

**2021**

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

**CRIMES (POLICING) LEGISLATION AMENDMENT BILL**

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

**Presented by  
Mick Gentleman MLA  
Minister for Police and Emergency Services**

## CRIMES (POLICING) LEGISLATION AMENDMENT BILL 2021

**The Bill is 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* (HRA).

### OVERVIEW OF THE BILL

The policy objective of the Bill is to improve the efficient functioning of the ACT justice system and enhance community safety.

The Bill is an omnibus bill which amends a range of legislation in the Minister for Police and Emergency Services' portfolio.

The Bill makes amendments to the *Crimes (Child Sex Offenders) Act 2005* (ACT), *Crimes (Child Sex Offenders) Regulation 2005* (ACT), the *Firearms Act 1996* (ACT), and the *Firearms Regulation 2008* (ACT) to:

- consolidate failure to report offences for child sex offenders into a single strict liability offence;
- enshrine a permanent amnesty for the surrender of firearms to police;
- provide a legislative basis for the destruction or disposal of those firearms by the Firearms Registrar without the need for a court order;
- introduce new, stricter safe storage requirements for security companies licensed to possess and use Category H guns; and
- introduce consequential amendments arising from updates to the numbering of provisions, and headings, of the *Crimes (Child Sex Offenders) Act 2005* (ACT).

### SUMMARY OF AMENDMENTS

#### ***Crimes (Child Sex Offenders Act) 2005***

The amendments to the *Crimes (Child Sex Offenders) Act 2005* (the CSO Act) are primarily aimed at enhancing the ability of ACT Policing to protect the lives and sexual safety of children in the ACT.

As discussed in the Explanatory Statements to the *Crimes (Child Sex Offenders) Amendment Act 2012* and *Crimes (Child Sex Offenders) Amendment Act 2015*, this rationale aligns with the *Conventions 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 of the CROC are directly relevant for the purposes of the CSO Act. Article 3 states that in all actions concerning children, the best interests of the child shall be the primary consideration. 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.

At present, the CSO Act sets out 18 different offences for failure to adhere to reporting obligations. These offences include behaviours including failing to report to police upon being convicted of a relevant offence and failing to report travel details when leaving the ACT. This Bill amends the offences so each one is now no longer an offence, but instead a 'reporting obligation provision'. The offences will be replaced by a single offence provision which criminalises failure to report as required by the reporting obligation provisions (new section 58A). This is in line with other jurisdictions, such as Victoria, where there is only one offence provision.

In addition to consolidating the offences within a single provision, the new offence in section 58A contains several elements including:

- a) a mental element of recklessness as to whether the offender was required to report. This is a safeguard introduced following consultation with JACS' Human Rights and Social Policy team to ensure the offence is compliant with the HRA; and
- b) a physical element where the act or failure to report is made strict liability. This strict liability element is subject to the defence of mistake of fact under the *Criminal Code 2002*.

Strict liability offences are ones where there is no mental element attached to the physical element of the offence. This means that the prosecution does not have to prove a person's mental intent to secure a conviction.

To ensure the strict liability offence is compliant with the HRA, the Bill introduces two safeguards so that a person will only commit a strict liability offence if they are reckless as to whether they are required to report, and they do not have a reasonable excuse for failing to report.

Under section 20 of the *Criminal Code 2002* (Criminal Code), a person is 'reckless' about whether they need to report if the person is aware there is a substantial risk that the circumstance of needing to report exists and it is not justifiable for the person to take this risk having regard to the circumstances.

In determining whether an offender has a reasonable excuse for failing to report, the Bill sets out criteria which the Court must consider, having regard to the offender's age, any disability the offender has, and whether the notice of reporting obligations was sufficient.

The Bill also makes a minor amendment to resolve a perceived gap in the legislation. Section 61 of the CSO Act currently provides that an offender is employed if they carry out 'work as a volunteer for an organisation'. The amendments clarify that the 'employment' of an offender includes work undertaken for a business without pay or as a volunteer.

## ***Firearms Act 1996 and Firearms Regulation 2008***

### **Permanent amnesty and power to destroy/dispose of firearms**

Under the Firearms Act, it is an offence for a person to possess or use a firearm without authorisation by a licence or permit.

The Bill introduces a permanent amnesty so that a person will not face penalty under an offence provision if unregistered firearms are surrendered to police. The Bill also provides a legislative basis for the Firearms Registrar to destroy or dispose of firearms surrendered under the amnesty, without requiring a court order to do so.

Several temporary amnesties have been declared for various time periods in the ACT, including the current temporary amnesty which took effect from 1 July 2021 and is due to end on 30 June 2022. The Bill repeals this temporary amnesty to enshrine a permanent firearms amnesty under the Firearms Act. In doing so, the ACT joins other jurisdictions in adopting the permanent National Firearms Amnesty.

The Bill also allows the Firearms Registrar to destroy or dispose of firearms without needing to seek a court order, which is the current practice under the Firearms Act. This will reduce regulatory burden on the Firearms Registrar in the context of a permanent amnesty.

