

## TASMANIA

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# COMMUNITY PROTECTION (OFFENDER REPORTING) AMENDMENT BILL 2016

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# **COMMUNITY PROTECTION (OFFENDER REPORTING) AMENDMENT BILL 2016**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*  
15 September 2016

*(Brought in by the Minister for Police, Fire and Emergency Management, the Honourable Marinus Theodoor Hidding)*

## **A BILL FOR**

**An Act to amend the *Community Protection (Offender Reporting) Act 2005***

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

### **1. Short title**

This Act may be cited as the *Community Protection (Offender Reporting) Amendment Act 2016*.

### **2. Commencement**

This Act commences on a day to be proclaimed.

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**3. Principal Act**

In this Act, the *Community Protection (Offender Reporting) Act 2005\** is referred to as the Principal Act.

**4. Section 3 amended (Interpretation)**

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *government custody*:

*non-intimate forensic procedure*  
means non-intimate forensic  
procedure as defined in the  
*Forensic Procedures Act 2000*;

- (b) by inserting the following definition after the definition of *Registrar*:

*reportable contact*, in relation to a  
reportable offender's contact with  
a child, means the contact listed  
in section 17(4);

**5. Section 10A inserted**

After section 10 of the Principal Act, the following section is inserted in Part 2:

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\*No. 61 of 2005

**10A. Magistrate may make community protection order on application from Commissioner**

- (1) If the Commissioner is satisfied that a reportable offender poses a risk to the safety or wellbeing of any child, or children, the Commissioner may apply to a magistrate for a community protection order prohibiting or restricting the movement, or conduct, of the reportable offender.
- (2) In relation to an application made under subsection (1), a magistrate may make a community protection order relating to a reportable offender if the magistrate is satisfied that –
  - (a) the reportable offender poses a risk to the safety or wellbeing of any child or children; and
  - (b) the making of the community protection order will reduce that risk.
- (3) A community protection order relating to a reportable offender made under subsection (2) may prohibit or restrict the following movement or conduct:
  - (a) the reportable offender associating with, or making contact or communicating with, a specified person, or persons of a specified class;

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- (b) the reportable offender being present at, or in the vicinity of, a specified place or specified premises or a place or premises of a specified class;
- (c) the reportable offender undertaking specified employment or employment of a specified kind;
- (d) the reportable offender consuming alcohol as defined in the *Alcohol and Drug Dependency Act 1968*;
- (e) the reportable offender taking, or being in possession of, a controlled substance as defined in the *Misuse of Drugs Act 2001*;
- (f) any other movement or conduct of a kind specified in the order.

**6. Section 16 amended (Reporting obligations of reportable offenders)**

Section 16 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “7 days” and substituting “3 days”;
- (b) by omitting from paragraph (c) “14 days or more” and substituting “any period”;

(c) by omitting paragraph (d) and substituting the following paragraphs:

(d) subject to paragraph (da), if the reportable offender intends to leave Tasmania for any period, no later than 7 days before leaving Tasmania; or

(da) if circumstances make it impracticable for a reportable offender who intends to leave Tasmania for any period to make a report no later than 7 days before leaving Tasmania, no later than 24 hours before leaving Tasmania; or

(d) by omitting paragraph (f) and substituting the following paragraphs:

(f) subject to paragraph (fa), any changes to his or her personal details, within 7 days of the change of those details; or

(fa) any changes to his or her reportable contact with a child, within 24 hours of the change of the reportable contact; or

**7. Section 17 amended (Report by reportable offender of personal details)**

Section 17 of the Principal Act is amended as follows:

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- (a) by omitting paragraph (e) from subsection (1) and substituting the following paragraphs:
  - (e) the address of any premises to which he or she has unrestricted access for the purposes of storing any item or for any other purpose; and
  - (ea) the names and ages of any children with whom he or she has reportable contact; and
  - (eb) details of his or her parental status, including whether or not a partner or the reportable offender is pregnant; and
  - (ec) the name and address of the school or child care facility attended by any child with whom he or she has reportable contact; and
  - (ed) details of the existence of any family law court order that involves a child with whom he or she has reportable contact; and
- (b) by inserting in subsection (1)(h) “, boat, caravan, motorhome, jet ski, or other vehicle,” after “vehicle”;
- (c) by inserting the following paragraphs after paragraph (ic) in subsection (1):



