

CLAUSE NOTES

Community Protection (Offender Reporting) Amendment Bill 2023

PART 1 - PRELIMINARY

Clause 1 Short Title

The short title will be the *Community Protection (Offender Reporting) Amendment Act 2024*.

Clause 2 Commencement

Provides for the Act to commence on a day or days to be proclaimed.

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

Clause 3 Principal Act

Provides that the *Community Protection (Offender Reporting) Act 2005* is the Principal Act referred to in the amendments.

Clause 4 Long Title substituted

Provides an amended short title adding an express objective of protecting children and allowing information from the Register to be disclosed for the safety and protection of children and the community.

Clause 5 Section 3 amended (Interpretation)

Provides amended definitions for 'authorised person' and 'personal details' and inserts new definitions for 'charged person', 'child-related service', and 'RWVP Registrar'.

Clause 6 Section 4A inserted Delegation by Commissioner

Inserts a section to allow the Commissioner of Police to delegate powers and functions under the Act.

Clause 7 Section 5 amended (Reportable offenders)

Inserts a section 5(4A) to provide the court with discretion to exclude a child from a reportable offender order if they have not previously been convicted of a reportable offence and are sentenced for a single prescribed offence.

Clause 8 Section 6 amended (Order requiring registration of offender)

Amends section 6 to expand the considerations of the court in making an order for the registration of an offender by:

- Removing the requirement of the court to order the registration of a person sentenced for a reportable offence unless the court is satisfied the person does not pose a risk of committing a reportable offence in the future.

- Inserting a new section 6(1)(a) and (b) requiring the court that sentences a person not referred to in the new section 5(4A) for a reportable offence, to cause the person to be registered and comply with obligations under the Act in accordance with the period of time determined by the court in accordance with sections 24 and 25.
- Inserting a new section 6(1A) providing the court may omit making a child a reportable offender if satisfied the child does not pose an unreasonable risk of committing a reportable offence against another child, adult or the community.
- Inserting a new section at 6(1B) providing the court may omit making a person a reportable offender if:
 - The person is sentenced for a Class 1 offence and the court is satisfied they do not pose an unreasonable risk of committing a reportable offence against another child, adult or the community.
 - The person is sentenced for a Class 2 or Class 3 offence and the court is satisfied that exceptional circumstances exist that indicate the person does not pose a risk of committing a reportable offence against another child, adult or the community.
- Inserting a new section 6(1C) to provide that in deciding whether exceptional circumstances exist, the paramount consideration is the safety and protection of children and the community.

Clause 9 Section 7 amended (Reporting orders for other offences)

Provides same provision as the new section 6(1)(b).

Clause 10 Section 9 amended (Magistrate may make reporting order on

Provides same provision as the new section 6(1)(b).

Clause 11 Section 10 amended (Matters to be taken into account)

Expands the matters a court can take into account when considering whether to make an order for registration under sections 6, 7 and 9 by inserting subsections relevant to previous convictions and any previous reporting order.

Clause 12 Section 10A amended (Magistrate may make community protection order on application from Commissioner)

Provides that a court imposing a community protection order, initiated by the Commissioner of Police, can further include conditions that:

- Restrict the reportable offender from accessing the internet (insertion of 10A(3)(ca)).
- Require the offender to submit to electronic monitoring (insertion of 10A(4)(a)(b)(c)) including conditions to comply with lawful directions and not tamper with, damage or remove the device.
- Surrender their passport (insertion of 10A(5)).

Clause 13 Section 10B amended (Magistrate may make interim community protection order)

Provides the same conditions inserted at clause 12 for Community Protection Orders also apply to interim Community Protection Orders.

Clause 14 Sections 10C and 10D inserted

10C. Variation, extension and revocation of community protection order

A provision to allow the Commissioner or a reportable offender to bring an application before a magistrate to vary, extend or revoke a community protection order, where the magistrate grants leave to bring the application because they are satisfied there has been a substantial change in relevant circumstances.

10D. Reportable offender not to commit further reportable offence

Provides that a reportable offender has an obligation not to commit a reportable offence during the reporting period.

Clause 15 Section 11 substituted

11. Corresponding reportable offenders

Simplifies the current definition and removes ambiguity created by the reference to the 'longer period' in the current definition.

11A. Interaction of orders

Provides that where two or more orders exist and are inconsistent, the condition on the most recently made order prevails to the extent of the inconsistency.

