

2015

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

CRIMES (CHILD SEX OFFENDERS)

AMENDMENT BILL 2015

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
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Crimes (Child Sex Offenders) Amendment Bill 2015

Outline of Government Amendments

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 purposes of the CSO Act, which include reducing the likelihood of convicted child sex offenders re-offending, and facilitating 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, are outlined in section 6 of the CSO Act.

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.

On 13 August 2015 the Bill was introduced in the Legislative Assembly. 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 Chief Police Officer (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 revised explanatory statement accompanying the Bill provides a comprehensive account of the proposed amendments and can be accessed at:

http://www.legislation.act.gov.au/es/db_52477/current/pdf/db_52477.pdf

Government amendments to the Bill are required to address one issue that has arisen following the introduction of the Bill and in response to a question raised by the Standing Committee on Justice and Community Safety Scrutiny of Bills Committee (p 36 of the Report).

The issue relates to the operation of the derivative and direct use immunities which are provided in proposed sections 116Q and 116Z.

The current derivative use immunity provisions in sections 116Q (4) and 116Z are broad in their application. Section 116Q (4) applies to data obtained from an electronic device when an offender has

been ordered to provide access to that device. Section 116Z applies when a search and entry warrant is executed under part 3.11. The effect of derivative use immunity is to prevent the use of evidence found in these circumstances for the prosecution of any offence, except for those in the CSO Act (all of which are considered less serious with a maximum penalty of five years imprisonment), or administration of justice offences, and in the case of section 116Z, sexual offences against children.

These limitations strongly favour the registered offender without compromising the purposes of the child sex offender scheme and the interests of justice.

The Government amendments clarify that the immunity provided under these provisions applies to direct and derivative uses, as originally intended in the Bill.

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Detail of Government Amendments

Amendment 1 – Clause 21 Proposed new section 116Q (4) Page 29, line 6

This amendment clarifies that the reference to any material obtained under section 116Q (4) includes material that is directly or indirectly obtained. This amendment also clarifies that the reference to proceeding means a proceeding relating to the registrable offender.

Amendment 2 – Clause 21 Proposed new section 116Z Page 35, line 20

This amendment clarifies that the reference to any material obtained under section 116Z includes material that is directly or indirectly obtained. This amendment also clarifies that the reference to proceeding means a proceeding relating to the registrable offender.