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- (id) details of any passwords, codes or other information or assistance required to enable the Registrar, or a police officer of a class authorised in writing by the Registrar, to gain access to data stored on any computer, mobile telephone or other electronic device capable of storing electronic data owned, used, or intended to be used, by the person; and
  - (ie) details of any mobile or fixed telephone number used, or intended to be used, by the person; and
- (d) by inserting the following subsection after subsection (1A):
- (1B) A reportable offender must present to the Registrar, or an authorised person, for inspection, any computer, mobile telephone, or other electronic device capable of storing electronic data, owned, used, or intended to be used, by the reportable offender.
- (e) by inserting the following subsections after subsection (3):
- (4) For the purposes of subsection (1)(ea), a reportable offender is taken to have

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reportable contact with a child if  
the reportable offender –

- (a) generally resides in the same premises as the child, for at least 3 days (whether or not consecutive) in a period of 12 months; or
- (b) is unsupervised and cares for, or supervises, the child for at least 3 days (whether or not consecutive) in a period of 12 months; or
- (c) provides his or her contact details to the child or receives the child's contact details from the child; or
- (d) engages in any of the following with the child for the purpose of inviting any further contact or communication with the child:
  - (i) any form of actual physical contact;
  - (ii) any form of oral communication (whether face-to-

face, by telephone  
or by use of the  
internet);

- (iii) any form of  
communication  
made in a  
document  
(whether by  
writing or  
printing).

- (5) The regulations may amend the  
personal details listed in  
subsection (1), by omitting  
personal details listed, amending  
personal details listed or adding  
new personal details to that list.

**8. Section 19 amended (Intended absence from  
Tasmania to be reported)**

Section 19 of the Principal Act is amended as  
follows:

- (a) by omitting from subsection (1) “7 or  
more consecutive days” and substituting  
“any period”;
- (b) by omitting from subsection (2) “At least  
14 days before leaving Tasmania” and  
substituting “At least 7 days before  
leaving Tasmania or, if circumstances  
make 7 days before leaving Tasmania  
impracticable, no later than 24 hours  
before leaving Tasmania”.

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**9. Section 21 amended (Power to take photographs and carry out non-intimate forensic procedures)**

Section 21 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “or fingerprints”;
- (b) by inserting the following subsection after subsection (1):
  - (1A) The Registrar or an authorised person may carry out, or may cause to be carried out by a person authorised by him or her, a non-intimate forensic procedure on a reportable offender.
- (c) by omitting paragraph (b) from subsection (2) and substituting the following paragraph:
  - (b) to undergo a non-intimate forensic procedure; and
- (d) by omitting subsection (3) and substituting the following subsections:
  - (3) In order to exercise a power under this section, the Registrar or an authorised person may detain a reportable offender, and authorise the use of reasonable force in respect of a reportable

offender, if it is reasonably necessary to do so –

- (a) to enable the reportable offender to be photographed; or
  - (b) to enable a non-intimate forensic procedure to be carried out in respect of the reportable offender; or
  - (c) to prevent loss, destruction or contamination of any forensic material taken from the reportable offender in accordance with this section.
- (3A) In detaining a reportable offender under subsection (3), the Registrar or authorised officer must tell the reportable offender –
- (a) why the reportable offender is being detained; and
  - (b) that the detention is authorised under this Act; and
  - (c) that the reportable offender will be released immediately after the

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purpose of the detention is fulfilled.

(3B) A reportable offender detained under this section –

(a) must not be held for a period that is longer than is reasonably necessary to enable the purpose for the detention to be fulfilled; and

(b) must be released immediately after the purpose for the detention is fulfilled.

