

CLAUSE NOTES

Community Protection (Offender Reporting) Amendment Bill 2016

PART 1 – PRELIMINARY

Clause 1: Short title

Specifies the name of the proposed Act.

Clause 2: Commencement

Specifies that the Act commences on the day it receives the Royal Assent.

PART 2 – COMMUNITY PROTECTION (OFFENDER REPORTING) ACT 2005 AMENDED

Clause 3: Principal Act

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

Clause 4: Section 3 amended (Interpretation)

Section 3 of the Act is amended by adding definitions for the terms **non-intimate forensic procedure** (as defined in the *Forensic Procedures Act 2000*) and **reportable contact** (in relation to a reportable offender's contact with a child).

Clause 5: Section 10A is inserted (Community Protection Orders)

This clause inserts section 10A, **Magistrate may make a community protection order on application from Commissioner.**

If satisfied that a reportable offender poses a risk to the safety or wellbeing of a child, the Commissioner of Police may make an application for a community protection order.

The proposed section allows a Magistrate to make an order prohibiting or restricting a reportable offender's conduct, which may include: association and communicating with certain persons; the ability to be present at or in the vicinity of certain places; undertaking specific employment; the consumption of alcohol and/or drugs; or other specified conduct.

Clause 6: Section 16 amended (Reporting obligations of reportable offenders)

This clause amends section 16 in three ways. Firstly by requiring a corresponding reportable offender to report to the Registrar within 3 days of arriving in Tasmania regardless of any period he or she intends to remain in the State. The amendment omits "7 days" at paragraph (c) and substitutes "3 days", omits "14 days or more" also at paragraph (c) and substitutes "any period".

The second amendment to section 16 omits paragraph (d) and substitutes with paragraphs (d) and (da). This subsection currently relates to a reportable offender leaving Tasmania for 7 or more consecutive days, and will now require that any travel outside Tasmania must be reported no later than 7 days before leaving. However, subsection (da) stipulates that where this is impracticable, 24 hours notice may be given.

The final amendment to section 16 relates to reporting personal details and reportable contact with a child by adding subsection (fa) requiring that any reportable contact with a child must be reported to the Registrar within 24 hours, not 7 days as it currently stands.

Clause 7: Section 17 amended (Report by reportable offender of personal details)

Section 17 of the Act outlines the details to be provided to the registrar by a reportable offender. Amendments to this section clarify current details and stipulate further particulars that must be reported, including: addresses of premises where the reportable offender has access to for storage or other purposes; the names and ages of children he or she has reportable contact with; parental status including whether or not a partner is pregnant; the name and addresses of and school or child care facility attended by a child he or she has reportable contact with; and the details of and relevant family law court orders.

This clause also requires a reportable offender to provide further details to the register in relation to vehicles. In addition to the details of a motor vehicle, the amendments will require the particulars of any boat, caravan, motorhome, jet ski or other vehicle to be provided.

Subsection (1) of section 17 is also amended to require, not only email addresses, internet/messaging usernames, etc., and associated passwords, but any further information necessary to gain access to data stored on those electronic devices/services, including mobile and fixed line telephones. The amended section also requires the reportable offender present items such as computers, phones and the like for inspection.

Reportable contact between a reportable offender and a child is also clarified and is taken to have occurred where:

- (a) The child resides in the same premises or is supervised by a reportable offender for at least 3 days (consecutive or not) in a 12 month period; or
- (b) The reportable offender provides his or her contact details to the child or receives the child's contact details; or
- (c) For the purposes of inviting further contact or communication with the child, engages in any physical contact or communication with the child.

This clause also adds subsection (5) to section 17 which provides for the *Community Protection (Offender Reporting) Regulations 2016* to amend, omit or add personal details that are required to be reported by a reportable offender.

Clause 8: Section 19 amended (Intended absence from Tasmania to be reported)

This section of the Act stipulates the specific details to be provided and responsibilities of a reportable offender who intends to leave Tasmania to travel

elsewhere. This clause does not amend those details or responsibilities however the section is amended only in respect to periods of time.

