark. The Government considers that it is reasonable and necessary to remove the current ability for a registrable offender to not consent to being photographed as a photograph of the offender's face and any distinguishing features is a key piece of information required for the monitoring and potential investigation where relevant. Accordingly, it is personal information that is necessary for the proper operation of the registration scheme. The offence provision has been included to highlight the necessity of a registrable offender being photographed and the importance of compliance with the police order in these circumstances.

This amendment engages a number of rights in the HR Act including the right to equality before the law (s 8), the right to privacy (s 12), and the right to security of the person (s 18 (1)). An analysis of this engagement is outlined in the human rights overview at the beginning of this explanatory statement.

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

This clause makes a minor and technical amendment to provide that a person being photographed has the right to privacy under both the existing section 78 and the new section 78A.

Clause 18 — New section 79 (1A)

This clause replicates the old section 78 (5) to clarify that an officer cannot, under section 78 or new section 78A, ask a registrable offender who is photographed 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.

A transgender person is defined in the section 169A of the Legislation Act, and an intersex person is defined in section 169B of the Legislation Act.

The replication of this provision engages and supports the right to privacy in section 12 of the HR Act by outlining what cannot be photographed regardless of whether the photograph is taken with consent, or without consent by court order.

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

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

Clause 19 — Right to have support person when being photographed Section 80
This clause makes a minor and technical amendment to provide that a person being photographed has the right to a support person under both the existing section 78 and the new section 78A.

Clause 20 – When reporting period begins
Section 83
This section makes it clear when reporting periods for registrable offenders and previous offenders begin. In the case of a registrable offender, the reporting period begins when the offender is sentenced, and if the sentence is full-time custody, reporting must begin when the offender stops being in full-time custody. The same applies for a previous offender, however the reporting period begins, if the offender was sentenced to full-time custody, when they stopped being in full-time custody. This takes into account that a previous offender may have already served a term in prison and that their reporting period starts at the time their term finished.

Clause 21 — New parts 3.10 and 3.11
Part 3.10 - Failure to comply with reporting obligations – public notices

New section 116A – Chief police officer may issue public notice in certain circumstances
This section provides a power to the CPO or DCPO to issue a public notice, being a name, photograph, and description of a registrable offender in limited circumstances where the CPO or DCPO believes on reasonable grounds that there may be risk to the lives or sexual safety of one or more people or of the community in general. The CPO or DCPO must also believe on reasonable grounds that publication of the notice will reduce this risk.

The CSO Act currently prohibits ACT Policing or any other agency from releasing information from the register as it is considered to be 'personal information' for the purposes of the registration scheme. The purpose of this amendment is to ensure that ACT Policing can effectively monitor registrable offender activities and ensure that a registrable offender who is not meeting their reporting obligations is quickly located, maintaining the safety of children and the community. The amendments provide an appropriate balance between the need for police to protect the community while still necessarily protecting the identity and security of registrable offenders.

This public notice would not identify that the offender is on the child sex offender register, only that the person is required by police to answer questions. The power limits the offender's human rights to the least extent possible by also requiring that before a notice is published, the offender has failed to comply with reporting requirements and cannot be located.

When issuing notices about offenders or suspects via their website or social media, it is the practice of ACT Policing to remove the notices once inquiries and operational needs have been satisfied. The practice will also apply regarding notices issues under this provision.

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

New part 3.11 – Entry and search warrants

In the ACT, a registrable offender is required to report to police on an annual basis. The information (including personal details) that must be reported is set out in division 3.4.1 of the CSO Act. The amendments provide specific entry and search powers in relation to registrable offenders to verify this information and to determine whether the registrable offender has breached or is likely to breach a prohibition order.

New division 3.11.1 – Preliminary

New section 116B – Definitions-pt 3.11

This section provides a number of definitions that apply to the new part 3.11. These include the meaning of 'entry and search warrant', which states that the purpose of the warrant is for police to enter and search the registrable offender's premises for the purpose of verifying the person's personal details or determining whether the person has breached or is likely to breach an order that was issued to prohibit certain conduct.

New division 3.11.2 – Entry and search warrants—general

New section 116C – Entry and search warrant – application

This section sets out the application process for an entry and search warrant. An application must include details of the warrant including its nature and duration and whether the offender has previously been the subject of a similar warrant or if an application for a warrant under this section has been made previously. The warrant must be supported by a sworn affidavit that demonstrates the need for these powers to be used. Only a senior officer above the rank of sergeant may apply for an entry and search warrant.

