

## CLAUSE NOTES

### ***COMMUNITY PROTECTION (OFFENDER REPORTING) AMENDMENT BILL 2011***

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#### **Background:**

The Bill introduces legislation to accord with the Tasmania *Together* Community Goal, 'to have confident, friendly and safe communities'.

The proposed amendments will correct minor anomalies that have been identified in the *Community Protection (Offender Reporting) Act 2005* and seek to ensure consistency in child protection offender reporting across all jurisdictions.

#### **PART 1 – PRELIMINARY MATTERS**

##### **Clause 1: Short title**

Specifies the name of the proposed Act.

##### **Clause 2: Commencement**

Specifies this Act commences on the day on which this Act receives Royal Assent.

##### **Clause 3: Principal Act**

Specifies that in this Act the *Community Protection (Offender Reporting) Act 2005* is referred to as the Principal Act.

##### **Clause 4: Section 15 amended (Class 3 offences)**

Section 15 of the Act relates to Class 3 offences, which are generally the more serious offences for which an offender may be, upon conviction, made registrable, and for which specific periods of registration are required.

This Clause amends section 15 of the Act to provide that the crime of Manslaughter, section 159 of the *Criminal Code Act 1924* becomes a Class 3 offence in situations where there are reasonable grounds to believe that in the course of or as part of the events surrounding the commission of that offence, an offence specified in Schedule 1, 2 or 3 was committed by the offender.

It is considered that in situations such as this, where the crime has involved a sexual element, the offender is a potential risk to the community upon release from custody, and as such should be considered for registration on the Community Protection Offender Register. Schedule 3 of the Act already provides that the crime of Murder is a Class 3 offence if there are reasonable grounds to believe that, in the course of or as part of the events surrounding the commission of that offence, an offence specified in Schedule 1, 2 or 3 was committed by the offender.

##### **Clause 5: Section 17 amended (Report by reportable offender of personal details)**

Section 17 of the Act relates to details the reportable offender must report to the Registrar. Currently the Act covers details such as name, address, any aliases, details

of affiliation with any club or organisation that has children participate, details of tattoos or permanent distinguishing marks, employment details etc. Section 17 does not currently require the reportable offender to report passport details.

This Clause provides that a reportable offender must notify the Registrar or an authorised person if they make, or intend to make an application to change their name with the Tasmanian Registrar of Births Deaths and Marriages.

New South Wales, Victoria, Western Australia and South Australia currently have legislation which requires registrable offenders to report their email address and other electronic identifiers to police as part of their reporting obligations. This Clause also amends the Act to include the same provisions as those jurisdictions and provide that a registrable person must report electronic communication identifiers including carriage service providers and internet service providers that are used by the offender.

The obligation for reportable offenders to provide email addresses and other electronic identifiers will contribute to deterring such offenders from accessing child exploitation material and/or engaging in predatory behaviour such as 'grooming' children via the internet.

This Clause also amends Section 17 of the Act to require a reportable offender to provide the Registrar or an authorised person with copies of valid passports, and to report any updated details regarding those passports. Reporting of passport details will assist with compliance management, monitoring and verification of any travel outside of Australia.

**Clause 6: Section 19 amended (Intended absence from Tasmania to be reported)**

Section 19 of the Act currently requires a reportable offender to provide details of each State, Territory or Country they intend to visit, dates of travel, address or location whilst in that location and dates of return.

This Clause amends this section of the Act to require reportable offenders to present all valid passports when reporting an intended absence from Australia. Passports must be presented for inspection at least 14 days before the reportable offender intends to travel.

The Bill will also make it a requirement that the reportable offender present their passport to the Registrar or an authorised person for inspection with 7 days of their return to Tasmania.

If the reportable offender decides not to leave Tasmania or Australia, after reporting to do so, a provision exists in the Bill to provide that they notify the Registrar or an authorised person of this decision not to leave.

This Clause also amends Section 17 of the Act to require a reportable offender to provide the Registrar or an authorised person with copies of valid passports, and to report any updated details regarding those passports. Reporting of passport details will assist with compliance management, monitoring and verification of any travel outside of Australia.