Clause 16 Section 13 amended (Class 1 offences)

Subsection (a) and (ab) has been amended to recognise the difference in children being involved in making and producing child exploitation material such as taking images of themselves, or consensual pictures of other children as opposed to adults making and producing child exploitation material.

Clause 17 Section 14 amended (Class 2 offences)

Provides a similar amendment with the same purpose as clause 16.

Clause 18 Section 15 amended (Class 3 offences)

Provides a similar amendment with the same purpose as clauses 16 and 17.

Clause 19 Part 2A inserted

PART 2A – Child-related Services and Disclosure in Relation to Charges

15A. Interpretation of Part

Provides that employer has the same meaning as section 17(3).

15B. Reportable offenders excluded from child-related services

Provides that a 'relevant reportable offender' is not a child or was not a child at the time of the offending and must not apply to engage or engage in child related work. An offence is created under this section.

It is a defence to the offence to prove that the defendant did not know it was a child related service.

15C. Commissioner may require charged person to make disclosure in relation to child-related services or reportable contact

Provides that the Commissioner may serve a notice requiring a charged person who is not a child, requiring the provision of information about whether they are engaged in any child-related services and whether they have any reportable contact with a child, on an ongoing basis until proceedings are finalised.

- The notice must be given before the first court appearance.
- The Commissioner is to give a copy of the notice to the RWVP Registrar.
- A police officer may make inquiries in accordance with guidelines under section 44(4A) to verify information provided by the person.

An offence is created under this section.

15D. Disclosure by charged person to employer in relation to child-related service

Provides that a charged person who is not a child, who engages in the provision of a child-related service, must disclose to their employer that they have been charged with a reportable offence within 7 days of becoming they are aware they have been charged.

An offence is created under this section.

15E. Commissioner may make disclosure regarding charged person

Provides that the Commissioner may, despite any Act or law and in accordance with the guidelines at section 44(4A), in respect of a charged person who is not a child, advise an employer or prospective employer, and any parent, guardian or carer of a child with whom the person has or the Commissioner reasonably believes may have had reportable contact with, that the person has been charged with a reportable offence and the details of that offence.

15F. Disclosure of information provided under this Part

Provides that where information is disclosed under this part, the person to whom the information is disclosed, must not disclose the information to any other person other than in circumstances set out in 15F(2).

An offence is created under this section.

15F(2) provides a list of circumstances in which the person who received the disclosure may lawfully disclose the information including; court proceedings, obtaining legal advice, for management of the person as an employee and others.

Provides a definition of 'personal relationship' has the same meaning as in the *Relationships Act 2003*.

Provides that a reportable offender must provide their relationship status including the name and address of any person with who they have a personal relationship or is staying with for more than one night and the names and ages of any children of that person.

Provides the person must supply details of any electronic monitoring that are subject to as a result of a sentence or court order in any jurisdiction.

Section 17(ic) has been amended to include technological advances in on-line communication and identity.

Section 17(ie) is amended to include the identification of communications devices.

Section 17(1C) is inserted to require a reportable offender to present to the Registrar any working with vulnerable people card issued under section 42 of the *Registration to Work with Vulnerable People Act 2013*.

Section 17(6) is inserted to allow the Registrar to seize a card presented under section 17(1C) and forward the card to the Registrar RWVP in this or any corresponding jurisdiction to have the cards validity checked or the registration reviewed.

Clause 21 Section 18 substituted

18. Reportable offender to report annually and as required by the Registrar

The new section clarifies the existing provision to clearly require offenders to report annually and at such other times directed by the Registrar.

Clause 22 Section 19 amended (Intended absence from Tasmania to be reported)

Amendments to this section require exact details of travel to be reported by a reportable offender including contact details, reason for travel, method of travel including booking details, the names and ages of travel companions and details of locations and contact with children consequential to travel.

The new section 19(5) requires the Commissioner to notify authorities of a reportable offender's intention to travel outside of Australia.

Clause 23 Section 20 amended (Where reports must be made)

Provides the Registrar flexibility for the method of taking a report, other than in person as a contingency for a pandemic or similar.

Clause 24 Section 21 amended (Power to take photographs and carry out non-intimate forensic procedures)

Provides clarity around the meaning of a non-intimate forensic procedure.

Creates an offence for an offender that does not comply with a requirement under the existing provision.