An officer who believes that immediate entry and search is necessary and that there is no time to prepare an affidavit may still apply for a warrant verbally and, if a warrant is granted, provide the affidavit to the court as soon as possible afterwards. If a warrant is refused, the applicant must still provide a written application to the court including a summary of the reasons for requesting a warrant, however these reasons do not need to be in the form of a sworn affidavit.

New section 116D – Application for entry and search warrant – supporting information

An application for a warrant under this part requires an applicant to provide all information relevant to the application and also requires the applicant to keep a copy of all affidavits or supporting information for one year beyond when the registrable offender stops being required report. This ensures that the information is easily accessible in circumstances where more than one warrant is required during the reporting period. It also provides a complete record of the offender's compliance with their reporting obligations and information relevant to those obligations. Extending the requirement to a year after the person is no longer required to report allows oversight of the documentation by the Ombudsman to ensure the obligations under the scheme are being met.

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

New section 116E – Entry and search warrant – remote application
This provision allows an applicant to apply for a warrant by telephone, fax, email or a form of communication if it is impracticable to do so in person. It would be impracticable to apply in person if, for example, the registrable offender denies police entry to their premises when police can hear activity within the premises that indicates a likely breach of their reporting obligations. In this situation, police could use a telephone or email to apply for a warrant to enter the premises.

The provision provides that the court is to fax or email a copy of the warrant to the applicant if practicable, depending on the circumstances of the application.

New section 116F – Entry and search warrant – deciding the application
A magistrate must be satisfied on reasonable grounds that the registrable offender has reported personal details incorrectly, breached an order prohibiting certain conduct under existing chapter 5A, or is likely to do either of those things. Information will need to be provided by the warrant applicant that shows why the registrable offender is likely to report incorrectly or breach an order, such as they have a history of similar breaches or were not cooperative with police on previous reporting occasions.

New section 116G – Content of entry and search warrant
This section requires that a warrant contains as much practical information as possible, such as to where or who the warrant applies, what will be searched for, the responsible police officer, relevant time periods, conditions of entry and what the warrant authorises police to do.

This section also includes a provision similar to entry and search warrant powers in other ACT legislation that requires a warrant only be executed between the hours of 6am and 9pm unless the court is satisfied that in the circumstances, evidence could be concealed, lost or destroyed, or it would not be practicable to conduct the search at another time. In addition to the examples included in the new section, this could be due to the urgent requirement to respond to information received by the police out of hours, or the availability of a forensic expert required to assist with the search.

Conditions of entry specifically may have regard to the personal privacy of a third party who may be living at the premises or otherwise affected by the execution of the warrant.

A warrant will stay in force for 7 days. If police cannot execute the warrant within that period, they can reapply for another warrant, as there is no limit on the issue of warrants based on sound and compelling evidence.

New section 116H – What an entry and search warrant may authorise
This provision sets out in detail what activity is authorised by a warrant, in particular to search premises including a vehicle and seize things specified in or relevant to the warrant, a person who may be carrying evidence relating to an offence or a seizable item such as a weapon. The warrant also authorises an officer to seize other things that they believe on

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

reasonable grounds to be connected with an offence punishable by 12 months imprisonment or more.

While the warrant provision is similar to other search and seizure powers in ACT legislation, some provisions vary to reflect the nature and purpose of the registration and reporting scheme. For example, a warrant authorises police to stop and detain a person at the premises to assist in the execution of a warrant. Detention must not exceed 2 hours unless a court is satisfied that the warrant cannot be executed within 2 hour; in those cases, detention cannot exceed 4 hours.

This provision targets specific information, particularly if held electronically, that the offender may have hidden from an ordinary observer and is required to 'unlock' and provide access to police under the warrant. If the offender has refused to provide access to electronic data, police are authorised to access the information in question for up to 4 hours. This allows for the use of an expert who may need to use decryption technologies to access otherwise inaccessible data. This time period can be extended to a maximum of 8 hours if the court is satisfied that the information cannot be accessed within 4 hours.

New section 116I – Extension and amendment of entry and search warrant

This section sets out the requirements if police wish to seek an extension of the warrant or amendments to the warrant conditions. The CPO, DCPO or police officer of the rank of sergeant or higher must apply to a magistrate before the expiry of the warrant and may agree to those amendments only if satisfied that the warrant requires extension of amendment to be properly executed. While an application to extend the time period for the execution of the warrant can be made more than once, the detention provisions are limited by only allowing one application to extend the time period up to 4 hours. This prevents prolonged and potentially arbitrary detention.

