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

ELEVENTH ASSEMBLY

CRIMES (CHILD SEX OFFENDERS) AMENDMENT BILL 2025

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004*, s 37)**

**Presented by
MARISA PATERSON MLA
MINISTER FOR POLICE, FIRE AND EMERGENCY SERVICES**

**TARA CHEYNE MLA
ATTORNEY-GENERAL
FEBRUARY 2025**

CRIMES (CHILD SEX OFFENDERS) AMENDMENT BILL 2025

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004* (the HR Act).

OVERVIEW OF THE BILL

The Bill expands the definition of child-related employment in section 124 of the *Crimes (Child Sex Offenders) Act 2005* (the Act) to include the provision of legal services related to a child, provided by Legal Aid ACT.

The Act establishes a child sex offenders register for the ACT. The Act requires offenders who have been convicted of particular sexual offences against children to be registered on the child sex offenders register. 'Registrable offenders' are subject to a number of requirements under the Act, including reporting obligations and a prohibition on engaging in child-related employment.

Child-related employment is defined in section 124 of the Act and includes employment, training or volunteer work which involves contact with a child in a proscribed list of employment areas, for example at educational or religious institutions, clubs and associations, and wards of hospitals where children are ordinarily patients. 'Contact' is defined as any form of contact between a person and a child, including any form of physical contact, any form of oral communication and any form of written communication, including electronic communication.

The current proscribed list of child-related employment identifies many situations typically associated with children. While the list includes counselling or other support services for children, it does not contemplate areas such as the provision of professional legal services where contact with children may be a regular occurrence. Legal Aid ACT provides a broad range of legal services related to children, including representing children in legal matters, representing parties in child protection proceedings, running the Youth Law Centre (a dedicated legal advice service for people aged 12 to 25 years old), and providing Independent Children's Lawyers in family law matters.

CONSULTATION ON THE PROPOSED APPROACH

The Bill was developed in consultation with Legal Aid ACT, ACT Policing and the ACT Human Rights Commission.

CLIMATE IMPACT

Nil impact.

CONSISTENCY WITH HUMAN RIGHTS

The proposed Bill has been carefully considered in the context of the objects of the Human Rights Act 2004 (HR Act). Any limitations on human rights are justifiable as reasonable limits set by laws in a free and democratic society, as required by section 28 of the HR Act. Importantly, the Bill also supports and strengthens protection of rights under the HR Act. The human rights limitations that this Bill creates are proportionate to and the least restrictive approach to achieve the overall policy objective of this Bill.

Rights engaged

This Bill engages the following rights under the HR Act:

- Section 11 – Protection of the family and child (promoted)
- Section 12 – Right to privacy (limited)
- Section 18 – Right to liberty and security of person (limited)
- Section 27B – Right to work and other work-related rights (limited)

Rights promoted

Section 11 – Protection of the family and child

The right to protection of the family and children recognises the importance of protecting the family group and, relevantly for this Bill, recognises the need for children to be protected owing to the vulnerabilities inherent in being a child.

The Bill promotes the right of children to be protected by ensuring that registrable offenders are prohibited from undertaking employment in child-related legal services, where provided by Legal Aid ACT. The Bill also aligns with the requirement in this right to give primary consideration to the best interests of the child in any decision that affects a child. Best interests in this context have a broad interpretation which includes ensuring safety and protecting children from exploitation.

This amendment will protect the safety of children by reducing the risk of contact between a child and a registrable offender in circumstances where legal services related to a child are being provided by Legal Aid ACT. As a result, this will reduce opportunities that may facilitate reoffending by a registrable offender and further exploitation of children.

Rights Limited

Expansion of definition of child-related employment

The preamble to the HR Act notes that few rights are absolute and that 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 contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

The expansion of the definition of child-related employment may limit registrable offenders' right to work and other work-related rights, right to liberty and security of person, and right to privacy.

1. Nature of the right and the limitation (s28(a) and (c))

Section 27B – Right to work and other work-related rights

The Bill limits the right to work because it expands the list of proscribed child-related employment areas in which a registrable offender may not undertake employment. Sections 126 and 127 of the Act provide that it is an offence to either apply for or engage in child-related employment. Each offence is subject to a maximum penalty of 200 penalty units, imprisonment for two years or both.

Section 12 – Right to privacy

The Bill limits the right to privacy because it expands the child-related employment areas which are relevant to the scope of the requirement for a person to disclose a pending charge for a registrable offence to an employer or prospective employer. Section 128 of the Act provides that it is an offence if a person is engaged in child-related employment and fails to disclose to their employer within 7 days that they have been charged with a registrable offence. Section 130 of the Act provides that it is an offence if a person has a pending charge for a registrable offence and fails to disclose it to a prospective employer when applying for child-related employment. Each offence is subject to a maximum penalty of 50 penalty units.

Section 18 – Right to liberty and security of person

The Bill limits the right to liberty as it expands the child-related employment areas to which existing offences carrying penalties of imprisonment will apply. As discussed above, sections 126 and 127 of the Act provide that it is an offence to either apply for or engage in child-related employment. Each of these offences is subject to a maximum penalty of imprisonment for two years and, upon conviction, a person may be sentenced to a period of imprisonment.

2. Legitimate purpose (s28(b))

The purpose of the overarching child sex offenders register scheme in the Act and the amendment in this Bill is to protect children by further restricting the situations where a child may come into contact with a registrable offender. These restrictions increase the safety of children and mitigate risks of exploitation.

The current proscribed list of child-related employment identifies many situations where contact with children is a common feature of employment, such as positions within educational services, community groups and healthcare services. While the list includes counselling or other support services for children, it does not contemplate areas such as the provision of professional legal services related to a

child where contact with children is a feature of the employment position and necessary for the provision of legal services to occur, such as providing legal advice to a child charged with a criminal offence.

