

**2012**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**CRIMES (CHILD SEX OFFENDERS) AMENDMENT BILL 2012**

**SUPPLEMENTARY EXPLANATORY STATEMENT**

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## **Crimes (Child Sex Offenders) Amendment Bill 2012**

### **Outline of Government Amendments**

The Crimes (Child Sex Offenders) Amendment Bill 2012 amends the Crimes (Child Sex Offenders) Act 2005 (the CSO Act).

The CSO Act establishes the ACT's Child Sex Offender Register which requires certain offenders who commit sexual offences against children to keep police informed of their whereabouts and personal details. Personal details must be reported for a period of time commencing when the offender is sentenced, or no longer in government custody.

On 16 February 2012, the Crimes (Child Sex Offenders) Amendment Bill 2012 (the Bill) was introduced to the Legislative Assembly. The amendments proposed by the Bill fall into two broad categories – the 'prohibition order scheme' (the new chapter 5A) and 'general amendments' (the remaining amendments).

The explanatory statement accompanying the Bill provides a detailed account of the amendments proposed to the CSO Act and can be accessed at:

[http://www.legislation.act.gov.au/es/db\\_44010/current/pdf/db\\_44010.pdf](http://www.legislation.act.gov.au/es/db_44010/current/pdf/db_44010.pdf)

Government amendments to the Bill are required to address four issues that have arisen following the introduction of the Bill on 16 February 2012. These issues are:

1. the requirement for transitional provisions to ensure that registrable offenders who will be serving a sentence of periodic detention when the Bill commences are required to commence their reporting obligations while completing their periodic detention;
2. to support the amendments proposed by clause 83 (when reporting period begins) of the Bill, it is necessary to move technical amendments to ensure that:
  - i) a reporting obligations notice is provided to registrable offenders when they are released from full-time government custody;
  - ii) to ensure that supervising authorities advise the chief police officer when a registrable offender stops being in full-time government custody; and
  - iii) to ensure that the child sex offenders register contains the date that the registrable offender was released from full-time government custody.
3. to protect information that is provided under sections 132ZN and 132ZO, it is necessary to create a offence that will apply to prescribed entities and people with parental responsibility for a child identified at risk to ensure that protected information is kept secret.
4. An amendment to section 132ZN and 132ZO to ensure that where protected information is provided under these sections, that the chief police officer must advise the prescribed entity or the person with parental responsibility of the new offence.

# **Crimes (Child Sex Offenders) Amendment Bill 2012**

## **Detail**

### **Amendment 1 – Proposed new clause 5A Page 2, line 27—**

This amendment is a technical amendment that will insert a new note into section 20 of the Act. Section 20 details the offences that are ‘reporting offences’ for the Act. The new note will clarify that an offence against section 203 (offence- affected registered offender must report) of the Act is also a ‘reporting offence’ for the purposes of section 20.

Section 200 is contained in new Chapter 10 of the Act, which makes it an offence if an affected registered offender does not report under the transitional arrangements that new chapter 10 creates.

For further discussion on this, please see the discussion on Amendment 6.

### **Amendment 2 – Proposed new clauses 17A to 17C Page 7, line 25—**

#### **17A- Reporting obligations notice to be given when person becomes registrable offender- Section 104 (1) (ba)**

This is a technical amendment that will insert a new section at 104 (1) (ba) of the Act. The amendment to section 104 (reporting obligations notice to be given when person becomes registrable offender) will ensure that a reporting obligations notice is given to a registrable offender when they are released from full-time government custody, therefore supporting the amendment at clause 17 to require those registrable offenders who are serving periodic detention to commence their reporting obligations while serving their sentence of periodic detention.

#### **17B- Supervising authority to tell chief police officer of certain events- New section 108 (1) (aa)**

This is a technical amendment that will insert a new section at 108 (1) (aa) of the Act. The amendment to section 108 (supervising authority to tell chief police officer of certain events) will support the amendments at clause 17 by requiring the supervising authority to advise the chief police officer when a registrable offender stops being in government custody. This amendment will ensure that the registrable offender commences their reporting obligations.

#### **17C- Establishment of child sex offenders register- Section 117 (2) (ea)**

This is a technical amendment that will insert a new section at section 117 (2) (ea). The amendment to section 117 (e) (establishment of child sex offenders register) is a technical amendment that will ensure that the child sex offenders register contains the date that the registrable offender was released from full-time government custody, and therefore the date their reporting period commenced.

**Amendments 3 and 4 – Proposed new section 132ZN (2A) Page 45, line 5 and Proposed new section 132ZO (3) Page 45, line 16—**

These two amendments amend clause 19 in the Bill to include an obligation on the chief police officer to advise a prescribed entity or a person with parental responsibility for a child at risk in writing of the new offence at section 132ZOA (offence- prescribed entities and people with parental responsibility to keep information secret) when they are provided with protected information.

Section 130ZN provides the chief police officer with the ability to give a prescribed entity certain information about a prohibition order including the registrable offender's name and date of birth, the term of the order, the conduct by the person that the order prohibits and any other information that the chief police officer considers is necessary to identify the registrable offender to ensure the safety of a child or children in the prescribed entities care or the registrable offender.