New section 116J – Revocation of entry and search warrant

A search warrant may be revoked by the court at any time before it expires if the warrant contains an error, was obtained using false or misleading information or is no longer required. The court may also revoke the warrant if it is in the interests of justice. The CPO, DCPO or police officer of the rank of sergeant or higher must also apply for a revocation of the warrant if they are satisfied that the grounds for the warrant no longer exist. This provides additional protection for registrable offenders by ensuring they are not subject to arbitrary or unjustified intrusions of their privacy.

New division 3.11.3 – Executing entry and search warrants

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

Police may use force or obtain assistance that is necessary and reasonable in the circumstances of executing the warrant. This includes if the registrable offender refuses to

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

allow entry to the premises, or attempts to destroy evidence while the warrant is being carried out.

New section 116L – Announcement before entry
Police are required to announce themselves and that they are authorised to enter the premises described in the warrant prior to entry. This provides an opportunity for the person in those premises to allow entry and means that police are not required to force entry. The only circumstances that an officer is not required to announce themselves before entry is if they believe on reasonable grounds that this would put a person at risk of harm or that evidence will be destroyed or concealed, or that the warrant will not be able to be executed effectively.

New section 116M – Details of warrant to be given to occupier etc
Police are required to provide a reasonable amount of information to the occupier of the premises as well as the registrable offender to whom the warrant relates. Showing the warrant to everyone who is present and subject to the warrant ensures that those people can verify the authority under which the warrant is issued and be clear on what the warrant authorises.

New section 116N – Occupier entitled to be present during search etc
This section provides that the occupier of premises (if present at the time a warrant is executed) is entitled to observe the search being undertaken so long as they do not interfere with the conduct of the search.

New section 116O – Use of equipment to examine or process things
This provision allows police or someone assisting police to execute the warrant to bring equipment with them if the equipment is reasonably necessary to examine or process a thing found at the premises to determine whether it can be seized under the warrant. This is particularly relevant when equipment may be necessary to access and search data that is stored on electronic devices. The provision extends to allowing police to remove something from the premises if it is not practicable to search it at the premises. There may be cases where portable equipment is not sufficient to access stored data and the relocation of devices to examination facilities is required. In other cases, a thing may require forensic testing to determine its evidential status. If a thing is taken from the premises, the occupier must (if practicable) be told where and when the device or thing is to be examined, and they or their representative may be present during its examination.

New section 116P – Use of electronic equipment at premises
This section governs the use of electronic equipment that is brought to the premises to specifically access data that may assist an officer verify a registrable offender's personal details or whether the offender has breached or is likely to breach an order prohibiting certain conduct that has been issued under chapter 5A. Police or a person assisting police must take care in using the equipment not to damage data and may copy the data to a storage device brought to the premises for this purpose. The seizure provisions in this section ensure that the collection of this data is appropriate and the means for collecting it is accountable.

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

The section allows police to seize equipment and storage devices if copying the material at the premises is not practicable or if it contains data or material the possession of which is unlawful (such as child exploitation material).

New section 116Q – Order requiring registrable offender to assist with access to data etc
The CPO, DCPO or police officer of the rank of sergeant or higher may apply to the court for an order requiring a registrable offender with knowledge of a particular computer system, to provide access to electronic data, to copy the data onto a storage device or convert the data into documentary form. This could require the registrable offender to provide passwords and access codes to electronic devices. Registrable offenders are already required to routinely report details in relation to online profiles. Police require these powers to address continuous advancements in communications technology that provide offenders with secure access to potentially illegal material online.

To ensure that this power does not unduly trespass on the privilege against self-incrimination, it is accompanied by derivative use immunity. The privilege and immunity are discussed in greater detail above under the human rights overview.

Essentially, a registrable offender who refuses to provide this information or assistance is guilty of an offence punishable by 500 penalty units, imprisonment for 5 years or both. The elements of this offence require that the offender fails to provide the information or assistance as ordered, and is reckless as to the nature of the order. A person would be considered reckless as to the nature of the order if they claim to have forgotten, or if they provide some but not all of the required access codes or passwords. A registrable offender is fully informed of their registration and reporting requirements which currently include providing access to electronic data or online activities. Claiming they have forgotten a code or password could therefore be considered reckless.