Provides authority to use reasonable force to carry out a non-intimate forensic procedure and prevent the loss, destruction or contamination of evidence.

Clause 25 Section 23 substituted (Suspension and extension of reporting obligations)

The substituted section provides clarification of the existing section for the way a suspension of a reportable offender order is calculated dependent on the reportable offender being in custody or outside Australia and, how offender's obligations continue to apply when they are outside Tasmania but within Australia.

Clause 26 Section 23A amended (Application of this Division)

The amendment includes a corresponding reportable offender as a young reportable offender.

Clause 27 Section 23B amended (Variation of reporting obligations of young reportable offenders)

The amendment adds 'unreasonable risk' to the consideration for varying reporting obligations of young offenders for consistency with the consideration in section 6(1A).

Clause 28 Section 23C amended (Suspension of reporting obligations of young reportable offenders)

The amendment adds 'unreasonable risk' to the consideration for suspending reporting obligations of young offenders for consistency with the consideration in section 6(1A).

Clause 29 Section 24 amended (Length of reporting period)

The amendment to this section provides the court with discretion to make an order within a set range dependent on a scale of offending as follows;

- For one Class 1 offence the order length is between 3 years and 8 years as determined by the court.
- For one Class 2 or one Class 3 offence, or more than one Class 1 offence, the order length is between 8 years and 15 years as determined by the court.
- For an offence specified in the existing section 24(3)(a) or (b) with the addition of Persistent Sexual Abuse of a Child against section 125A of the *Criminal Code*, the order length is between 15 years and life as determined by the court.

Provides that previous convictions apply to the courts consideration in determining the length of the reporting order.

Clause 30 Section 26 repealed (Reporting period for corresponding reportable offenders)

Repeals section 26 as a result of the clarification in clause 15 of section 11 relevant to corresponding reportable offenders.

Clause 31 Section 27A inserted

27A. Suspension of reporting obligations of reportable offenders on Commissioner's own initiative

Inserts a new section 27A(1) to enable the Commissioner to suspend reporting obligations on the Commissioner's own initiative where; (a) the reportable offender (i) was a child for the last offence that made them a reportable offender of (ii) has a cognitive or physical impairment; or (iii) has a mental illness and (b) there is a change in circumstances following the order being made, then (2) the Commissioner can suspend the reporting obligations where the Commissioner is satisfied the person does not pose an unreasonable risk of offending against a child, an adult or the community.

Under (3) the Commissioner can revoke a suspension made under the section if the Commissioner believes on reasonable grounds the offender poses or may pose an unreasonable risk of offending against a child, an adult or the community.

Under (4) and (5) the Commissioner must give written notice of a suspension or revocation under this section and the revocation or suspension takes effect when the notice is served.

Clause 32 Section 30 amended (Commissioner and certain chief executive officers entitled to be parties to proceedings)

Section 30(3) is amended by omitting "the Commissioner" and substituting "all relevant authorities" are to be notified of any proceedings under section 28 to suspend a reportable offender's obligations.

Clause 33 Sections 33 and 33A substituted

33. Failure to comply with obligations

Section 33 is amended to clarify that the section applies to reporting obligations imposed under the Act and is amended to increase the penalty to a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 3 years, or both.

33A. Failure to comply with community protection order or interim community protection order

Section 33A is amended to clarify that the section applies to reporting obligations imposed under the Act and is amended to increase the penalty to a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 3 years, or both.

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

Section 34 is amended to increase the penalty to a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

Clause 35 Sections 34A and 34B inserted

34A. Conduct intended to cause harassment of reportable offenders or charged persons

Inserts a new section 34A where;

subsection (1) provides definitions for;

- 'harassment' to include threat, serious and substantial abuse and severe ridicule
- 'identified person' means a reportable offender, or a charged person, about whom information is accessed or disclosed under the Act.
- "public place" includes a place to which the public has access, a privately owned place accessible by the public and a school, university or place of education accessible to students and the public.

Subsection (2) provides clarity about a reference to conduct that includes conduct occurring on a number of occasions over a period of time where conduct is not taken to be in private if there is any form of communication with the public or occurs in a public place or in hearing of people in a public place.

Subsection (3) provides a person who accesses or is disclosed information under the Act must not engage in any conduct, otherwise than in private, by which the person intends to cause harassment of an identified person.