(e) by omitting from subsection (6) “the fingerprints or photographs” and substituting “the photographs or any forensic material, within the meaning of the *Forensic Procedures Act 2000*, taken as a result of the carrying out of the non-intimate forensic procedure on the reportable offender”;

(f) by inserting the following subsection after subsection (6):

(7) A non-intimate forensic procedure carried out on a reportable offender –

(a) must be carried out in circumstances affording

reasonable privacy to the  
reportable offender  
undergoing the non-  
intimate forensic  
procedure; and

- (b) is to be carried out in a  
manner consistent with  
appropriate medical or  
other relevant  
professional standards.

**10. Section 22 amended (Retention of material for certain purposes)**

Section 22 of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

- (b) any forensic material, within the meaning of the *Forensic Procedures Act 2000*, taken as a result of the carrying out of a non-intimate forensic procedure on a reportable offender;

**11. Part 3, Division 4A inserted**

After section 23 of the Principal Act, the following Division is inserted in Part 3:

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***Division 4A – Suspension and variation of reporting  
obligations for young reportable offenders***

**23A. Application of this Division**

This Division applies to a young reportable offender.

**23B. Variation of reporting obligations of young reportable offenders**

- (1) The Commissioner may vary any one or more of a young reportable offender's reporting obligations on the Commissioner's own initiative, if the Commissioner is satisfied, on reasonable grounds, that the young reportable offender does not pose a risk to the safety or wellbeing of any child or children.
- (2) The Commissioner must give the young reportable offender or his or her parent, guardian or carer written notice of the variation of the young reportable offender's reporting obligations as soon as reasonably practicable.
- (3) The variation of the young reportable offender's reporting obligations takes effect when the Commissioner gives the written notice under subsection (2) to the young reportable offender or his or her parent, guardian or carer.



**23C. Suspension of reporting obligations of young reportable offenders**

- (1) The Commissioner may suspend a young reportable offender's reporting obligations on the Commissioner's own initiative, if the Commissioner is satisfied, on reasonable grounds, that the young reportable offender does not pose a risk to the safety or wellbeing of any child or children.
- (2) The Commissioner must give the young reportable offender or his or her parent, guardian or carer written notice of the suspension of the young reportable offender's reporting obligations as soon as reasonably practicable.
- (3) The suspension of the young reportable offender's reporting obligations takes effect when the Commissioner gives the written notice under subsection (2) to the young reportable offender or his or her parent, guardian or carer.

**23D. Effect of variation**

While a variation of a young reportable offender's reporting obligations made under this Division is in force, the young reportable offender is required to meet his or her reporting obligations as varied.

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**23E. Effect of suspension**

While a suspension of a young reportable offender's reporting obligations made under this Division is in force, the young reportable offender is not required to meet his or her reporting obligations other than by making an initial report.

**23F. Revocation of suspension or variation**

- (1) The Commissioner may at any time revoke a suspension, or variation, made under this Division if the Commissioner believes, on reasonable grounds, that the reportable offender –
  - (a) poses, or may pose, a risk to the life of a child or children; or
  - (b) poses, or may pose, a risk to the safety of a child or children; or
  - (c) is exposing, or may expose, a child or children to sexual conduct or sexual material.
- (2) If the Commissioner revokes a suspension, or variation, under subsection (1) he or she must give the young reportable offender or his or her parent, guardian or carer written notice of the revocation as soon as reasonably practicable.

- (3) The revocation takes effect when the Commissioner gives the written notice under subsection (2) to the young reportable offender or his or her parent, guardian or carer.

**12. Section 33A inserted**

After section 33 of the Principal Act, the following section is inserted in Division 7:

**33A. Failure to comply with community protection order**

A reportable offender who, without reasonable excuse, fails to comply with a community protection order made, and in force, under section 10A in respect of the reportable offender commits an offence.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

**13. Section 34 amended (Providing false or misleading information)**

The penalty under section 34 of the Principal Act is amended by omitting “50 penalty units” and substituting “100 penalty units”.