Without fear of prosecution, people who have inherited, purchased or otherwise acquired firearms without the necessary permit or licence will be encouraged to hand in these guns, for registration or forfeiture. The registration of firearms will ensure firearms users are subject to the scrutiny and visibility of the license framework, with the corresponding conditions and responsibilities. The forfeiture of firearms will result in either a disposal or destruction of firearms by the Firearms Registrar and reduce the number of firearms accessible by the public. Under both scenarios, the permanent amnesty will significantly reduce the risk of gun violence in the community.

#### Safe storage requirements for the security industry

Under Part 12 of the Firearms Act, firearms must be stored safely and securely by all license holders. The Bill adopts item 49 of the National Firearms Amnesty (NFA) and requires security companies with composite licenses for Category H guns to adhere to more stringent storage standards. These amendments also make firearms less vulnerable to theft from the security industry by people who may harbour criminal intent and cause harm to others.

These new standards largely replicate the requirements under section 81 of the *Firearms Regulations 2017* (NSW). While NSW currently only allow security companies to store one firearm at residential premises, the Bill provides that security companies in the ACT holding any number of firearms may store these firearms at registered premises including residential premises subject to approval by the Firearms Registry. In assessing whether premises are suitable for firearms storage, stringent safety checks carried out by the Firearms Registry, and the premises approved based on safety requirements. This is similar to the assessments and approvals currently conducted by the Registry in relation to registered premises that firearms dealers can operate from.

The commencement of these amendments will be delayed by 12 months, to ensure all security companies have ample opportunity to update their facilities to meet the new requirements.

### **CONSULTATION ON THE PROPOSED APPROACH**

The proposed amendments are the result of consultation with relevant stakeholders affected by the proposals. Input from stakeholders has informed the amendments proposed in this Bill.

Amendments in the Bill have been identified by and developed in consultation with justice stakeholders including the Director of Public Prosecutions (DPP), ACT Policing, the Firearms Registry, the ACT Bar Association, ACT Law Society and the ACT Human Rights Commission (including Victims of Crime Commissioner, Public Advocate and Children & Young People Commissioner).

In relation to the firearms reforms, the Firearms Advisory Committee and security companies holding composite licenses under the Firearms Act were also consulted.

### **CONSISTENCY WITH HUMAN RIGHTS**

International human rights law requires governments to ‘respect, protect and fulfil rights’. This obligation requires government to ensure its organs and agents do not themselves commit violations of human rights, protect individuals and groups from having their rights unduly interfered with and take positive action to facilitate the full realisation of rights.

The European Court of Human Rights has considered the positive obligation of governments to uphold rights in depth. One element of this responsibility involves creating legislative and administrative frameworks to deter conduct that infringes rights, and to undertake operational measures to protect an individual who is at risk of rights infringement<sup>1</sup>.

The Bill engages and supports the following HRA rights:

- Section 9 – Right to life
- Section 11 – Protection of family and children

The Bill also engages and places reasonable and justifiable limitations on, the following rights under the HRA

- Section 8 – Recognition and equality before the law
- Section 12 – Right to privacy
- Section 13 – Freedom of movement
- Section 18 – Right to liberty and security of the person
- Section 22(1) – Right to be presumed innocent until proven guilty

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<sup>1</sup> Colvin, M & Cooper, J, 2009 ‘Human Rights in the Investigation and Prosecution of Crime’ Oxford University Press, p.425. For more detail on positive obligations, see generally, Akandji-Kombe, J, 2007 ‘Positive obligations under the European Convention on Human Rights’, Council of Europe.

### ***Rights engaged and promoted***

#### Amendments to the Firearms Act 1996 and Firearms Regulation 2008

The firearms amendments engage and support the right to life, primarily by reducing the risk of gun violence in the community. The right to life embodies the notion that no-one may be arbitrarily deprived of life.

Efforts to reduce the number of unregistered, unlicensed firearms circulating in the community, coupled with reforms to ensure firearms stored by the security industry are less vulnerable to theft, make it less likely that people in the ACT suffer harm or loss of life from gun violence.

#### Amendments to the Crimes (Child Sex Offenders Act) 2005

The CSO Act amendments engage and support the right to the protection of family and children (section 11). Under the CROC articles, the best interests of the child are the primary consideration, and children are to be protected from all forms of sexual exploitation or sexual abuse. The CSO Act amendments support this right by ensuring the safety of children is given primary importance.

### ***Rights engaged and limited***

This Bill is consistent with the HRA despite engaging with and limiting some rights protected under the HRA. As the preamble to the HRA notes, few rights are absolute and therefore may be subject to reasonable limitations in law, provided these limits are demonstrably justified in a free and democratic society.

Section 28 (2) of the HRA contains a framework that is used to determine the acceptable limitations that may be placed on human rights. This explanatory statement details an assessment of the limitations identified against the section 28 framework. Section 28 provides that any limitation on a human 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.