An offence is created with a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

34B. Publication, display and distribution of identifying information of reportable offender

Inserts a new section 34B where;

subsection (1) provides definitions for;

- 'display' means display in or within view of a public place as per section 34A
- 'distribute' means distribute to the public or a section of the public
- 'Identifying information' means information accessed or disclosed under the Act in respect of a reportable offender or charged person that identifies the person as such
- 'publish' means publish to the public or a section of the public

Subsection (2) provides a person must not publish distribute or display information without the written approval of the Minister.

An offence is created with a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

Subsection (3) provides the section does not apply where the publishing, display or distribution of information is in accordance with the Act.

Clause 36 Section 37 amended (Courts to provide details of orders to Commissioner)

Amends section 37(3) by omitting "as soon as is practicable" and substituting "within 7 days" for the court to provide details of an order requiring the registration of a person to the Commissioner.

Clause 37 Section 41A inserted

41A. Access to information of participants in witness protection programs

Inserts a section to restrict the personal information of a reportable offender in Witness Protection in accordance with the *Witness Protection Act 2000* to be accessed in accordance with duties undertaken under that Act and by the Registrar and staff of the Registrar.

Clause 38 Section 42 amended (Registrar)

This section is amended by 'omitting police officer' and substituting a 'person' may be appointed by the Commissioner to be the Registrar.

Clause 39 Section 44 amended (Access to Register to be restricted)

This section has been amended for expansion to allow the flow of information for the protection of children and the community and to clarify who are relevant agencies to whom information can be disclosed.

Sections (1) – (4) are omitted and substituted as follows;

The new section (1) defines relevant agency as;

- (a) the Commissioner of the Australian Federal Police; or
- (b) the Commissioner (however designated) of the police force of another State, or a Territory, or another country; or
- (c) the Australian Criminal Intelligence Commission; or
- (d) the Australian Transaction Reports and Analysis Centre (AUSTRAC) continued in existence by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 of the Commonwealth*; or
- (e) any other government authority of the Commonwealth or of this or any other State, or of a Territory, responsible for the protection of children or reportable offender management.

The section (2) provides the Register or any part of the register is only to be accessed by;

- (a) the Commissioner; or
- (b) the Registrar; or
- (c) the staff of the Registrar; or
- (d) a police officer; or
- (e) an employee, within the meaning of the *State Service Act 2000*, who accesses the Register in the course of the employee's duties, for the purposes of –
 - (i) enforcing or administering a law of the State, or of another State, a Territory or the Commonwealth; or
 - (ii) monitoring compliance with, or investigating a contravention of, a law of the State, or of another State, a Territory or the Commonwealth; or
 - (iii) the administration of justice; or

(f) a person who is authorised to do so by the Commissioner.

The new section (3) restricts persons in (2)(c), (d), (e) of (f) from disclosing personal details contained in the Register except to a police officer or a relevant agency in accordance with Commissioners Guidelines developed under the new section 44(4A). An offence for disclosure outside these conditions is created with a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

The new section (4) restricts the Registrar and the Commissioner from making disclosures outside the guidelines developed under the new subsection (4A) or under a requirement or authorisation under law.

The new section (4A) requires the Commissioner to develop guidelines about access to, and the verification and disclosure of, personal details in the Register that ensure that access to the personal information in the Register is restricted to the greatest extent possible without interfering with the purpose of the protection of children, adults and the community.

Clause 40 Sections 44AA and 44AB inserted

44AA. Provision of information to corresponding registrar

Insertion of a provision to provide the Registrar may disclose personal details of a reportable offender from the Register to a corresponding Registrar for the purposes of a corresponding Act.

44AB. Provision of information to court

Insertion of a provision to allow information from the Register, upon the request of a court, must be disclosed by the Commissioner as to:

- (a) whether or not the person is a reportable offender;
- (b) if the person is a reportable offender, the period and conditions of any order made under this Act in relation to the reportable offender –
if the Commissioner is satisfied that –
- (c) the information requested is for the purposes of informing the court making orders under the *Children, Young Persons and Their Families Act 1997* or the *Family Law Act 1975* of the Commonwealth; and
- (d) the information requested does not identify any victims of the reportable offender other than those in relation to whom the court is making the orders specified in paragraph (c).