Children often come into contact with legal service providers, and in particular Legal Aid ACT, through a variety of different means. Children may be charged with, or witness, criminal offending, they may be connected to family or personal violence orders, or they may be the subject of care proceedings. Ordinarily the provision of legal services in these areas will necessitate direct contact with a child, for example to take instructions or question them as a witness. Where a registrable offender has contact with a child the risk to the safety of the child is increased as is the risk the registrable offender will reoffend.

The amendment is consistent with the policy intention of the existing definition of child-related employment and will ensure that the scheme continues to operate effectively.

3. Rational connection between the limitation and the purpose (s28(d))

The scheme aims to reduce the likelihood that registrable offenders will reoffend by targeting offenders who engage in concerning conduct and prohibiting them from engaging in that conduct. Registration as a child sex offender and the associated requirements under the Act mean that registrable offenders have fewer opportunities to be in situations that facilitate reoffending and therefore increases the safety of children in those situations.

This amendment increases the protection of children who come into contact with Legal Aid ACT for the provision of child-related legal services. Without this amendment, a registrable offender working at Legal Aid ACT may be able to provide child-related legal services, which could bring them into contact with children and increase the risk to the safety of those children. By preventing employment of registrable offenders in this area, their likelihood of reoffending is mitigated. The mitigation of these risks is directly linked to the legitimate purpose of this Bill.

4. Proportionality (s28 (e))

Section 27B – Right to work and other work-related rights

The amendment has been drafted narrowly, providing that the prohibition only affects legal services where the provision of those services involves contact with a child and is related to a child, in order to be the least restrictive of the right to work. The provision is not intended to restrict the ability of registrable offenders to work at Legal Aid ACT more broadly where the employment does not involve contact with a child.

The amendment is not intended to capture circumstances, for example, where contact with a child is incidental to the delivery of legal services or not directly related

to the child, for example where a person seeking legal services in relation to their rental rights attends a meeting with their child. As elucidated in the examples in the Bill, the amendment is intended to capture circumstances such as where Legal Aid ACT represents a child in a legal matter, provides advice to a child or where a child is a witness in a proceeding.

Moreover, at this stage, the provision only relates to legal services provided by Legal Aid ACT, whether through its officers or funded private practitioners. The amendment does not capture where legal services are provided by other organisations or businesses.

The narrow scope of the amendment ensures that the limitation on the right to work is proportionate to the purpose of protecting the safety of children.

Section 12 – Right to privacy

The requirement for a person to disclose a pending charge for a registrable offence to an employer or prospective employer in an area of child-related employment is essential to achieve the overarching purpose of the scheme. The requirement allows for the early identification of potential contact between a child and a person charged with a registrable offence, while not prohibiting that contact until the person is convicted and a registrable offender. Section 132 of the Act provides that it is an offence for an employer to divulge information obtained as a result of the disclosure obligations under the Act. This requirement minimises the limitation on the right to privacy and helps to ensure that the limitation is proportionate to the purpose of protecting the safety of children.

Section 18 – Right to liberty and security of person

The application of maximum penalties of imprisonment for the child-related employment offences in sections 126 and 127 of the Act is proportionate to any limitation on a registrable offender's right to liberty. The offences and associated penalties are consistent with the ACT Government *Guide for Framing Offences* and are considered proportionate to the purpose of the scheme. The maximum penalties attached to the offences reflect the seriousness of the offences and other similar offences across the ACT statute.

Registrable offenders are provided with information about their obligations under the Act upon registration. In addition, the Bill has been drafted with a delayed commencement of three months to allow sufficient time for impacted individuals to be made aware of the expansion of the scope of the offences.

This amendment does not engage registrable offenders' right to equality and non-discrimination and would not be discrimination on the basis of irrelevant criminal record, because the restricted type of work (being child-related) is directly relevant to the registrable offender's criminal history.

CRIMES (CHILD SEX OFFENDERS) AMENDMENT BILL 2025

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **CRIMES (CHILD SEX OFFENDERS) AMENDMENT BILL 2025**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is consistent** with the *Human Rights Act 2004*.

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Tara Cheyne MLA
Attorney-General

CRIMES (CHILD SEX OFFENDERS) AMENDMENT BILL 2025

Clause 1 **Name of Act**

This is a technical clause that names the short title of the Act. The name of the Act will be the *Crimes (Child Sex Offenders) Amendment Act 2025*.

Clause 2 **Commencement**

This clause provides that the Act will commence three months after its notification day.

Clause 3 **Legislation amended**

This clause provides that the Act amends the *Crimes (Child Sex Offenders) Act 2005*.

Clause 4 **What is *child-related employment*? New section 124 (1) (sa)**

This clause inserts subsection (sa) to provide that child-related employment includes legal services related to a child, provided by Legal Aid ACT. Examples are provided to assist to explain the meaning.

Clause 5 **Section 124 (2), new definition of *Legal Aid ACT***

This clause inserts a definition of *Legal Aid ACT* into section 124(2). The definition is the same as in section 94 of the *Legal Aid Act 1977*. Section 94 provides that the Legal Aid Commission exercises its functions under section 8 of the *Legal Aid Act 1977* under the name Legal Aid ACT. Legal Aid ACT's functions include providing legal assistance by arranging for the services of private legal practitioners to be made available or making available the services of its officers (section 8(2) of the *Legal Aid Act 1977*). As a result, the amendment at clause 4 restricts employment to provide legal services related to child both as an officer of Legal Aid ACT and as a private practitioner funded by Legal Aid ACT.