**14. Sections 36A and 36B inserted**

After section 36 of the Principal Act, the following sections are inserted in Division 8:

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**36A. Power of detention to enable notice to be given**

- (1) This section applies if there are reasonable grounds to suspect –
  - (a) that a person is a reportable offender; and
  - (b) the person has not been given written notice of his or her reporting requirements in accordance with section 36, or is otherwise unaware of his or her reporting requirements.
- (2) A police officer may detain the person if it is reasonably necessary to do so –
  - (a) to enable a decision to be made about –
    - (i) whether or not the person is a reportable offender; or
    - (ii) if the person is a reportable offender, whether or not the person has been given written notice of his or her reporting requirements in accordance with section 36 or is otherwise aware of his or her reporting requirements; or

- (b) to enable the person to be given written notice of those reporting requirements in accordance with section 36 if the person is not aware of them.
- (3) When detaining the person, the police officer must tell the person –
- (a) why the person is being detained; and
  - (b) that the detention is authorised under this Act; and
  - (c) that the person will be released immediately after the reasons for the detention are satisfied.
- (4) The detained person –
- (a) may be taken to a police station; and
  - (b) must not be held for longer than is reasonably necessary to enable the purpose of the detention to be satisfied; and
  - (c) must be released immediately after the purpose of the detention is satisfied.

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**36B. Failure to comply with procedural requirement does not affect reportable offender's reporting requirements**

A failure by a person other than a reportable offender to comply with a procedural requirement imposed on the person by this Act does not, of itself, affect a reportable offender's reporting requirements.

**15. Section 44 amended (Access to Register to be restricted)**

Section 44(5) of the Principal Act is amended by omitting "section" and substituting "Part".

**16. Sections 44B, 44C and 44D inserted**

After section 44A of the Principal Act, the following sections are inserted in Part 4:

**44B. Provision of information to prescribed entities**

- (1) The Commissioner may in writing provide, to an entity prescribed by the regulations to be a prescribed entity for the purposes of this section, any information from the Register in respect of a reportable offender.
- (2) Information may only be provided under subsection (1) –

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- (a) for the purposes of law enforcement, judicial functions or activities; or
  - (b) as authorised or required by or under any Act or law; or
  - (c) if the Commissioner believes on reasonable grounds that to do so is necessary and appropriate to ensure the safety and wellbeing of a child or children.
- (3) If, under subsection (1), the Commissioner provides any information from the Register, or chooses not to provide any such information, no civil or criminal liability attaches to the Commissioner or the State by reason of the provision, or not, of that information.
- (4) If, under subsection (1), the Commissioner provides any information from the Register, or chooses not to provide any such information, that provision, or not, of information is not to be regarded –
- (a) as a breach of any duty of confidentiality or secrecy imposed by law; or
  - (b) as a breach of professional ethics or standards or as unprofessional conduct.

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**44C. Disclosure of information to parent, guardian or carer**

- (1) The Commissioner, or the Secretary of the responsible Department in relation to the *Public Health Act 1997*, may disclose to the parent, guardian or carer of a child that a person who has reportable contact with the child is a reportable offender, if the Commissioner, or the Secretary, considers on reasonable grounds that it is necessary and appropriate for the purpose of ensuring the safety and wellbeing of a child or children.
- (2) If, under subsection (1), the Commissioner makes a disclosure of information to a parent, guardian or carer of a child, or chooses not to make such a disclosure, no civil or criminal liability attaches to the Commissioner or the State by reason of the disclosure, or non-disclosure, of that information.
- (3) If, under subsection (1), the Commissioner makes a disclosure of information to a parent, guardian or carer of a child, or chooses not to make such a disclosure, that disclosure, or non-disclosure, of information is not to be regarded –
  - (a) as a breach of any duty of confidentiality or secrecy imposed by law; or



- (b) as a breach of professional ethics or standards or as unprofessional conduct.

**44D. Prescribed entities and parents, guardians or carers to keep information secret**

- (1) An entity prescribed for the purposes of section 44B to whom information from the Register is provided under that section, and a parent, guardian or carer to whom information is disclosed under section 44C, commits an offence if the prescribed entity or the parent, guardian or carer –

- (a) makes a record of the provision or disclosure of that information and produces that record to any other person, or is reckless about whether or not any other person can access that record; or
- (b) recklessly divulges or communicates that information to another person.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (2) Subsection (1) does not apply if the record of the provided, or disclosed, information is made, or the information is divulged or communicated, under this Act or another law of this State.

