

2018

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

CRIMES (CHILD SEX OFFENDERS) AMENDMENT

REGULATION 2018 (No 1)

SL2018-24

EXPLANATORY STATEMENT

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Crimes (Child Sex Offenders) Amendment Regulation 2018 (No 1)

Overview

The object of the *Crimes (Child Sex Offenders) Act 2005* (the Act) is to reduce the likelihood of offenders, who have committed certain sexual offences against children, re-offending by requiring that they keep police informed of their whereabouts or other personal details for a period of time. The Act also prevents registered child sex offenders working in child-related employment by making it an offence for them to apply for or engage in such employment.

Sexual crimes committed against children have profound consequences for the victim, their family, and our community. These crimes warrant the specific monitoring and reporting measures imposed by the child sex offender register. An important measure under the Act is the prevention of registered child sex offenders working in child-related employment by making it an offence for them to apply for (s 126) and engage in such employment (s 127). The exclusion of registered offenders who have been sentenced by a court for a registrable offence, or are the subject of a child sex offender registration order, is a fundamental part of creating safe environments for children.

The term ‘employment’ is defined in s 123 as including the performance of work under a contract of employment (s 123(a)(i)) and the performance of work as a volunteer (s 123(c)).

‘Child-related employment’ is defined in s 124 as ‘employment involv[ing] contact with a child’ in relation to the listed services and activities, including:

- child protection services;
- preschools, kindergartens and child-care centres;
- detention places under the *Children and Young People Act 2008*;
- clubs, associations or movements (including of a cultural, recreational or sporting nature) with significant child membership or involvement; and
- babysitting or childminding services arranged by a commercial activity.

Section 124(1)(t) provides that anything else prescribed by regulation is ‘child-related employment’. There are no other events, activities or services currently prescribed as being child-related employment.

Purpose of the Bill

The purpose of this Regulation is to prescribe the following events, activities or services as ‘child-related employment’ under s 124(1)(t) of the Act:

- (a) entertainment or party activities or services;
- (b) school events or activities;

- (c) sporting, gym or recreational activities;
- (d) photography services;
- (e) talent or beauty competitions;
- (f) promotional events or activities;
- (g) appearing as seasonal characters, or other characters,

where the event, activity or service is aimed at or designed to appeal to children, or has, or is likely to have significant attendance by children. All forms of child-related employment are also qualified by the requirement that they involve contact with a child (s 124(1)).

This Regulation will prevent a registered child sex offender from applying for or engaging in work (including involvement of a voluntary nature) at school fetes, toy exhibitions and appearing as a Santa Claus over the festive season, or other children's movie characters.

The aim of the Regulation is to reduce the possibility of any incidence of sexual, physical, or emotional harm of children in the ACT when participating in certain events, activities or services. The events, activities or services prescribed may ordinarily provide an opportunity for a registered offender being in a position that children would trust.

Human Rights Considerations

The *Human Rights Act 2004* (HR Act) applies equally to children and registered offenders. The Regulation engages and both supports and limits a number of human rights.

The Regulation holds the protection of children in the ACT community as paramount and supports a number of rights, in particular the right to:

- recognition and equality before the law (s 8);
- life (s 9);
- '...be treated or punished in a cruel, inhuman or degrading way' (s 10(1)(b)); and
- '...the protection needed by the child because of being a child, without distinction or discrimination of any kind' (s 11(2)).

Failing to prescribe the events, activities and services included in the Regulation would mean that the offender could engage in those activities without committing an offence.

The Regulation also engages and limits a number of human rights for registered offenders working with, or wanting to work with, children, in particular:

- recognition and equality before the law (s 8(1) and s 8(3));

- privacy and reputation (s 12);
- freedom of movement (s 13); and
- taking part in public life (s 17(c)).

Section 28 of the HR Act provides that an individual's or a group's rights may be subject to reasonable limits if those limits are demonstrably justified.

The protection of the rights of children in the ACT is a legitimate objective and pressing social need. The protection of children from sexual harm is particularly important, most recently identified by the Royal Commission into Institutional Responses to Child Sexual Abuse. The expansion of the definition of 'child-related employment' to prevent registered offenders from engaging in certain types of employment is a proportionate response under s 28 of the HR Act. There is no other practicable way to achieve the objective of protecting some of the most vulnerable within the community.

There is clear justification for the limitations of rights involved, and the scope of the restriction is narrowed by the requirement that the events, activities or services are only prescribed if they are aimed at or designed to appeal to children, or have, or are likely to have significant attendance by children.

Detail

Clause 1 — Name of regulation

This is a technical clause that establishes the name of the Regulation as the *Crimes (Child Sex Offenders) Amendment Regulation 2018 (No 1)*.

Clause 2 — Commencement

This is a formal provision specifying when the Regulation will commence. The Regulation will commence on the day after its notification day.

Clause 3 — Legislation Amended

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

Clause 4 – New section 16C

This clause prescribes the following events, activities or services, if the event, activity or service is aimed at or designed to appeal to children, or has, or is likely to have significant attendance by children:

- (a) entertainment or party activities or services;
- (b) school events or activities;

- (c) sporting, gym or recreational activities;
- (d) photography services;
- (e) talent or beauty competitions;
- (f) promotional events or activities;
- (g) appearing as seasonal characters, or other characters.

The example provided for paragraph (b) is fetes. The example provided for paragraph (f) is toy exhibitions. The example provided for paragraph (g) is Santa and children's movie characters.