## **Clause 7: Section 24 amended (Length of reporting period)**

This Clause amends section 24 by omitting the present sub-section (3) and replacing it with similar provisions as to the reporting period, that being, “life or such lesser period as is determined by the court”, which relate to a reportable offender:

- a) in respect to an offence described by section 15(f) and (g), murder and manslaughter, where there are reasonable grounds to believe that in the course of or as part of the events surrounding the commission of that offence, an offence specified in Schedule 1, 2 or 3 was committed by the offender.
- b) a reportable offender sentenced for two or more Class 2 offences or two or more Class 3 offences; and
- c) a reportable offender in respect of one or more Class 2 offences and one or more Class 3 offences.

This amendment reflects the intention of Parliament when the legislation was introduced in 2005. The register currently has 6 (out of 207) persons registered for life.

## **Clause 8: Section 25 amended (Reduced period applies for young reportable offenders)**

Section 25 of the Act relates to reporting periods for young offenders. This clause amends section 25 to align it with the new amendments provided in Clause 8, which relate to section 24 – Length of reporting period for adults.

Section 24 of the Act states:

### **24. Length of reporting period**

- (1) A reportable offender must continue to comply with the reporting obligations imposed by this Part for such period not exceeding 8 years as is determined by the court, if he or she has been sentenced for not more than one Class 1 offence.
- (2) A reportable offender must continue to comply with the reporting obligations imposed by this Part for such period not exceeding 15 years as is determined by the court, if he or she –
  - (a) has been sentenced for not more than one Class 2 offence or not more than one Class 3 offence; or
  - (b) has been sentenced for more than one Class 1 offence
- (3) A reportable offender must continue to comply with the reporting obligations imposed by this Part for the remainder of his or her life or such lesser period as is determined by the court, if he or she is a reportable offender in respect of –
  - (a) an offence under section 158 of the *Criminal Code*; or
  - (b) a Class 3 offence, and he or she then commits and is sentenced for a Class 2 offence or a Class 3 offence.

This Clause amends the Act to ensure that appropriate periods are imposed for young offenders who have committed certain scheduled offences.

The amendments to section 25 state that:

- a) The maximum reporting period for a young reportable offender in respect of the matters referred to in section 24(1), which are low level offences, must not exceed 4 years; and
- b) the maximum reporting period for a young reportable offender for the matters referred to in section 24(2), which are medium level offences, and section 24(3), which are high level offences, must not exceed 7 ½ years.

**Clause 9: Section 33 amended (Failure to comply with reporting obligations)**

The current penalty for failing to comply with reporting obligations under the Act is a fine not exceeding 50 penalty units or imprisonment for a term not exceeding 6 months, or both. This clause amends the penalty to a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both. This amendment seeks to bring Tasmania in line with the penalties imposed in other jurisdictions.

**Clause 10: Section 36 substituted  
Notice to be given to reportable offender**

Section 36 of the Act currently stipulates that a court must provide a reportable offender with a notice of his or her reporting obligations and the consequences that may arise if he or she fails to comply with those obligations.

This clause amends section 36 to provide that the court may give a direction to a reportable offender to remain in the court until the orders are prepared and served. This amendment will improve efficiency and ensure that offenders are served with orders at the time of his or her court appearance, and will remove the requirement for police to locate and serve the relevant orders at a later time.

**Clause 11: Section 44A inserted  
Provision of information to Registrar of Births, Deaths and Marriages**

This clause inserts a new section 44A in the Act. This clause seeks approval to allow the Commissioner of Police to provide the Tasmanian Registrar of Births, Deaths and Marriages with the name, date of birth and previous addresses of a registrable offender.

In addition, where a reportable offender applies to change his or her name under the *Births, Deaths and Marriages Registration Act 1999*, the Registrar of Births, Deaths and Marriages must inform the Commissioner in writing of that application. The Commissioner may then order the Registrar to refuse to register the change of name, and notify the reportable offender in writing of that the Commissioner has ordered the refusal. Alternatively, the Commissioner may also allow the name change.

The clause also provides an appeal provision, where a reportable offender is aggrieved by the decision of the Commissioner, he or she may apply to the Magistrates Court (Administrative Appeals Division) for a review of that decision.