The offence provision provides strong incentive for offenders to provide the required assistance to police and also sends a strong message to offenders that their obligations throughout their reporting periods are serious and enforceable. It also provides reassurance to the community regarding the integrity of the registration scheme.

As the registrable offender is compelled to provide this information to police or otherwise face criminal sanctions, a provision has been included that any material obtained under this section is not admissible in a proceeding except for a proceeding under the CSO Act, or a proceeding under the *Criminal Code 2002* (pt 3.4 – False or misleading statement, information and documents). This is consistent with similar provisions in ACT legislation that compel a person to provide information that leads to disclosure of other information or evidence. The use of that further information is only permitted for strictly limited purposes.

New section 116R – Damage etc to be minimised

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

This provision requires police to take care when executing a warrant particularly relating to electronic equipment to cause as little damage as practicable. If damage is caused, the officer is required to notify the owner in writing of the particulars of the damage. If the occupier is absent, police are able to leave the notice in a conspicuous place. This ensures the owner or occupier is notified of the damage as soon as possible.

New section 116S – Compensation
This section allows a person to claim reasonable compensation if electronic equipment is damaged during the execution of a warrant or order under this division.

New division 3.11.4 – Seized things
New section 116T – Copies of seized things to be provided
This provision requires the police to provide the occupier of the premises (if present at the time a warrant is executed) of copies of things or information they have seized as soon as practicable after their seizure. This is to reduce any inconvenience to the occupier while the thing or information is being examined. Police are however not required to do so when the thing that was seized was taken away from the premises on a storage device that police brought with them, or if possession of the material would otherwise be unlawful (such as child exploitation material).

New section 116U – Receipt for things seized
This section provides a record of things seized during the execution of a warrant for both police and owners. The receipt must show the person from whom the items were seized, what was seized, whether the thing will be forfeited, returned or destroyed, and the process for such forfeiture, return or destruction.

New section 116V – Return or destruction of things seized
This provision protects the rights of registrable offenders regarding items that may have been seized by requiring either the return of the items, or justification for keeping or destroying the item. If the reason for seizing that item no longer exists or the item has been seized for more than one year, the police must take reasonable action to return the item. This is required except for when a senior ranked police officer (superintendent or above) is satisfied that the item is likely to be required as evidence in future proceedings or has value in an ongoing inquiry. This provision must be read together with the former provisions regarding powers to seize, as in some circumstances, such as when a person has been compelled to provide access to electronic data, the information obtained cannot be used in proceedings other than those involving an offence under the CSO Act or part 3.4 of the Criminal Code (false or misleading statements, documents etc).

Police must apply to the court for approval to destroy data or things containing data that have been seized. Destruction is conditioned on the registrable offender refusing to assist police or a person assisting to access the information, or that attempts to access the data over a period of 30 days were not successful. While the destruction of a device in these circumstances may

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

be seen as an inappropriate penalty, the Bill contains safeguards that the person has refused to assist police to access its data (thereby committing an offence), and that there are reasonable grounds to believe that it may contain, or be used to acquire, unlawful material.

Destruction of a device should only be sought when less intrusive means of removing the data have been unsuccessful.

New section 116W – Application for order disallowing seizure
A person who wishes to contest a seizure under this part can ask the court for an order disallowing the seizure. This protects the rights of a person against arbitrary seizure of personal property. The court will need to consider a number of issues including the person's legal right to the thing, whether the thing is still required as evidence, is required for business purposes, has sentimental value or if its absence will cause hardship to a person.

The court must also consider whether possession of the thing is unlawful or dangerous, or if the thing could otherwise be lawfully confiscated, seized or forfeited.

If seizure is not disallowed on these grounds, the court may consider making an order for the destruction of the thing. This is particularly relevant in cases where the thing seized is child exploitation material.

New section 116X – Forfeiture and disposal of seized things
This provision is consistent with other legislation governing seizure powers in the ACT. It addresses processes police must follow when they are required to return a seized item but cannot locate the person from whom it was seized or the owner, or if the thing is to be forfeited to the Territory. In cases where the thing is forfeited, it can be either sold or destroyed, depending on whether possession of the thing is unlawful or dangerous. Sale is the preferred method of disposal though it must be carried out in a cost efficient manner. The proceeds are returned to the Territory.

New division 3.11.5 - Miscellaneous
New section 116Y – Offence – refusal of entry to premises
A person who is required to allow or assist police or a person assisting to enter premises, and refuses entry to the premises, is guilty of an offence punishable by 500 penalty units, imprisonment for 5 years or both.