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**17. Sections 45A, 45B, 45C and 45D inserted**

Before section 46 of the Principal Act, the following sections are inserted in Part 5:

**45A. Interpretation**

In this Part –

*conveyance* means any vehicle, vessel or aircraft, or any other contrivance intended to be, or being, used to carry people, animals or goods over land or water or in the air;

*premises*, in relation to a reportable offender, means the premises reported by the reportable offender, in his or her personal details, as the premises at which he or she generally resides.

**45B. Power to enter and search premises to verify personal details**

- (1) A police officer may, without warrant and using reasonable force if necessary, enter into, remain on, search and inspect a reportable offender's premises for the purpose of verifying any personal details reported by the reportable offender.
- (2) Before entering premises under subsection (1), a police officer must communicate to, or attempt to

communicate to, a reportable offender within the premises the police officer's authority to enter the premises, unless the police officer reasonably believes that communicating or attempting to communicate with the reportable offender would be likely to endanger any person.

- (3) A reportable offender must allow a police officer to enter, remain on, search and inspect premises for the purposes of this section and must cooperate with the police officer with respect to that entry, search and inspection.

**45C. Power to enter and search places, premises, conveyances and containers**

- (1) If a police officer reasonably suspects a reportable offender is committing, or has committed, an offence against this Act, the police officer may without warrant, enter into, remain on, search and inspect any place, premises, conveyance or container the police officer reasonably believes is being, or has been, used by the reportable offender.
- (2) In entering into, remaining on, searching and inspecting any place, premises, conveyance or container under subsection (1), a police officer may exercise all or any of the following powers:

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- (a) use any force as is reasonably necessary;
  - (b) inspect, take copies of or seize any records, documents or other thing the police officer considers relevant that is kept at, or in, the place, premises, conveyance or container;
  - (c) break open and search any cupboards, drawers, chests, trunks, boxes, packages or other things, whether fixtures or not;
  - (d) require any conveyance to be stopped;
  - (e) inspect any computer, mobile telephone or device capable of storing electronic data;
  - (f) remove from the place, premises, conveyance or container any computer, mobile telephone or other device capable of storing electronic data for the purpose of inspecting the computer, mobile telephone or device.
- (3) If a reportable offender is aware that, in order to gain access to data stored on a computer, mobile telephone or other device being inspected or removed by a police officer under this section, it is necessary to enter any password, code or

other information, or to perform any function in relation to the data, he or she must provide the police officer with that password, code or information or assist the police officer in performing that function.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (4) A reportable offender must allow a police officer to enter into, remain on, search and inspect any place, premises, conveyance or container for the purposes of this section and must cooperate with the police officer with respect to that entry, search and inspection.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (5) This section does not authorise the entry into any part of a place that is being used solely for residential purposes by a person other than a reportable offender, except –

- (a) with the consent of that person; or
- (b) under the authority of a search warrant.

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**45D. Failure to comply with Act**

- (1) A reportable offender who, without reasonable excuse, fails to comply with this Act commits an offence.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (2) A police officer who suspects on reasonable grounds that a reportable offender has committed an offence under subsection (1) may arrest the reportable offender without a warrant.

**18. Section 47A inserted**

After section 47 of the Principal Act, the following section is inserted in Part 5:

**47A. Publication of personal details of certain reportable offenders**

- (1) In this section –

*personal details* includes photographs and digital images.

- (2) This section does not apply to a young reportable offender or corresponding reportable offender who is a child.
- (3) The Commissioner may publish any or all of the personal details of a reportable

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offender, or corresponding reportable offender, if –

(a) the Commissioner is satisfied that –

(i) the reportable offender or corresponding reportable offender has failed to comply with any one or more of his or her reporting obligations; or

(ii) in purported compliance with Part 3, the reportable offender or corresponding reportable offender has provided material that is false or misleading in a material particular; and

(b) the reportable offender's or corresponding reportable offender's whereabouts are not known.

**19. Schedule 1 amended (Class 1 offences)**

Schedule 1 to the Principal Act is amended by inserting after

|             |   |
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| Section 13C | Possession of prohibited visual recording |
|-------------|---|

the following item:

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Section 21

Indecent or offensive behaviour

**20. Repeal of Act**

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.