This Clause will allow an exchange of information to ensure that if an offender attempts to change their name without first notifying the Commissioner, as per amendments provided in Clause 5, this will be picked up and the offender charged with breaching reporting requirements.

The Registrar of Births, Death and Marriages will also be subject to the confidentiality provisions within section 45 of the Act.

This amendment will effectively contribute to preventing reportable offenders from establishing new identities to avoid monitoring by police and thereby potentially enabling them to re-offend in the community. It supports rigorous monitoring of reportable offenders who pose a risk to vulnerable members of the community and is in line with legislation in other jurisdictions.

**Clause 12: Section 47 amended (Matters not to be heard in public)**

This clause incorporates the new section 44A within section 47 of the Act. It provides that proceedings in relation to a matter under section 44A must be heard in the absence of the public unless the court determines otherwise.

**Clause 13: Schedule 1 amended (Class 1 offences)**

This clause amends Schedule 1 to omit a number of Commonwealth offences and include the following Commonwealth *Criminal Code Act 1995* offences which were included by the Commonwealth *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* which received Royal Assent on 14 April 2010. The offences included are:

Section 273.5	Possessing, controlling, producing, distributing or obtaining child pornography material outside Australia
Section 273.6	Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia
Section 471.16	Using a postal or similar service for child pornography material
Section 471.17	Possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service
Section 471.19	Using a postal or similar service for child abuse material
Section 471.20	Possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service
Section 471.24	Using a postal service or similar service to procure persons under 16
Section 471.25	Using a postal service or similar service to “groom” person under 16
Section 471.26	Using a postal service or similar service to send indecent material to person under 16
Section 474.19	Using a carriage service for child pornography material
Section 474.20	Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service
Section 474.22	Using a carriage service for child abuse material

Section 474.23	Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service
Section 474.25A	Using a carriage service for sexual activity with person under 16 years of age
Section 474.26	Using a carriage service to procure persons under 16 years of age
Section 474.27	Using a carriage service to “groom” persons under 16 years of age
Section 474.27A	Using a carriage service to transmit indecent communication to person under 16 years of age

**Clause 14: Schedule 2 amended (Class 2 offences)**

This clause amends Schedule 2 to omit a number of offences and substitute following Commonwealth *Criminal Code Act 1995* offences:

Section 272.9	Sexual activity (other than sexual intercourse) with a child outside Australia
Section 272.12	Sexual intercourse with young person outside Australia – defendant in position of trust or authority
Section 272.13	Sexual activity (other than sexual intercourse) with young person outside Australia – defendant in position of trust or authority
Section 272.14	Procuring child to engage in sexual activity outside Australia
Section 272.15	“Grooming” child to engage in sexual activity outside Australia
Section 272.20	Preparing for or planning offence against this Division
Section 273.7	Aggravated offence – offence involving conduct on 3 or more occasions and 2 or more people
Section 471.22	Aggravated offence – offence involving conduct on 3 or more occasions and 2 or more people
Section 474.24A	Aggravated offence – offence involving conduct on 3 or more occasions and 2 or more people
Section 474.25B	Aggravated offence – child with mental impairment or under care, supervision or authority of defendant

For the purposes of the *Commonwealth Criminal Code Act 1995*:

A young person is defined as a person who is at least 16 years of age but under the age of 18 years.

A child is defined as a person under the age of 16 years.

Schedule 2 of the Act is also amended by the addition of the Tasmanian *Criminal Code Act 1924* offence of Unnatural Crimes, section 122.

**Clause 15: Schedule 3 amended (Class 3 offences)**

This clause amends Schedule 3 to omit a number of offences and substitute the following Commonwealth *Criminal Code Act 1995* offences:

Section 272.8	Sexual intercourse with a child outside Australia
Section 272.10	Aggravated offence – child with mental impairment or under care, supervision or authority of defendant
Section 272.11	Persistent sexual abuse of child outside Australia
Section 272.18	Benefitting from an offence against this Division
Section 272.19	Encouraging offence against this Division

**Clause 16: Repeal of Act**

This clause provides that the *Community Protection (Offender Reporting) Amendment Act 2011* is repealed on the ninetieth day from that day on which it commences. This provision provides authority for this Act to be repealed once it receives Royal Assent and amends the Principal Act and not remain on the statutes.