

House of Assembly—No 4

As laid on the table and read a first time, 8 May 2014

South Australia

**Child Sex Offenders Registration (Control Orders
and Other Measures) Amendment Bill 2014**

A BILL FOR

An Act to amend the *Child Sex Offenders Registration Act 2006*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Child Sex Offenders Registration (Control Orders and Other Measures) Amendment Act 2014*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Child Sex Offenders Registration Act 2006*

4—Amendment of section 9—Child sex offender registration order

Section 9(3)—delete "sexual safety" and substitute:

5 safety and well-being

5—Amendment of section 18—Change of travel plans while out of South Australia to be given

Section 18(1)(a)—delete "13 days" and substitute:

6 days

6—Amendment of section 64—Interpretation

Section 64(1), definition of *child related work*, (q)—delete paragraph (q) and substitute:

and includes work in connection with taxi services and hire car services
(whether or not the work involves contact with a child);

7—Amendment of section 66F—Commissioner may publish personal details of certain registrable offenders

Section 66F—after subsection (1) insert:

(1a) For the avoidance of doubt, information published by the
Commissioner under this section (whether before or after the
commencement of this subsection) may specify that the person to
whom it relates is a registrable offender.

8—Amendment of section 66J—Publication, display and distribution of identifying information

(1) Section 66J(1)—delete "without having first obtained" and substitute:

25 except in accordance with

(2) Section 66J—after subsection (1) insert:

(1a) An approval granted by the Minister for the purposes of this section
may be subject to such conditions as the Minister thinks fit.

(1b) In determining whether or not to grant an approval, or the conditions
to attach to an approval, the Minister may take into account the
matters specified in section 66G(2) (as if the references to the
Commissioner in section 66G(2)(f) and (h) were references to the
Minister).

(1c) If the Minister, in good faith, grants an approval for the purposes of
this section, no civil or criminal liability attaches to the Minister or
the Crown by reason of the grant of that approval.

- 5 (1d) If the Commissioner removes any or all of the personal details of a registrable offender from the website on which they are published under section 66F, a person who has published on a website identifying information consisting of those personal details, or who is displaying such identifying information, must take reasonable steps to remove that information from the website or display.

Maximum penalty: Imprisonment for 2 years.

9—Insertion of Part 5C

After section 66J insert:

Part 5C—Control Orders

66JA—Court may make control order

- 10 (1) The Magistrates Court may, on application made by the Commissioner, make a control order relating to a registrable offender if satisfied on the balance of probabilities that—
- 15 (a) the registrable offender poses a risk to the safety and well-being of any child or children; and
- (b) the making of the order will reduce that risk.
- (2) In considering whether or not to make a control order under this section, and in considering the terms of the control order, the Court must have regard to the following matters:
- 20 (a) the circumstances and seriousness of each offence in relation to which the person is a registrable offender, including—
- (i) the age of the registrable offender at the time each offence was committed; and
- 25 (ii) the age of each victim of each offence as at the time the offence was committed; and
- (iii) the differences between those ages;
- (b) the period of time since each offence in paragraph (a) was committed (disregarding any period during which the registrable offender was in government custody);
- 30 (c) the registrable offender's total criminal record;
- (d) the effect of the order sought on the registrable offender in comparison with the level of the risk that a further registrable offence may be committed by the registrable offender;
- 35 (e) whether the registrable offender has breached a provision of this Act or a restraining order under Part 4 Division 7 of the *Summary Procedure Act 1921* (including a foreign restraining order (within the meaning of the *Summary Procedure Act 1921*) registered under section 99H of that Act);
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- (f) the personal circumstances of the registrable offender such as age, accommodation, employment, physical and mental condition and integration into the community,

and may have regard to any other matter the Court thinks fit.

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- (3) The Court may make a control order without being satisfied as to the matters in subsection (1) or having regard to the matters in subsection (2) if—

- (a) the Commissioner and the registrable offender consent to the making of the order and its terms; and

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- (b) it is in the interests of justice to make the order without being satisfied of, or having regard to, those matters.

- (4) In considering whether it is in the interests of justice to make an order under subsection (3), the Court may have regard to the following:

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- (a) whether the registrable offender has obtained legal advice in relation to the making of the order;

- (b) whether the registrable offender—

- (i) has impaired intellectual functioning; or

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- (ii) is subject to a guardianship order (within the meaning of the *Guardianship and Administration Act 1993*); or

- (iii) is illiterate, or is not literate in the English language; or

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- (iv) may not, for some other reason, understand the effect of consenting to the making of the order.