#### Amendments to the Crimes (Child Sex Offenders Act) 2005

While the CSO Act amendments may engage and limit the rights to recognition and equality before the law, and the right to be presumed innocent until proven guilty, these limitations are demonstrably justifiable as being the less restrictive approach to achieve the objects of the CSO Act, as detailed below. The reporting scheme regulated by the amendments may also engage and limit the rights to privacy, freedom of movement, and the right to liberty and security of the person.

1. Nature of the right and limitation (s 28(2)(a))

*Recognition and equality before the law (section 8)*

Section 8 of the HRA provides:

- (1) Everyone has the right to recognition as a person before the law.
- (2) Everyone has the right to enjoy their 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.

Section 8 applies where the differential treatment (direct or indirect) must be on the basis of a protected attribute, such as age, sex, race and disability.

The CSO Act amendments apply to registrable offenders only. While the amendments do not specifically target people on the basis of a protected attribute, they may in practice disproportionately affect persons for whom English is a second language owing to more limited ability to comprehend reporting requirements. The introduction of the stricter offence for failure to report may therefore limit the right of particular registrable offenders to enjoy their human rights without distinction or discrimination.

At various points, including upon conviction and at the annual reporting interview, offenders are provided with a Notice of Reporting Obligations (NORO). The NORO sets out all the circumstances in which an offender must report. The offender is audiotaped and videotaped at the annual reporting interview when they are provided with the NORO and asked to sign a declaration that they have understood their reporting obligations. In addition, people with English as a second language or who have special needs are asked about their requirements and are accommodated by ACT Policing, who can provide translating services and offer that support people might attend the interviews.

*Right to privacy (section 12)*

Section 12 of the HRA protects individuals from unlawful or arbitrary interference with privacy, family, home or correspondence. The right encompasses the idea that individuals should have a separate area of autonomous development, interaction and liberty, free from excessive government intervention and unsolicited intrusion by other individuals.

The right to privacy requires that the state does not arbitrarily or capriciously invade a person's privacy in a manner not based on demonstrable evidence. The concept of arbitrariness requires that any interference with privacy, even when provided for by law, should be reasonable in the particular circumstances.

The amendments proposed engage and limit the right to privacy of registrable offenders, as it requires them to abide by the set of reporting requirements, as outlined in the CSO Act. The reporting obligations require offenders to provide ACT Policing with a wide range of personal information, including information about the offender's place of residence, employment, and details of any travel outside the Territory. Offenders who do not comply with their reporting obligations are subject to a maximum penalty of 500 penalty units or 5 years' imprisonment or both.

These requirements are reasonable in the circumstances given that the offender has been convicted of a child sex offence, the information that is required to be reported ensures police are able to evaluate and manage the ongoing risk to safety of children posed by the offender, the offender is advised of their reporting obligations multiple times and in various ways, and because the reporting scheme is limited in time.

### *Right to freedom of movement (section 13)*

Section 13 of the HRA provides that everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT. The right to freedom of movement is linked to the right to liberty. It can be interpreted as providing that a person's movement across borders should not be unreasonably limited by the state, including through procedural impediments. This right is not absolute.

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 HRA): '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 amendments in the Bill relate to a scheme which engages and limits a person's right freedom of movement in the ACT as registrable offenders must report on their movement into ACT and travel outside ACT and failure to do so will result in penalty of up to five years' imprisonment. The reporting regime also impacts on the freedom of the offender to live anywhere in the community, and to associate or communicate with children.

The current amendments do not change the reporting regime, but instead change the offence construction applying to the reporting regime. This means that the changes will have no further impact on the rights limited by the reporting regime itself.

The reporting obligations are considered to be a reasonable limitation on human rights as they are directed at the legitimate purpose of ensuring safety of children in the community



and provide the least restrictive means of limiting offenders' movement through ensuring reporting occurs at specific times and via specific means that are defined in legislation.

### *Right to liberty and security of the person (section 18)*

Everyone has the right to liberty and security of person, in particular, no-one may be arbitrarily arrested or detained or deprived of their liberty except on the grounds and in accordance with the procedures of the law.

The right to liberty and security of a person can be relevant any time a person is not free to leave a place by his or her own choice. This includes the interim detention of a person, for example, to allow a public authority to control movement within an area.

The right to security and liberty of person is engaged as imprisonment *for breach of a reporting obligation* could amount to arbitrary detention (section 18(1) of the HRA). The United Nations Human Rights Committee confirmed in the case of *Van Alphen v the Netherlands* that 'arbitrary' deprivation of liberty must not be manifestly disproportionate, unjust or unpredictable. ([\[10\]](#) *Van Alphen v The Netherlands* UN Doc CCPR/C/39/D/305/1988, 15 August 1990, paragraph 5.8)

This right is engaged as an offender's failure to comply with their reporting obligations could lead them to be imprisoned. The penalty for failure to report as required under new section 58A of the Act is 500 penalty units or 5 years' imprisonment or both. This is a justified limitation on the right to liberty as the failure to report as required poses a significant risk to the safety of children and the penalty stands as a potential deterrent. The offender is aware of their reporting obligations through the NORO, and the offender has been convicted and sentenced by a Court and therefore has notice of obligations which if not adhered to would result in the penalty. The penalty of imprisonment is available for the most serious offending and there are several safeguards relating to the determination of the offence that are discussed further below.