Section 132ZO provides the chief police officer with the ability to give information about a prohibition order to a person who has parental responsibility for a child or children protected by the order.

**Amendment 5 – Proposed new section 132ZOA Page 45, line 16**

This amendment will insert a new offence at section 132ZOA (Offence- prescribed entities and people with parental responsibility to keep information secret). This offence will apply to prescribed entities and people with parental responsibility for a child at risk who are provided with protected information under sections 132ZN and 132ZO.

Section 132ZOA (2)(a) creates an offence where the person makes a record of the protected information that has been provided and the person is reckless about whether the information is protected information.

Section 132ZOA (2)(b) creates an offence where the person does something that divulges the protected information and the person is reckless about whether the information is protected information about someone else and is reckless about whether doing the thing would result in the information being divulged to someone else.

The physical element for the offences at subsections 2(a) and 2(b) is conduct ('makes a record of protected information' and 'divulges protected information'). The *Criminal Code 2002*, section 22(1) applies the fault element of 'intention' for these physical elements of conduct.

An offence under section 132ZOA is punishable by imprisonment for 6 month, 50 penalty units, or both.

Sections (3) to (6) detail the circumstances where the offence will not apply. The offence will not apply if:

- the record was made, or the information was divulged, under this Act or another Territory law;

- the protected information was divulged by a prescribed entity to a staff member of the prescribed entity to allow the staff member to identify the registrable offender;
- the protected information is divulged with the registrable offender's consent;
- the protected information was divulged for law enforcement functions or activities and then only to an entity prescribed by regulation.

For sections (3) to (6), the defendant has an evidential burden to prove the matter.

This offence is considered necessary in order to protect the protected information that is provided to both prescribed entities under section 130ZN and also to persons with parental responsibility for a child at risk at section 132ZO.

### Human Rights Considerations

The new offence at section 132ZOA engages a number of the rights in the ACT's *Human Rights Act 2004* (HR Act). The offence engages and supports the right to privacy and reputation (section 12). The new offence also engages, and places limitations on, the following HR Act rights:

- section 16- Freedom of expression;
- section 18- Right to liberty and security of person.

The manner in which these human rights are engaged can be considered in the context of the discussion on rights in the Explanatory Statement for the Bill.

With respect to the right to privacy and reputation (section 12), the offence engages and supports this right by providing protection to registrable offenders where the chief police officer gives protected information to a prescribed entity or a person with parental responsibility. The provisions that allow the chief police officer to give information to certain people include limits to the circumstances and the type of information that may be given. Creating an offence to apply to instances where protected information is divulged provides further protection to the privacy of people subject to prohibition orders.

The creation of an offence that applies to a prescribed entity or to a person with parental responsibility engages and limits human rights of those people. The prescribed entity or person with parental responsibility will be on notice about the need to keep relevant information secret by virtue of the government amendment to new sections 132ZN and 132ZO (detailed above). These amendments will require the chief police officer to tell the person, in writing, about the person's obligations to keep information given to them secret.

The engagement of rights is proportionate as the purpose of the limitation is strictly limited to the 'divulging of protected information about a person'. There is a clear link between the limitation and the purpose of the offence, namely, to protect information about the person subject to a prohibition order given to:

- a prescribed entity under section 132ZO; and
- a person with parental responsibility under section 132ZN.

There is no less restrictive means reasonably available to achieve the purpose the limitation. An alternative would be to restrict the giving of protected information to people with responsibility for the care and welfare of children. This alternative would have the effect of

limiting the new prohibition order scheme's ability to properly protect the lives or sexual safety of a child or children at risk because of the conduct registrable offenders.

**Amendment 6 – Proposed new clause 20A Page 49, line 12**  
**20A- New chapter 10**

The Government amendments will introduce new chapter 10 into the Act. New chapter 10 will provide transitional provisions to ensure that registrable offenders who are serving a sentence of periodic detention when the Bill commences are required to commence their reporting obligations while serving their sentence of periodic detention.

The Bill proposes to amend section 83 of the CSO Act to ensure that convicted child sex offenders who receive a sentence of periodic detention commence their reporting obligations when they commence their periodic detention. Previously, these offenders were required to commence their reporting obligations after they had completed their sentence of periodic detention.

ACT Policing has raised concerns over the commencement of the reporting obligations for offenders who would be serving a sentence of periodic detention when the Bill commenced. The amendments in the Bill do not apply to registrable offenders who would be serving a sentence of periodic detention at commencement.

New section 202 (reporting obligations notice to be given) will require the chief police officer to give an affected registrable offence a reporting obligations notice not later than 7 days after the commencement of the Bill. An 'affected registrable offender' is defined at section 201 as a registrable offender who, immediately before the commencement day, is serving a periodic detention period of a sentence of imprisonment.

New section 203 creates an offence where an affected registrable offender is given a reporting obligations notice and the offender does not take all reasonable steps to report the offender's personal details, in person, to the chief police officer within 7 days after the person's reporting period begins. The offence is punishable by imprisonment for 2 years, 200 penalty units, or both.

New section 204 states when the reporting period begins for an affected registrable offender. The affected registrable offender's reporting period begins the day after the day the offender receives a reporting obligations notice.

New section 205 details expiry date for chapter 10. It states that chapter 10 will expire 1 year after the commencement day for the Bill.