66JB—Terms of control order

- (1) A control order may prohibit or restrict any conduct, including (without limitation)—

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- (a) associating with, or communicating with, a specified person or persons of a specified class; or

- (b) being present at, or being in the vicinity of, a specified place or premises or a place or premises of a specified class; or

- (c) undertaking specified employment or employment of a specified kind; or

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- (d) other conduct of a kind specified in the order.

- (2) The Court must, on making or varying a control order in relation to a registrable offender, take all reasonable steps to explain to the registrable offender the terms of the control order and in particular—

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- (a) the registrable offender's obligations under the control order; and

- (b) the consequences that may follow from a failure to comply with the control order.

66JC—Interim control orders

- (1) The Magistrates Court may, on an application under section 66JA, make an interim control order if the Court is satisfied that it is appropriate to do so in all of the circumstances.
- (2) An interim control order may include any prohibition that may be included in a control order (and section 66JB(2) applies to the interim control order as if it were a control order).

66JD—Duration of order

- (1) A control order remains in force for a period of 5 years or such lesser period as specified in the control order.
- (2) An interim control order remains in force for the period specified by the Court in making the order, or until further order of the Court.

66JE—Variation and revocation of order

- (1) The Magistrates Court may, on application made by the Commissioner or the registrable offender to whom a control order or interim control order applies, vary or revoke the order.
- (2) A registrable offender may only apply under subsection (1) with the permission of the Court.
- (3) The Court may only grant permission under subsection (2) if satisfied that—
- (a) there has been a material change in circumstances relating to the registrable offender or the order; and
- (b) it is in the interests of justice to grant permission.
- (4) In proceedings for the variation or revocation of a control order or interim control order—
- (a) the Commissioner and the registrable offender are parties to the proceedings; but
- (b) in the case of an application made by the Commissioner, the Court may, if satisfied that the application has been served on the registrable offender, hear and determine the proceedings whether or not the registrable offender chooses to participate in the hearing.

66JF—Offence to contravene or fail to comply with order

- (1) A person who contravenes or fails to comply with a control order or interim control order is guilty of an offence.
- Maximum penalty: Imprisonment for 5 years.

5 (2) For the purposes of determining whether a communication amounts to a breach of a control order or interim control order that prohibits or restricts certain communication, a registrable offender will be taken to have communicated with a specified person, or a person within a specified class, if the other person, in the circumstances of the communication, appears to be the specified person or within the specified class of person.

10 (3) A person does not commit an offence against this section in respect of an act or omission unless the person knew that the act or omission constituted a contravention of, or failure to comply with, the order or was reckless as to that fact.

66JG—Service of order

(1) If the Magistrates Court—

15 (a) makes an order imposing a control order or interim control order on a registrable offender; or

(b) makes an order, on application by the Commissioner, varying or revoking a control order or interim control order that has been imposed on a registrable offender,

and the registrable offender is not present in Court at the time—

20 (c) the Commissioner must cause a copy of the order imposing, varying or revoking the control order or interim control order to be served on the registrable offender; and

25 (d) in relation to the imposition or variation of a control order— the order does not take effect until a copy is served on the registrable offender.

(2) If the Commissioner is required to cause a copy of an order imposing, varying or revoking a control order or interim control order to be served on a registrable offender under subsection (1), a police officer may—

30 (a) require the registrable offender to remain at a particular place for so long as may be necessary for the order to be served; and

35 (b) if the registrable offender refuses or fails to comply with the requirement or the officer has reasonable grounds to believe that the requirement will not be complied with—arrest and detain the registrable offender in custody (without warrant) for—

(i) so long as may be necessary for the order to be served; or

40 (ii) 2 hours or such longer period as is approved by the Magistrates Court,

whichever is the lesser.

- (3) The Magistrates Court may, on application by a police officer, extend a period of detention under this section if satisfied that it is appropriate to do so in the circumstances, but not so that the aggregate period of detention of the person exceeds 8 hours.

5 **10—Amendment of section 66L—Information to be provided to parents and guardians**

- (1) Section 66L—after "who" insert:

is to

- (2) Section 66L(a)—delete "resides" first occurring and substitute:

10 reside

- (3) Section 66L(b)—delete "stays" first occurring and substitute:

stay

- (4) Section 66L—delete "must tell a" and substitute:

must, before doing so, tell each