### *Rights in criminal proceedings and the right to be presumed innocent until proven guilty (section 22)*

Section 22 of the HRA is based on article 14 of the ICCPR and provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.

The UNHRC stated in General Comment 32:

‘The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proven beyond a reasonable doubt, [and] ensures that the accused has the benefit of doubt...’<sup>2</sup>

In order to have a reversal of proof, ‘the substance and effect of any presumption adverse to a defendant must be...reasonable’.<sup>3</sup>

Section 22 of the HRA is engaged by the CSO amendments as a strict liability element is introduced to the failing to report offence and it reverses the onus of proof by placing an onus of proof upon the defendant rather than the prosecution. The strict liability element applies to whether the defendant did in fact report per their obligations and places an evidential burden on the registrable offender to present, or point to, evidence that suggests a reasonable possibility that the defence of honest mistake can be established.

## 2. Legitimate purpose (s 28(2)(b))

Section 6 of the CSO Act sets out that its objectives 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.

The scheme and the amendments proposed in the Bill are directly linked to the purpose of reducing the likelihood that registrable offenders will re-offend and seek to support the capacity of ACT Policing to protect the lives and sexual safety of children. It reflects the expectation of the community that laws support the safety and protection of children from sexual assault and violence.

The September 2011 ‘Trends & Issues in crime and criminal justice’ paper published by the Australian Institute of Criminology focussed on ‘misconceptions about child sex offenders.’<sup>4</sup> The paper discusses a study on recidivism rates amongst extra-familial child sex offenders over a 25-year period. The study, conducted by Prentky et al, found that 52% of child sex offenders reoffended (they were charged with a further sex offence) in the 25 year at risk

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<sup>2</sup> Office of the United Nations High Commissioner for Human Rights, Human Rights Committee, 2007 ‘General Comment 32: Article 14: Right to equality before courts and tribunals and to a fair trial’, para 30.

<sup>3</sup> *Attorney General’s Reference No 4 of 2002; Sheldrake v DPP* [2005] 1 AC 264, [21].

<sup>4</sup> Richards, K ‘Misperceptions about child sex offenders’ *Trends and Issues in Crime and Criminal Justice*, issue number 429, Australian Institute of Criminology, September 2011.

period following the original conviction. However, this study also notes the limitations of sex offender recidivism studies, and notes that the 52% recidivist figure could be higher.<sup>5</sup>

These statistics should be viewed with caution given the fact that child sex offences have very low rates of reporting, detection, arrest and successful prosecution. However, what can be said is that the research indicates that a significant proportion of child sex offenders will reoffend.

### 3. Rational connection between the limitation and its purpose (s 28(2)(d))

The amendments to the CSO Act augment existing monitoring powers by ACT Policing and increase their ability to protect the lives and sexual safety of children in the Territory.

Registrable offenders, defined under section 8 of the CSO Act, are already required to adhere to their reporting obligations. The amendments seek to ensure greater compliance by registrable offenders with their reporting obligations. ACT Policing estimate that the amendments will primarily impact the approximately 10% of registrable offenders who do not comply with their reporting obligations.

The application of strict liability will only apply to one element of the offence (whether or not the offender reported as required), while there will continue to be a mental element to the offence (whether the offender was reckless as to whether they were required to report).

The existing reporting framework requires offenders to report to ACT Policing in a wide range of situations, such as:

- upon leaving custody;
- upon being sentenced;
- upon entering the ACT;
- annually as part of the annual interview process;
- when leaving the Territory; and
- when their personal details change.

The provisions vary, with some reports needing to be made in person and others being able to be made via phone or email contact.

The amendments to the CSO Act do not change these reporting requirements, but instead consolidate the offences for each reporting requirement into a single offence provision.

The amendments to the CSO Act are justified given the current issues with the operation of the reporting requirement offences. Specifically, the current element of intention relating to an omission to 'take all reasonable steps' to report is almost impossible to prove. For

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<sup>5</sup> Ibid, p5.

example, a registrable offender may state that they forgot to report, which proves a complicating factor in demonstrating that intention is present.

The limitations are also justified taking into account the safeguards that are in place, namely:

- That offenders are given a NORO at multiple stages, including at each annual interview, making sure they are aware of the need to report.
- The new defence in section 58A(3), which states that the offence section does not apply if the offender has a reasonable excuse for failing to report as required.
- The requirements that the Court must consider in applying section 58A(3), set out in section 58A(4) (including the age of the offender, whether the offender had a disability, and the form of notice given to the offender).
- The inbuilt defence to strict liability subsection 58A(1)(c) of mistake of fact under section 36 of the *Criminal Code 2002*.

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

These amendments require the balancing of the respective rights of children and their families and registrable offenders.