While section 116H allows police to enter the warrant premises by force if necessary, this offence provision provides strong incentive for offenders to not refuse or obstruct access to premises.

New section 116Z – Admissibility of evidence
This section provides that material obtained using the entry and search powers in part 3.11 is admissible in a proceeding under the CSO Act, in relation to a class 1 or class 2 offence

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

(which are defined in the CSO Act and particularly relate to offences of a sexual nature against children), or a proceeding under the *Criminal Code 2002* (pt 3.4 – False or misleading statement, information and documents). This provides a balance of the rights of an offender to privacy with the rights of children to be protected against further sexual offences.

Clause 22 — New sections 122A to 122C

This clause inserts new section 122A into the CSO Act to provide a power for the CPO to apply to the Magistrates Court for the removal of a registrable offender from the register in certain circumstances. Clause 19 also inserts new section 122B which provides that before making an application under section 122A, the CPO must take reasonable steps to give notice to each identifiable victim of the registrable offender. This is further reflected in section 122A which provides that the Director of Public Prosecutions may appear in the court on behalf of the victim when an application is made. Finally, clause 19 inserts new section 122C which provides that a registrable offender who was a young offender at the time of the offence may apply to be removed from the register.

New section 122A provides that the court may make an order if satisfied on reasonable grounds that it would be inappropriate for the offender to remain on the register. When making this decision, the court must consider a number of factors which are outlined in section 122A (3). These factors are:

(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 the sexual safety of 1 or more people or of the community; and

(h) any other circumstances that the court considers relevant.

As outlined in the purpose section of the explanatory statement, this amendment supports the purposes in section 6 of the CSO Act by ensuring that those offenders who are assessed as no longer likely to reoffend or engage in conduct that poses a risk to the lives or sexual safety of children are no longer required to report. As a result, ACT Policing will better use existing resources to monitor those registrable offenders who continue to present a risk to the community.

Part 3.5 of the CSO Act provides the reporting periods for various offences that lead to an offender being registered. If a registrable offender is found guilty of a single class 1 offence, they are automatically subject to a 15 year reporting period (s 84), and a conviction for a single class 2 offence attracts an 8 year reporting period (s 85). The lowest possible reporting

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

period is 4 years for a young offender found guilty of a single class 2 offence (s 89 (2)). In certain circumstances convictions for multiple offences can result in a registrable offender being subject to reporting obligations for the rest of the offender's life.

These reporting periods are significant, appropriately reflecting the seriousness of child sex offences and the need to monitor those offenders who have committed sexual crimes against children. However, in certain circumstances the mandatory reporting period may be, or may become, inappropriate for individual registrable offenders.

Currently, a registrable offender may only apply for an order suspending their reporting obligations in very limited circumstances. Section 96 of the CSO Act provides that a registrable offender is eligible to apply for an order suspending the offender's reporting obligations only if:

(a) 15 years have passed (excluding days in government custody) since the offender was last sentenced or released from government custody for a registrable offence or a corresponding registrable offence, whichever is later; and
(b) 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; and
(c) the offender is not on parole for a registrable offence.

The existing provision does not provide for removal from the register, and if the application is unsuccessful the registrable offender cannot reapply for five years (s 100).

This amendment will allow ACT Policing to account for the individual circumstances of certain registrable offenders who, for all intents and purposes, should no longer be registered and subject to reporting obligations. Determining the extent to which the registrable offender's circumstances should be weighed up as part of this process is complex. However a system which allows for consideration of the individual is the most favoured approach given the varieties in offending context and behaviour. ACT Policing have access to detailed information about the registrable offender's personal circumstances and a unique insight into whether registration remains appropriate. For example, a registrable offender may be physically or cognitively impaired due to illness or incapacitation, and the likelihood of reoffending is effectively non-existent.

This amendment aligns with the recommendation of the Victorian Equal Opportunity and Human Rights Commission that the court should be afforded discretionary power to decide whether an offender should be registered having regard to the circumstances of the offence and the risk posed to the community[46]. This provision will also ensure that the intent of the registration scheme is upheld and that the purposes of the CSO Act are better met by allowing the removal of registrable offenders who no longer need to be registered.