The clause substitutes an intended absence from Tasmania of “7 days” to “any period” and requires a reportable offender to give notice “7 days” before leaving Tasmania as opposed to “14 days”. As in Clause 6, there is an additional provision for 24 hours notice where 7 days is impracticable.

Clause 9: Section 21 amended (Power to take photographs, fingerprints, &c)

This clause amends section 21 of the Act to provide for the taking of a non-intimate forensic procedure on a reportable offender. Currently, the Act allows for the taking of photographs and fingerprints, however a non-intimate forensic procedure, as defined by the *Forensic Procedures Act 2000*, and now included at section 3 of the Act, may include the taking of DNA and other non-intimate samples.

The Act currently provides for the use of reasonable force to enable such procedures to be carried out and this clause clarifies that to do so, a reportable offender may be detained. This clause also provides additional mechanisms where this occurs such as advising the reportable offender of reasons for his or her detention, that the detention is authorised under the Act and that he or she will be released immediately after the procedure has been carried out. In addition, the amendments stipulate that the reportable offender must not be held for longer than reasonable necessary and that during any non-intimate forensic procedure the reportable offender’s rights and professional standards will be respected.

Clause 10: Section 22 amended (Retention of material for certain purposes)

This clause amends the section by removing the reference to fingerprints and inserting “forensic material” as defined by the *Forensic Procedures Act 2000*.

Clause 11: Part 3, Division 4A inserted (Suspension and variation of reporting obligations for young reportable offenders)

This clause prescribes for the suspension and/or variation of reporting obligations for young reportable offenders. The Commissioner of Police, if satisfied on reasonable grounds that the young reportable offender does not pose a risk to the safety or wellbeing of any child or children, may suspend or vary a young person’s reporting obligations. The variation or suspension does not take effect until the Commissioner provides the young reportable offender or his parent/guardian/carer with written notice of such variation or suspension.

This clause also stipulates that the young reportable offender is still required to meet his or her reporting obligations and that the Commissioner may, at any time, revoke a suspension or variation where there are reasonable grounds to believe there is a risk to the life or safety of a child.

Clause 12: Section 33A inserted (Failure to comply with community protection order)

This clause provides for the offence and penalty where a reportable offender fails to comply with a community protection order.

Clause 13: Section 34 amended (Providing false or misleading information)

This clause increases the penalty for a reportable offender who provides information that is false or misleading in a material particular, from 50 penalty units and/or imprisonment for a term not exceeding 6 months to 100 penalty units and/or imprisonment for a term not exceeding 6 months.

Clause 14: Sections 36A and 36B inserted (Power of detention to enable notice to be given and Failure to comply with procedural requirement does not affect reportable offender's reporting obligations)

Section 36A will apply where there are reasonable grounds to suspect that a person is a reportable offender and has not been given notice, or is unaware of his or her reporting requirements. The section will permit police to detain a person to ascertain their status and enable notice of reporting requirements to be given. Where this power is exercised, police must advise the person of the reasons for their detention and release that person immediately after the reasons for detention are satisfied. The clause also stipulates that the detained person may be taken to a police station and not detained for longer than is reasonable necessary.

Section 36B stipulates that the failure of a person to comply with procedural requirements of the Act does not, of itself, affect a reportable offender's reporting requirements.

Clause 15: Section 44 amended (Access to Register to be restricted)

This clause is an administrative amendment relating to information from a register maintained under a corresponding Act that is accessible by the Commissioner. In this section, the word "section" is substituted by "part".

Clause 16: Sections 44B, 44C and 44D inserted (Provision of information to prescribed entities, Disclosure of information to parent, guardian or carer and Prescribed entities and parents, guardians or carers to keep information secret)

This clause relates to the provision of information from the register to certain entities/person and the responsibilities that relate to such disclosure.

Section 44B permits the Commissioner to provide in writing, any information from the register to prescribed entities for the purposes of law enforcement, judicial functions or activities, where authorised or required by or under any Act or Law or where there is a belief on reasonable grounds it is necessary and appropriate to ensure the safety and wellbeing of a child or children.