The current legislative framework needs to be amended to prevent offenders from claiming that their failure to report was due to forgetfulness given the severity of the consequences of failing to report on the safety for children.

The amendments are considered to be the least restrictive means of achieving the objective of strengthening the enforcement of the reporting regime which is in place to protect the safety of children. The CSO Act amendments have been developed with two safeguards to ensure that the limitations on the rights of the offender to the presumption of innocence are appropriate and adapted to achieve the stated objective. The safeguards relate to the introduction of a mental element of recklessness as to whether the offender was required to report and a reasonable excuse defence, where the offender may establish that they have a reasonable excuse for failing to report based on a range of factors including age, disability or whether sufficient notice to report was given. These safeguards ensure that the application of strict liability to the offence does not unduly curtail the offender's right to presumption of innocence and will enable consideration of individual circumstances that may have contributed to the failure to report. Together these changes will support prosecution of failure to report and thus enable the child sex offender register scheme to function effectively.

## CRIMES (POLICING) LEGISLATION AMENDMENT Bill 2021

### *Human Rights Act 2004 - Compatibility Statement*

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Crimes (Policing) Legislation Amendment Bill 2021**. 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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Shane Rattenbury MLA  
Attorney-General

# Crimes (Policing) Legislation Amendment Bill 2021

## Detail

### Part 1 – Preliminary

#### Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act is the *Crimes (Policing) Legislation Amendment Act 2021* (the Amendment Act).

#### Clause 2 — Commencement

This clause provides for the commencement of the amendments. All provisions other than sections 35 and 36 and part 5 of the Amendment Act (*Firearms Regulation 2008*) will commence on the day after the Amendment Act's notification day. Sections 35, 36 and Part 5 of the Amendment Act will commence 12 months after the day the legislation is notified.

#### Clause 3 — Legislation amended

This clause lists the legislation being amended by the Bill. The Bill amends the *Firearms Act 1996*, *Firearms Regulation 2008*, *Crimes (Child Sex Offenders) Regulation 2005* and *Crimes (Child Sex Offenders) Act 2005*.

#### Clause 4 — Legislation repealed

This clause repeals the *Firearms (Amnesty) Declaration 2021* (NI2021-398).

### Part 2 – Crimes (Child Sex Offenders) Act 2005

In the existing Act, there are numerous offence provisions centred around behaviour of failing to report as required. This Bill removes the individualised offence provisions and consolidates them into a single offence, new section 58A. The former offence provisions will now only stipulate what reporting behaviour is required and when.

In addition to consolidating the offence provisions, this Part amends the offence elements so that:

- 1) whether or not an offender is meant to report has the mental element of recklessness; and
- 2) whether or not an offender did in fact report is made strict liability.

#### Clause 5 – What is a *reporting obligation*?

##### Section 19, definition of *reporting obligation*

This clause amends section 19 to change the definition of 'reporting offence provision' to instead be the definition of 'reporting obligation provision'. This reflects that the offences have now been consolidated into a single offence, and so the provisions are no longer

reporting offences but reporting obligations. New section 58A sets out a single offence of failing to report under a reporting obligation provision.

#### **Clause 6 – Section 20**

This clause lists the sections of the CSO Act which are to be considered ‘reporting obligation provisions’. Section 21 has been removed from this list as it is no longer part of the Act. Sections 70 and 71 have been removed from this list as they are not reporting obligation provisions.

#### **Clause 7 – Sections 22 to 25**

Sections 22 through 25 were previously ‘reporting offence provisions’ and will now be ‘reporting obligation provisions’ under the changes made in clauses 5 and 6. The offence elements of the sections have been removed, with the offences now consolidated into new section 58A below. The titles of the named sections have been amended to take into account that there is no longer an offence contained within these sections.

The sections still retain the requirement to report in specific circumstances.

#### **Clause 8 – Sections 28 to 30**

Sections 28 through 30 were previously ‘reporting offence provisions’ and will now be ‘reporting obligation provisions’ under the changes made in clauses 5 and 6. The offence elements of the sections have been removed, with the offences now consolidated into new section 58A below. The titles of the sections have been amended to take into account that there is no longer an offence contained within these sections.

The sections still retain the requirement to report in specific circumstances.

#### **Clause 9 – Section 34**

Section 34 was previously a ‘reporting offence provision’ and will now be a ‘reporting obligation provision’ under the changes made in clauses 5 and 6. The offence element of the section has been removed, with the offences now consolidated into new section 58A below. The title of the section has been amended to take into account that there is no longer an offence contained within this section.

The sections still retain the requirement to report in specific circumstances.

#### **Clause 10 – Section 37 heading**

The title of this section has been amended to take into account that there is no longer an offence contained within this section, due to the consolidation of offences within section 58A.

#### **Clause 11 – Section 37 (2) and (3)**

In 2015, section 37 was amended to make failure to report a strict liability element of the offence. The result of this was that police no longer had to prove that a person had

intentionally failed to report, it became sufficient to prove that the failure to report had occurred. However, now that the offences are consolidated within section 58A, subsections (2) and (3) are no longer required. The intent and effect of the 2015 amendments to section 37 will not change.