Clause 41 Section 44B amended (Provision of information to prescribed entities)

This section has been amended by inserting the Registrar or an authorised person throughout the current section as appropriate, as persons able to facilitate a free flow of information for the protection of children, adults and the community and the management of reportable offenders and as authorised by law in accordance with the Commissioners Guidelines developed under the new section 44(4A).

Clause 42 Section 44C amended (Disclosure of information to parent, guardian or carer)

Provides the same indemnities to the Secretary of the responsible Department in relation to the *Children, Young Persons and Their Families Act 1997* that apply to the Commissioner when making disclosures under this provision.

Clause 43 Section 44CA inserted

44CA. Application by parent, guardian or carer for disclosure

Inserts a new section under which a parent, guardian or carer of a child may apply to the Commissioner to be informed whether a specified person, other than a child, who has or, has had, regular unsupervised access (unsupervised contact for a least 3 days whether or not consecutive in any 12 month period) to their child is a reportable offender.

The application needs to be in an approved form and include evidence to satisfy the Commissioner in respect of the above information.

The Commissioner may disclose whether or not the specified person is a reportable offender unless they were a child when they committed the latest offence that has made them a reportable offender.

The Commissioner must inform the applicant in writing of the obligation under 44D to keep the information secret.

44. Section 44D amended (Prescribed entities and parents, guardians or carers to keep information secret)

Amends the current provision to capture the persons subject to disclosures of information under the amended and new sections at 44B, 44C and 44CA.

Increases the penalty for the offence of divulging information to a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

Clause 45 Section 45 amended (Confidentiality)

The current section has been amended to facilitate the disclosure of information from the Register by expanding the circumstances in which information can be disclosed to include;

(b) for the purposes, in this or any other jurisdiction, of –

(i) the protection of children, adults and the community; or

(ii) law enforcement; or

(iii) the management of reportable offenders;

(ba) in the course of proceedings in court in respect of orders made under this Act;

Clause 46 Section 45AA inserted

45AA. Power to conduct search of person

Insertion of a new section to allow police the power to search a reportable offender in certain circumstances as follows;

If a police officer reasonably suspects that a reportable offender is committing, or has committed, an offence against this Act, the police officer may, without warrant, in a public place or after entering a place, premises, conveyance or container in accordance with section 45C –

(a) conduct a frisk search, within the meaning of the *Search Warrants Act 1997*, of the reportable offender; and

(b) search any thing in the possession of the reportable person; and

(c) seize, retain, and conduct an examination (including a forensic examination) of any thing that the police officer reasonably believes is evidence that a reportable offender is committing, or has committed, an offence against this Act.

Clause 47 Sections 45B and 45C substituted

45B. Power to arrest without warrant

Inserts a new section for a power to arrest without warrant to replace the only power of arrest currently contained in 45D at subsection (2) limited to a police officer who suspects on reasonable grounds that a reportable offender has committed an offence against subsection (1) which specifies; A reportable offender who, without reasonable excuse, fails to comply with this Act commits an offence.

The new section provides a general power of arrest without warrant where a police officer suspects on reasonable grounds that a person has committed any offence under this Act.

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

Inserts a new section to clarify and replace the current powers to enter and search places, premises conveyances and containers and verify personal details currently provided in sections 45B and 45C, and, adds a power for police to search devices.

The new section provides;

(1) A police officer may, for the following purposes, without warrant, enter into, remain on, search and inspect any place, premises, conveyance or container, or search any device, that the police officer reasonably believes is being, or has been, used by a reportable offender:

(a) to ensure the reportable offender is not committing, or has not committed, a reportable offence or an offence against this Act;

(b) to verify any personal details reported by the reportable offender.

The new section 45C(2) is the same as the current section 45B(2) where 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, however the section has been expanded to include 'or lead to the loss or destruction of evidence in relation to the commission of a reportable offence or an offence against this Act'.

The same provisions as per the current section 45C(2) (a) to (e) apply regarding using force to enter and carry out a search in the new section (now section 45C(3) (a) to (e)), however the current subsection (f) is expanded to include 'seize, retain, conduct an examination (including a forensic examination) of, any thing that the police officer reasonably believes is, or may contain, evidence of the commission of a reportable offence, or an offence against this Act, by the reportable offender.