[46] Submission to Sex Offenders Registration Act 2004 review – 2011, page 2

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

New section 122B provides an important safeguard to ensure that any identifiable victim or victims of the registrable offender are given notice of the proposed application for removal from the register. Section 122B (2) outlines what the notice must contain, which includes an invitation for the victim to make a written submission to the CPO about the offender being removed from the register, and a statement that any submission will be considered by the CPO when deciding whether to make an application under section 122A.

This section will also require the CPO, prior to giving notice to a victim, to consult with the Victims of Crime Commissioner. On consultation, the CPO and the Victims of Crime Commissioner may decide that it is best for the Victims of Crime Commissioner to give notice or be involved in giving notice.

This amendment ensures that victims are given the opportunity to have their say on any proposal to remove an offender from the register. It aims to prevent potential further harms to the victim by ostensibly minimising the nature of the harm of the sexual offending and the resultant harm. It also aligns with the explanatory statement to the *Victims of Crime Act 1994*, that the governing principles in that Act are designed to ensure that the needs of victims of crime are, as far as possible, factors in decision-making related to the administration of justice. Furthermore, the amendment supports guiding principle (g) in the Victims of Crime Act (to keep victims informed and involved in matters in which they have a direct interest) by providing the opportunity for the victim to make a submission that will be taken into account by the decision maker.

New section 122C provides that a registrable offender who was a young offender at the time a registrable offence was committed may apply to the Magistrates Court for an order removing the offender from the register. This provision accompanies new section 9 (1A) and (1B), outlined in clause 7, to ensure that registration is consistent with the intent of the legislative scheme, and consistent with rights.

Section 122C (3) provides that the person may only apply for removal once. If this application is refused it is subject to the normal appeal avenues for court orders. Section 122C (4) provides that a copy of the application must be served on the Victims of Crime Commissioner, the CPO, and the Director of Public Prosecutions. Similar to new section 122B, this process will ensure that notice is given to any identifiable victim of the registrable offender and that the victim has the opportunity to make a submission on the application. Section 122C (8) provides that the Director of Public Prosecutions may appear in the court on behalf of the victim, and section 122C (9) states that the court may make the order if satisfied on reasonable grounds that it would be inappropriate for the offender to remain on the register.

Similarly to clause 7, the court must consider a number of factors when making a decision about whether an order for removal is appropriate. The factors are:

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

(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 the sexual safety of 1 or more people or of the community; and

(f) any other circumstances that the court considers relevant.

Given that this new provision relates to young offenders who are currently registered, the CPO must take all reasonable steps to give written notice of section 122C to each person to whom the section applies not later than 1 month after the commencement day for these amendments (s 122C (11)). The purpose of this notice is to ensure that these offenders are aware of the new right to apply to the court to be removed from the register.

Further detailed discussion of the purpose and nature of this amendment is under clause 7.

Human rights considerations

This amendment engages the right to protection of the family and children (s 11 HR Act), the right to privacy (s 12 HR Act), and the right to freedom of movement (s 13 HR Act). Substantive analysis of this engagement is outlined in the human rights overview at the beginning of this explanatory statement, and under the discussion of clause 9.

Clauses 23, 24 and 25 — Schedule 2, part 2.1 and 2.2
These clauses substitutes the term 'child pornography' with 'child exploitation material' in schedule 2. This amendment ensures that the CSO Act and the child sex offender scheme remain up to date and reflects legislative and academic practice across other jurisdictions.

Clauses 26, 27 and 28 — Dictionary, new definitions
These are technical clauses that add further definitions to the Dictionary of the CSO Act.

Schedule 1 — Consequential amendments
Schedule 1 makes a number of minor amendments to Territory legislation to reflect the amendments made by the Bill.

Part 1.1 — Crimes Act 1900
Part 1.1, clauses 1.1 and 1.2 amend sections 7A, 64, 64A and 65 of the Crimes Act to replace the term 'child pornography' with 'child exploitation material'. This amendment ensures that ACT legislation remains up to date and reflects legislative and academic practice across other jurisdictions.

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

Part 1.2 — Crimes (Child Sex Offenders) Regulation 2005

Part 1.2 makes a number of amendments to the CSO Regulation to clarify certain reporting obligations and streamline administration of the register.

Part 1.2, clause 1.3, amends sections 7 (c) and 8 (c) of the CSO Regulation to reflect the change of location of the Child Sex Offender Registration Team. Including a GPO Box address ensures that any future locations changes do not affect these provisions.