#### **Clause 12 – Section 42**

Section 42 was previously a ‘reporting offence provision’ and will now be a ‘reporting obligation provision’ under the changes made in clauses 5 and 6. The offence element of the section has been removed, with the offences now consolidated into new section 58A below. The title of the section has been amended to take into account that there is no longer an offence contained within this section.

The sections still retain the requirement to report in specific circumstances.

#### **Clause 13 – Defence – impracticable to report 7 days before leaving Section 43**

Section 43 provides an exception to the offence created in section 42. Given that the offences, including the offence in section 42, are now consolidated into section 58A, section 43 has been amended accordingly to refer to the correct offence provision.

#### **Clause 14 – Section 44**

Section 44 provides an exception to the offence created in section 42. Given that the offences, including the offence in section 42, are now consolidated into section 58A, the wording of section 44 has been amended accordingly to refer to the correct offence provision.

#### **Clause 15 - Sections 45 to 49**

Sections 45 through 49 were previously ‘reporting offence provisions’ and will now be ‘reporting obligation provisions’ under the changes made in clauses 5 and 6. The offence elements of the sections have been removed, with the offences now consolidated into new section 58A below. The titles of the sections have been amended to take into account that there is no longer an offence contained within these sections.

The sections still retain the requirement to report in specific circumstances.

#### **Clause 16 – Sections 54 to 56**

Sections 54 through 56 were previously ‘reporting offence provisions’ and will now be ‘reporting obligation provisions’ under the changes made in clauses 5 and 6. The offence elements of the sections have been removed, with the offences now consolidated into new section 58A below. The titles of the sections have been amended to take into account that there is no longer an offence contained within these sections.

The sections still retain the requirement to report in specific circumstances.



### **Clause 17 – New division 3.3.4**

This clause introduces the new Division 3.3.4 – Failing to report. It contains section 58A, a new section which takes all the previous reporting offences and consolidates them within a single section. This is in line with other jurisdictions, such as Victoria.

Subsection (1) of 58A makes it an offence for an offender to fail to report as required under a reporting obligation provision. The offence occurs under the circumstances where the offender is required to report under a reporting obligation provision, is reckless as to whether or not they are required to report, and fails to report as required. The third element of failing to report as required is made a strict liability element by subsection (2).

This changes the current offence language whereby an offender must ‘take all reasonable steps’ to report, which is difficult 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.

The move to make paragraph (1)(c) strict liability is appropriate given that each registrable offender is provided with a Notice of Reporting Obligations (NORO) at multiple points. The NORO outlines the reporting obligations of each registrable offender, and is provided:

- a) when an offender is convicted;
- b) when an offender is released from custody;
- c) when an offender first reports to ACT Policing;
- d) when an offender attends their annual reporting interview with ACT Policing; and
- e) when an offender requests a NORO be provided to them.

The offender is also audiotaped and videotaped at the annual reporting interview when they are provided with the NORO and asked to sign a declaration that they have understood their reporting obligations. In addition, people with English as a second language or who have special needs are asked about their requirements and are accommodated by ACT Policing.

As with all strict liability elements, defendants will have access to the defence of mistake of fact under section 36 of the *Criminal Code 2002* for subsection (1)(c).

Subsection (3) introduces a new defence, stating that the section does not apply if the registrable offender has a reasonable excuse for failing to report as required under a reporting obligation provision. This measure has been put in place as a safeguard for the offender.

Subsection (4) sets out the criteria that must be considered by the court when considering whether the offender has a reasonable excuse for failing to report under subsection (3).

**Clause 18 – Meaning of employment in section 59**  
**New section 61 (1) (ca)**

Section 59(1) of the CSO Act defines ‘personal details’ of a registrable offender, and includes:

- ‘(f) if the offender is employed –
  - (i) the nature of the offender’s employment; and
  - (ii) the name of the offender’s employer (if any); and
  - (iii) the address of each premises where the offender is generally employed or, if the offender is not generally employed at any particular premises, the name of each of the localities where the offender is generally employed.’

Section 61(1) then defines when a registrable offender is employed. At present, the section 61(1) relevantly states that an offender is employed if they carry out work ‘as a volunteer for an organisation’. Due to concerns that this could be read as purely applying to volunteer work for a charitable organisation, this clause amends the section to explicitly include work carried out for a business without pay or as a volunteer.

**Clause 19 – New section 61 (2) (c)**

As with clause 18, section 61(2) builds on section 59(1)(f). Section 61(2) defines when a person is an employer for the purposes of section 59(1)(f). This amendment inserts specific wording in order to ensure that someone is an employer even if they engage someone to carry out work without pay or as a volunteer.

**Clause 20 – Offence – offender reporting in person must provide identification etc**  
**Section 70 (a)**

Section 70 provides that it is an offence if an offender is required to report and does not take all reasonable steps to present for inspection of the offender’s identification. Due to the changes in clauses 5 and 6, there is no longer a ‘reporting offence provision,’ so subsection (a) is amended to refer instead to a ‘reporting obligation provision.’ The rest of the offence remains the same.