The new section 45C(4) is the same as the current section 45C(4) regarding the offender cooperating and allowing police to enter and remain for the search, however the penalty for the offence has been increased to a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

The new section 45C(5) is the same as the current section 45C(3) regarding assisting police with codes and passwords, however the penalty for the offence has been increased to a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

The new section 45C(6) is the same as the current section 45C(5) regarding the limits of a police search of a place solely resided in by a person other than the reportable offender.

Clause 48 Section 45D amended (Failure to comply with Act)

The power of arrest has been omitted from this section as per the notes in clause 47. The penalty for the offence has been increased to a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

Clause 49 Sections 47 and 47A substituted

47. Matters generally to be heard in public

Substitutes the current section 47 and provides a consistent approach for court proceedings by providing proceedings in relation to any matter under this Act must be heard in open court unless the reportable offender is under witness protection or the court determines otherwise.

47A. Publication of personal details of certain reportable offenders

Substitutes the current section 47A to clarify and simplify a provision for publication that does not apply to a young reportable offender or corresponding reportable offender who is a child but provides that the Commissioner may publish any or all of the personal details of a reportable offender, or corresponding reportable offender, if the reportable offender's or corresponding reportable offender's whereabouts are not known to the Commissioner.

47B. Publication of de-identified information

A new section has been inserted to allow the Commissioner to report publicly on de-identified data regarding monitoring and compliance, registration of

Reportable Offenders, charges for offences under the Act and disclosures of information. All information is de-identified and used for public education and reporting purposes.

Clause 50 Section 49A inserted

49A. Evidence of electronic monitoring device

The insertion of this section provides that where a reportable offender is required to submit to electronic monitoring under this Act, information collected as a result of that electronic monitoring –

(a) must be provided to the Commissioner; and

(b) may be used as evidence in proceedings under this or any other Act.

And if a reportable offender is required to submit to electronic monitoring under another Act, information collected as a result of that electronic monitoring may be –

(a) provided to the Commissioner; and

(b) used as evidence in proceedings under this Act.

Clause 51 Section 50A amended (Appeals)

Subsection (2) is amended to add a 28 day period for making an appeal.

Clause 52 Sections 50B and 50C inserted

50B. Appeals from Magistrates Court decision

The insertion of a section to allow an appeal to be made to the Supreme court within 28 days following a magistrates decision to make an offender reporting order or community protection order; or a decision not to make an offender reporting order or community protection order, or a failure to make such an order.

The insertion of provisions for the Supreme Court to deal with the appeal made under this section.

50C. Amendment of Schedules by order

The insertion of a section to administer amendments to the Schedules of Offences by order of the Governor, where the order is a statutory rule for the purposes of the *Rules Publication Act 1953*.

Clause 53 Section 51 amended (Regulations)

Inserts subsection (4) that provides; The amendment by an Act of regulations made for the purposes of this Act does not bar their subsequent amendment or repeal by regulation.

Clause 54 Section 54 inserted

54. Transitional provisions consequent on *Community Protection (Offender Reporting) Amendment Act 2024*

A provision to prescribe how the amendments operate with orders already in place prior to the commencement of the Amending Act. Active orders continue undisturbed in their current form and length, despite the amendments to;

- the schedules of offences,
- section 6 - Order requiring registration of an offender,
- sections 13,14 and 15 – Classes of offences
- Section 24 length of order

Provides all amendments regarding reporting, monitoring and compliance and information sharing etc apply to current and future orders.

Provides all amendments apply to future orders regardless of the date of offending.

Clause 55 Schedules 1, 2 and 3 amended

SCHEDULE 1 – CLASS 1 OFFENCES

SCHEDULE 2 – CLASS 2 OFFENCES

SCHEDULE 3 – CLASS 3 OFFENCES

Provides for repeal of the current Schedules of Offences and creation of new Schedules of Offences that contain the offences from the current Schedules with amendments as follows;

- Correction of 18 drafting errors as they appear in the current Schedules of Offences where the subsection creating the offence was omitted.
- The addition of 15 recently added Commonwealth Offences to Schedule 1 as follows:

Section 273A.1 Possession of child-like sex dolls etc.