The section provides criminal and civil protection for the Commissioner by stipulating that the decision to release, or not to release the information does not constitute a breach of any duty, confidentiality or secrecy imposed by law and is not a breach of any professional or ethical standard or conduct.

Section 44C relates the disclosure of information where a reportable offender is having reportable contact with a child. Where it is considered on reasonable grounds necessary and appropriate for ensuring the safety and wellbeing of a child

or children, the Commissioner, or Secretary of the responsible Department in relation to the *Public Health Act 1997*, may disclose to a guardian or parent of a child having such contact that the person is a reportable offender.

The criminal and civil protections afforded the Commissioner in section 44B also relate to any disclosure made under the provisions of this section.

Where information is disclosed as permitted by section 44B or section 44C, section 44D provides for the offence of disclosing that information. A prescribed entity, parent or guardian to whom information from the Register is provided does however commit an offence if he or she records that information and causes another person to access it, or divulges or communicates that information to another person.

A penalty not exceeding 100 penalty units and/or a term of imprisonment not exceeding 6 months is also prescribed for this offence. Clause 16 does however state that an offence is not committed where a record or information is provided, disclosed or communicated under the Act or another law of Tasmania.

Clause 17: Sections 45A, 45B, 45C and 45D inserted (Interpretation, Power to enter and search premises to verify personal details, Power to enter and search places, premises, conveyances and containers and Failure to comply with the Act)

Section 45A of the Act is amended by adding a definitions for the term **premises**, in relation to a reportable offender's personal details.

Sections 45B and 45C relate to a police officer's power to enter and search premises in certain circumstances. Section 45B permits a police officer, without warrant and using reasonable force, to enter into, remain on, search and inspect a reportable offender's premises to verify personal details. In the exercise of this power, an attempt to communicate such an authority to the reportable offender inside the premises must be made unless doing so is likely to endanger any person. The reportable offender must not obstruct the exercise of this authority.

Where there is reason to suspect a reportable offender is, or has committed an offence against the Act, section 45C permits police, without warrant, to enter into, remain, search and inspect any place, premises, conveyance or container reasonable believed is or has been used by a reportable offender. In the exercise of this power, police may use any force as is reasonably necessary, inspect, copy and seize records or other things considered relevant, break open and search any cupboard, chest, trunk or other thing and require a conveyance to be stopped. A police officer may also inspect any computer, phone or data storing device and where necessary, remove any computer, phone or device for the purpose of further inspection. In addition, a reportable offender must supply any password, code or other information necessary for access to any data stored on such devices.

This clause provides for a penalty not exceeding 100 penalty units and/or a term of imprisonment not exceeding 6 months for a breach of this section or where a reportable offender does not allow a police officer to perform his functions in respect to entry, search and inspection.

The power of entry, search and inspection does not extend to a place used solely for residential purposes by a person other than a reportable offender unless there is consent or the existence of a search warrant.

Section 45D relates to the failure of a reportable offender to comply with the Act and prescribes for a penalty not exceeding 100 penalty units and/or a term of imprisonment not exceeding 6 months. There is also a power of arrest, without warrant, where a police officer suspects on reasonable grounds that a reportable offender has failed to comply with the Act.

Clause 18: Sections 47A inserted (Publication of personal details of certain reportable offenders)

For the purposes of section 47A, this clause defines **personal details** as including photographs and digital images and permits the Commissioner to publish any or all personal details of a reportable offender, or a corresponding reportable offender who is not a child. This is only allowable where the reportable offender's whereabouts is unknown and the Commissioner is satisfied that the reportable offender has either failed to comply with one or more of his or her reporting obligations, or, in respect to his or her reporting obligations, provided false or misleading particulars.

Clause 19: Schedule I amended (Class I offences)

Schedule I of the Act is amended by inserting Indecent or offensive behaviour as per section 21 of the *Police Offences Act 1935* as a Class I offence.

PART 4 – REPEAL OF ACT

Clause 20: Repeal of Act

This clause provides that the *Community Protection (Offender Reporting) Amendment Act 2016* is repealed on the three hundred and sixty fifth day from the day on which it commences.