**Clause 21 – Section 70, note**

This amendment omits a note which refers the reader to section 116. Section 116, which previously applied to all reporting offence provisions, is removed under clause 27 of this Bill. Section 116 is no longer necessary as the wording of the reporting offence has now changed and doesn’t require an offender to have taken ‘all reasonable steps’ to report.

**Clause 22 – New section 70 (2)**

While clause 21 removed the reference to section 116, the offence in section 70 still refers to an offender taking ‘all reasonable steps’ to present identification. This new subsection brings across the requirements from the omitted section 116, so that a court must still

consider: the offender's age; any offender's disability; the form of notice given to the offender; and any other matter the court considers appropriate.

### **Clause 23 – Offence – person reporting in person for offender must provide identification Section 71 (a)**

Section 71 provides that it is an offence if a person is required to report and does not take all reasonable steps to present for inspection of the person's identification. Due to the changes in clauses 5 and 6, there is no longer a 'reporting offence provision,' so subsection (a) is amended to refer instead to a 'reporting obligation provision.' The rest of the offence remains the same.

### **Clause 24 – Section 71, note 2**

This amendment omits a note which refers the reader to section 116. Section 116, which previously applied to all reporting offence provisions, is removed under clause 27 of this Bill. Section 116 is no longer necessary as the wording of the reporting offence has now changed and doesn't require an offender to have taken 'all reasonable steps' to report.

### **Clause 25 – New section 71 (2)**

While clause 24 removed the reference to section 116, the offence in section 71 still refers to a person taking 'all reasonable steps' to present identification. This new subsection brings across the requirements from the omitted section 116, so that a court must still consider: the offender's age; any offender's disability; the form of notice given to the offender; and any other matter the court considers appropriate.

### **Clause 26 – What is a *reporting obligation notice*? Section 103, definition of *reporting obligation notice*, paragraph (b)**

This is a consequential amendment due to the changes to the reporting offence contained in this Bill. Section 103 defines a 'reporting obligation notice', which needs to be provided to the offender under Part 3.7. Paragraph (b) of the definition currently refers to the offender needing to take all reasonable steps to comply, however that requirement has been removed under the new consolidated offence in section 58A.

### **Clause 27 – Reasonable steps to comply with reporting obligations Part 3.9**

Part 3.9 currently contains section 116. Section 116 sets out what the court must have regard to in considering whether a person took 'all reasonable steps' to comply with a reporting obligation. This was previously necessary as all the reporting offence provisions referred to the offender taking all reasonable steps to report. However, the new consolidated offence in section 58A no longer makes reference to needing to take all reasonable steps to report. As such, section 116 is no longer relevant and has been removed. Sections 70 and 71, which still make reference to 'all reasonable steps', have had this section inserted as a subsection (see clauses 20 to 25).

### **Clause 28 – Dictionary, new definition of *reporting obligation provision***

In line with the changes in clauses 5 and 6, this amendment inserts a definition of ‘reporting obligation provision’.

### **Clause 29 – Dictionary, definitions of *reporting offence* and *reporting offence provision***

In line with the changes in clauses 5 and 6, this amendment removes the now superfluous definitions of ‘reporting offence’ and ‘reporting offence provision’.

### **Clause 30 – Dictionary, definition of *travel details***

This is a consequential amendment from the changes made to section 42 in clause 12.

## **Part 3 – Crimes (Child Sex Offenders) Regulation 2005**

### **Clause 31 – Sections 5, 7, 8, 11 headings**

These are consequential amendments from the changes made to:

- section 34 in clause 9;
- section 45 in clause 15;
- section 46 in clause 15; and
- section 71 in clause 25.

### **Clause 32 – Details to be included in reporting obligations notice – Act, s 104 and s 137 (2) (b) and (f) (i) Section 13 (c) (v)**

This is a consequential amendment from the changes made in Part 2 of this Bill to change the headings of the sections under which a registrable offender must report.

### **Clause 33 – Section 13 (e)**

This is a consequential amendment from the changes made to sections 45 and 46 in clause 15.

## **Part 4 – Firearms Act 1996**

### **Clause 34 – Section 38**

This clause substitutes the Minister’s current discretion to declare a temporary amnesty period by notifiable instrument with a permanent amnesty in relation to sections 42 or 43.

This clause provides that a proceeding does not lie against person in relation to the offence for unauthorised possession or use of prohibited firearms (section 42), and the offence for unauthorised possession or use of firearms other than prohibited firearms (section 43) if that person surrenders the firearm to a police officer.

**Clause 35 – Offence—storage requirements for category C, D and H licences Section 182 (1)**

This clause inserts the words “other than the holder of a category H licence mentioned in subsection (1A)”. The clause is a consequential amendment to reflect the insertion of new section 182 (1A) in clause 36.

This clause will carve out holders of a specific category H licence mentioned in section 182 (1A), from the storage requirements and penalties set out in section 182 (1).