Section 273B.4 Failing to protect a child at risk of a child sexual abuse offence

Section 273B.5(1) Failing to report a child sexual abuse offence – reasonable belief

Section 273B.5(2) Failing to report a child sexual abuse offence – reasonable suspicion

Section 471.25A(1) Using a postal or similar service to groom another person to make it easier to procure persons under 16 for the sender

Section 471.25A(2) Using a postal or similar service to groom another person to make it easier to procure persons under 16 for another person

Section 471.25A(3) Using a postal or similar service to groom another person to make it easier to procure persons under 16 to occur in the presence of the sender or another person

471.22A Possessing or controlling child abuse material obtained or accessed using a carriage service

474.23A(1) Conduct for the purposes of electronic service used for child abuse material

474.25C Using a carriage service to prepare or plan to cause harm to, engage in sexual activity with, or procure for sexual activity, persons under 16

474.27AA(1) Using a carriage service to groom another person to make it easier to procure persons under 16 for the sender

474.27AA(2) Using a carriage service to groom another person to make it easier to procure persons under 16 for another person

474.27AA(3) Using a carriage service to groom another person to make it easier to procure persons under 16 to occur in the presence of sender or another person

- The addition of 14 sexual and child protection offences made after 2005 that were not captured in the current schedules as follows;

Criminal Code Act 1924

Section 105A(2) Failing to report the abuse of a child

Section 125E(2) Failure by a person in authority to protect a child from a sexual offence

Section 129 Procuring a person for penetrative sexual abuse by threats or fraud

Section 165A Infanticide

Section 178 III Treating a child

Section 178A(1) Female genital mutilation

Section 178B(1) Removal of child from State for performance of female genital mutilation

Classification (publications, Films and Computer Games) Enforcement Act 1995

Section 72 Make or produce bestiality product

Section 74 Possess bestiality product

Children, Young Persons and Their Families Act 1997

Section 91 Fail to protect child from harm

Section 95 Harbour or conceal a child

Section 96 Remove child without authority

Sex Industry Offences Act 2005

Section 8(2) Accosting a child

Section 11 Children on premises

- To move the section for persistent sexual abuse of a child under section 125A(2) of the *Criminal Code Act 1924* from Schedule 2 to Schedule 3 to align with community expectation given that if a person were charged with the individual offences that constitute this crime, the reportable order made would be equivalent to an order under Schedule 3.
- To remove the repealed offences from the Schedules of; Aggravated sexual assault under section 127A(1) of the *Criminal Code Act 1924* and Penetrative sexual abuse of a person with a mental impairment under section 126 of the *Criminal Code Act 1924* and other Commonwealth offences.
- The movement of offences to align with community expectation and for consistency as follows;

Schedule I – Class I offences

Section 13

Criminal Code Act 1995 of the Commonwealth

Section 273.6	Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia	As a child stays in Schedule 1 As an adult moves to schedule 2
Section 471.20	Possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service	As a child stays in Schedule 1 As an adult moves to schedule 2
Section 474.23	Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service	As a child stays in Schedule 1 As an adult moves to schedule 2

Schedule 2 – Class 2 offences

Section 14

<i>Children, Young Persons and Their Families Act 1997</i>		
Section 91	Fail to protect child from harm	Move to schedule 1
Section 95	Harbour or conceal a child	Move to schedule 1
Section 96	Remove, counsel or induce child to be absent without lawful authority	Move to schedule 1
<i>Classification (Publications, Films and Computer Games) Enforcement Act 1995</i>		
Section 72A(a)	Make or reproduce child exploitation material	As a child moves to Schedule 1 As an adult moves to schedule 3
Section 72A(b)	Cause or permit child exploitation material to be made or reproduced	As a child moves to Schedule 1 As an adult moves to schedule 3
Section 72A(c)	Be involved in the making or reproduction of child exploitation material	As a child moves to Schedule 1 As an adult moves to schedule 3
JS2/JT/tr/oc4/EN Section 73A	Distributing child exploitation material or facilitating the distribution of child exploitation material	As a child moves to Schedule 1 As an adult stays in schedule 2
<i>Criminal Code Act 1995 of the Commonwealth</i>		
Section 272.9	Sexual activity (other than sexual intercourse) with a child outside Australia	Move to schedule 3
Section 272.12	Sexual intercourse with young person outside Australia – defendant in position of trust or authority	Move to schedule 3
Section 272.13	Sexual activity (other than sexual intercourse) with young person outside Australia – defendant in position of trust or authority	Move to schedule 3
Section 272.14	Procuring child to engage in sexual activity outside Australia	Move to schedule 3
Section 273.7	Aggravated offence – involving conduct on 3 or more occasions and 2 or more people	Move to schedule 3
Section 471.22	Aggravated offence – offence involving conduct on 3 or more occasions and 2 or more people	Move to schedule 3