Part 1.2, clause 1.4, amends section 9 of the CSO Regulation to include a number of new approved ways of reporting for the purposes of section 63 (b) of the CSO Act. Approved ways of reporting will include reporting by telephone, email, or prepaid post.

This amendment replaces the current section 9 of the CSO Regulation which provides that personal details in section 59 (h) of the CSO Act include particulars of an offender's motor vehicle. This reflects the amendment made under clause 11 to include details of modifications in s 59 (1) (h) of the CSO Act.

Part 1.2, clause 1.5, also amends section 16A of the CSO Regulation which prescribes entities with access to personal information in the register for the purposes of section 118 (1) (b) (i) of the CSO Act. The amendment inserts an entity responsible for exercising a function or activity for an entity mentioned in paragraph (a) to (p).

This amendment clarifies that personal information under section 118 (1) (b) (i) can be disclosed to not just the head officers of the entities listed in section 16A, but also to other officers within the entities whose responsibilities involve exercising law enforcement functions and related activities. The aim of this amendment is to ensure that key agencies, such as ACT Care and Protection, have the power to share information under this provision where appropriate.

Part 1.2, clause 1.6, amends section 17 of the CSO regulation, pursuant to section 137 (2) (a) (ii) of the CSO Act, by inserting table 17 to prescribe a number of verifying documents that must be provided in support of a report. This amendment provides that a registrable offender must provide a broad range of documents relating to personal details that they report. This will provide ACT Policing with better monitoring capabilities in relation to registrable offenders, and will reduce the administrative burden making further inquiries to confirm certain personal details.

This amendment prescribes the following documents that must be provided:

- birth certificate (to verify details reported under s 59(a), (b) & (c));
- change of name certification (to verify details reported under s 59(a) & (b));
- utilities bill, contract of sale, or lease (to verify details reported under s 59(d));
- documentary evidence showing proof of membership (to verify details reported under s 59(g));

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

- travel documents and/or itinerary (to verify details reported under s 59(n));
- contract information, including an invoice (to verify details reported under s 59(p) & (q)); and
- passport (to verify details reported under s 59(t)).

This amendment engages and limits the right to privacy in section 12 of the HR Act. Analysis of this engagement is outlined in the human rights overview at the beginning of this explanatory statement.

Part 1.3 — Director of Public Prosecutions Act 1990

Part 1.3, clause 1.7, inserts a new function into section 6 (1) the Director of Public Prosecutions Act, providing that the Director of Public Prosecutions can make applications for prohibition orders under chapter 5A of the CSO Act.

Part 1.3, clause 1.8, makes a technical amendment to section 6 (1) to reflect changes to numbering made by amending the Director's functions.

Part 1.4 — Ombudsman Act 1989

Part 1.4 makes a number of amendments to the Ombudsman Act to clarify the Ombudsman's role in relation to monitoring compliance with the CSO Act.

Part 1.4, clause 1.9, amends the functions of the Ombudsman to reflect the introduction of the entry and search warrant provisions under clause 17. New section 4C (ca) provides that a function of the Ombudsman is to monitor compliance with new part 3.11 of the CSO Act (Entry and search warrants) by the CPO, deputy chief police officer, an executing officer, and anyone assisting the executing officer.

Part 1.4, clause 1.10, amends section 17 of the Ombudsman Act to similarly reflect the introduction of the entry and search warrant provisions under clause 17. Section 17B (1) outlines that police are to give the Ombudsman reasonable assistance that the Ombudsman reasonably requires to exercise the Ombudsman's functions in relation to entry and search warrants.

Part 1.4, clauses 1.11 and 1.12, make minor technical amendments to section 17C (1) and section 20A (1) to reflect the Ombudsman's new role in monitoring compliance with part 3.11 of the CSO Act.

The purpose of these amendments is to provide adequate safeguards and oversight for the new powers relating to entry and search warrants.

Part 1.5 — Prostitution Act 1992

Part 1.5, clauses 1.13 and 1.14, amend Schedules 1 and 3 of the Prostitution Act to replace the term 'child pornography' with 'child exploitation material'. This amendment ensures that

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

ACT legislation remains up to date and reflects legislative and academic practice across other jurisdictions.

Part 1.6 — Supreme Court Act 1933

Part 1.6, clause 1.15, amends schedule 2 of the Supreme Court Act to replace the term ‘child pornography’ with ‘child exploitation material’. This amendment ensures that ACT legislation remains up to date and reflects legislative and academic practice across other jurisdictions.

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