**Clause 36 - new section 182 (1A)**

This clause inserts subsection (1A), a new offence provision specific to entities that carry on business in the ACT as a security organisation and hold a category H licence.

The clause provides that these license holders must comply with prescribed storage requirements, which apply to each of the registered firearms held under the licence. The requirements include that:

- a) the firearm must be stored in a container prescribed by regulation when it is not being used or carried;
- b) any ammunition for the firearm must be stored in a locked container of a type approved by the registrar and that is kept separate from the prescribed container; and
- c) the other requirements relating to security and safe storage that are prescribed by regulation.

Further storage requirements are prescribed in clause 40 which amends the *Firearms Regulation 2008*.

The clause specifies that non-compliance with this provision is an offence, carrying a maximum penalty of 2 years’ imprisonment.

**Clause 37 - Section 262 heading**

This clause substitutes the heading for section 262. It is a technical amendment to more accurately reflect the provisions which allow both the destruction and disposal of surrendered or seized firearms.

**Clause 38 - Section 262 (2)**

This clause omits the words “A police officer” and substitutes them with additional wording “For a firearm other than a firearm mentioned in subsection (3A), a police officer”. It is a consequential amendment to reflect the insertion of new section 262 (3A) in clause 39.

This clause will carve out the ability of a police officer or owner to apply to a court for an order under section 262 in relation to firearms surrendered to a police officer willingly under the permanent amnesty.

### **Clause 39 - New section 262 (3A) and (3B)**

This clause inserts new subsections 3A and 3B. It notes the circumstances in which a police officer may destroy or dispose of firearms which have been surrendered without needing to seek a court order.

This clause provides that the Firearms Registrar may destroy or dispose of firearms as soon as practicable if the person surrendering the firearm does not express an intention (either through providing a statement to this effect or by remaining silent) to seek authority to possess the firearm at the time of surrender, and there are no circumstances that would preclude this.

This clause also provides that the Firearms Registrar may destroy or dispose of firearms after 6 months if the person surrendering the firearm express an intention to seek authority to possess the firearm at the time of surrender, the person has not obtained authority to possess the firearm within the 6 months period and there are no circumstances that would preclude this. 6 months has been prescribed as the minimum period a police officer is required to store the firearm prior to destruction or disposal in the circumstances. This will allow the person to obtain the appropriate firearms licence and permit to possess and use the surrendered firearm.

## **Part 5 – Firearms Regulation 2008**

### **Clause 40 - New section 47A**

This clause inserts new section 47A.

This clause introduces new licence conditions relating to the safe storage of firearms for category H licensees that operate as security organisations in the ACT.

The storage conditions that are imposed vary according to the number of firearms the security organisation is licensed to hold, with the requirements becoming stricter when more firearms are held.

The following conditions apply to licensees that are licensed to hold one firearm and are also standard conditions that apply to all licensees. When not in use or being carried, the firearms must be:

- stored in a locked steel safe of a type approved by the registrar (an exception to this requirement is when a vault or control room is approved by the registrar)
  - the safe must be:
    - bolted to the structure of the premises;
    - fitted with an alarm of a type approved by the registrar; and
    - monitored at a place separate from the registered premises; and
- fitted with a trigger or barrel lock that prevents the firearm from being discharged;
- secured individually on, or in, a locked device within the safe; and
- the registered premises must be approved by the registrar for storing the firearms.

If between two and five firearms are held under the licence, the following conditions apply in addition to the abovementioned standard conditions:

- the steel safe within which the firearm is stored must:
  - weigh at least 150kg; and
  - be locked at all times except when accessed for the purpose of distributing a firearm; and
- the alarm fitted for the safe must be separate to the alarm for the registered premises.

If between six and fifteen firearms are held under the licence, the following conditions apply in addition to the abovementioned standard conditions:

- the steel safe within which the firearm is stored must:
  - weigh at least 500kg;
  - be locked at all times except when accessed for the purpose of distributing a firearm; and
  - be fitted with a 15-minute time delay lock; and
- the alarm fitted for the safe must be separate to the alarm for the registered premises.

If more than fifteen firearms are held under the licence, the following conditions apply in addition to the abovementioned standard conditions:

- the firearms may be stored either in:
  - a safe that meets the standard conditions (but also weighs at least 500kg); or
  - within a vault or control room of a type approved by the registrar; and
- the alarm fitted for the safe must be separate to the alarm for the registered premises.

The clause provides that the firearms registrar must consider each of these factors when deciding whether to approve registered premises for storing firearms by licensed security companies:

- that the premises are capable of being secured to prevent unauthorised entry;
- that the premises have an intruder alarm system that is monitored at a place separate from the registered premises in a way that the registrar considers appropriate;
- that the premises are suitable for the nature of the use of the firearm by the licensee; and
- that the premises are suitable for use as a place for the safe storage of firearms.

The clause provides that if the registrar considers it necessary, as a consideration in relation to the suitability of premises, that the premises may need to have a duress facility that is monitored at a place separate from the registered premises in a way that the registrar considers appropriate.