Section 474.24A	Aggravated offence – offence involving conduct on 3 or more occasions and 2 or more people	Move to schedule 3
Section 474.25B	Aggravated offence – child with mental impairment or under care, supervision or authority of defendant	Move to schedule 3
<i>Criminal Code</i>		
Section 105A(2)	Fail to report the abuse of a child	Move to Schedule 1
Section 124	Penetrative sexual abuse of a child [or young person]	Move to Schedule 3
Section 124A	Penetrative sexual abuse of a child [or young person] by a person in a position of authority	Move to Schedule 3
Section 126	Penetrative sexual abuse of a person with a mental impairment	Move to Schedule 3
Section 130A	Producing child exploitation material	As a child moves to Schedule 1 As an adult moves to schedule 3
Section 130B(1)	Distributing child exploitation material	As a child moves to Schedule 1 As an adult stays in schedule 2
Section 133(1)	Incest	Move to Schedule 3
Section 169	Administering a drug with intent to facilitate the commission of an offence	Move to Schedule 3
Section 170A	Persistent family violence (the commission of which involved an unlawful family violence act involving an offence against another provision listed in this Schedule)	Delete this section as it now exists in schedule 3.
Section 186(1)	Forcible abduction	Move to Schedule 3
Section 186(2)	Abduction	Move to Schedule 3
Section 189	Abduction of a young person under the age of 17 years	Move to Schedule 3
<i>Sex Industry Offences Act 2005</i>		
Section 7(1)(d)	Administering to a sex worker, or causing a sex worker to take, any drug or other substance with the intent to stupefy or overpower that sex worker	Move to Schedule 3
Section 7(2)(d)	Administer to a person, or cause a person to take, any drug or other substance with the intent to stupefy or overpower that person to induce provision of sexual services or fee or reward derived from provision of sexual services	Move to Schedule 3

Schedule 3 – Class 3 offences

Section 15

<i>Criminal Code</i>		
Section 170A	Persistent family violence (the commission of which involved an unlawful family violence act involving an offence against another provision listed in this Schedule)	Apply this to Schedule 1,2 or 3 offences
Section 192(1)	Stalking and bullying (if the person against whom the offence is committed is a child)	Move to Schedule 2

PART 3 – COMMUNITY PROTECTION (OFFENDER REPORTING) REGULATIONS 2016 AMENDED

Clause 56 Principal Regulations

Provides that in this part the *Community Protection (Offender Reporting) Regulations 2016* are being amended.

Clause 57 Regulation 4 amended (Authorised persons)

Provides that an authorised person can be a State Service Employee working under the direction or control of the Registrar.

Clause 58 Regulation 8 amended (Supervising authorities)

The Amendment reflects the naming convention for the 'Chief Psychiatrist.

Clause 59 Regulation 8A inserted

8A. Prescribed offences in respect of child offenders

Provides the list of prescribed offences for the purposes of the new section 5(4A) that relates to a single offence committed by a child where on sentencing, the court may omit to make the child a reportable offender.

They are;

(a) sections 72A(a), (b), (c), 73A and 74A(a) of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*;

(b) sections 130A, 130B(1) and 130C of the *Criminal Code*;

(c) sections 8(1A), 21 and 35(3) of the *Police Offences Act 1935*;

(d) sections 273.5, 273.6, 471.17, 471.20, 474.19, 474.20, 474.22A and 474.23 of the *Criminal Code 1995* of the Commonwealth.

Clause 60 Regulation 10 amended (Prescribed entities)

Provides the current updated names of the Departments referred to in the current section.

PART 4 – SENTENCING ACT 1997 AMENDED

Clause 61 Principal Act

Provides that in this part the *Sentencing Act 1997* is being amended.

Clause 62 Section 11A amended (Matters to be taken or not taken into account in sentencing certain sexual offenders)

Provides that section 11A(1) of the principal Act is amended by inserting in the definition of *aggravating circumstance* that the offender at the time of the commission of the offence was a reportable offender within the meaning of the *Community Protection (Offender Reporting) Act 2005*.

PART 5 – CONCLUDING PROVISION

Clause 63 Repeal of Act

Provides that the Act is automatically repealed one year after the last uncommenced provision of this Act commences.