

Legislative Council—No 39

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South Australia

Child Sex Offenders Registration Bill 2006

A BILL FOR

An Act to establish a register of child sex offenders; to prevent registered child sex offenders engaging in child-related work; to make a related amendment to the *Criminal Law (Sentencing) Act 1988*; and for other purposes.

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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 Act 2006*.

2—Commencement

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

3—Object

The object of this Act is to protect children from sexual predators by—

- (a) requiring certain persons who may have a propensity to commit sexual offences against children to keep the Commissioner of Police informed of their whereabouts and other personal details for a period of time—
 - (i) to reduce the risk of such offences being committed; and
 - (ii) to facilitate the investigation and prosecution of any offences that are committed; and
- (b) preventing such persons from engaging in child-related work.

4—Interpretation

- (1) In this Act, unless the contrary intention appears—

child means a person under the age of 18 years;

child sex offender registration order means an order made under section 9 and includes a corresponding child sex offender registration order;

class 1 offence means an offence listed in Schedule 1 Part 2;

class 2 offence means an offence listed in Schedule 1 Part 3;

Commissioner means the Commissioner of Police;

corresponding child sex offender registration order means an order made under a corresponding law that falls within a class of order that the regulations state is a corresponding child sex offender registration order for the purposes of this Act;

corresponding law means a law of a foreign jurisdiction—

- (a) that requires people who have committed specified offences to report, in that jurisdiction, information about themselves and to keep that information current for a specified period; and
- (b) that is declared by the regulations to be a corresponding law for the purposes of this Act;

corresponding registrar means the person whose duties and functions under a corresponding law most closely correspond to the duties and functions of the Commissioner under this Act;

court includes a court (however described) of a foreign jurisdiction but does not include a family conference within the meaning of the *Young Offenders Act 1993*;

detainee means a person who—

- (a) is detained in a training centre within the meaning of the *Young Offenders Act 1993*; or
- (b) is detained as a result of being declared liable to supervision under Part 8A of the *Criminal Law Consolidation Act 1935*;

disability means intellectual disability or physical disability;

Note—

The meaning of *disability* is affected by subsection (3).

existing licensee means a person who has been released from government custody on licence and includes a person who has a similar status under the laws of a foreign jurisdiction;

finding of guilt in relation to an offence committed by a person (however expressed) means—

- (a) a court making a formal finding of guilt in relation to the offence; or
- (b) a court accepting a plea of guilty or other admission of guilt from the person in relation to the offence; or
- (c) a court declaring under Part 8A of the *Criminal Law Consolidation Act 1935* that the person is liable to supervision in relation to the offence, or an equivalent declaration or finding under the law of a foreign jurisdiction; or
- (d) in the case of conduct that is, under section 5, equated with an offence for the purposes of this Act, a court making a formal finding that the person engaged in that conduct,

but does not include a finding of guilt that is subsequently quashed or set aside by a court;

fingerscan means fingerprints taken by means of a device to obtain a record of the fingerprints;

foreign jurisdiction means a jurisdiction other than South Australia (including jurisdictions outside Australia);

foreign registrable offence means an offence that is not a registrable offence under this Act but that is specified in a corresponding law as an offence the commission of which results in a requirement that the offender report, in the jurisdiction in which the corresponding law is in force, information about himself or herself;

foreign registrable offender has the meaning set out in section 7;

foreign witness protection law means a law of a foreign jurisdiction that provides for the protection of witnesses;

good behaviour bond means a bond entered into under Part 5 of the *Criminal Law (Sentencing) Act 1988*;

government custody means—

- (a) custody as a prisoner or detainee; or
- (b) custody under a law of a foreign jurisdiction in the nature of custody referred to in paragraph (a);

intellectual disability means permanent or temporary loss or imperfect development of mental faculties resulting in reduced intellectual capacity;

New South Wales Act means the *Child Protection (Offenders Registration) Act 2000* of New South Wales;

New South Wales registrable offender has the meaning set out in section 8;

offence includes conduct that is, under section 5, equated with an offence for the purposes of this Act;

parole means an order made under Part 6 Division 3 of the *Correctional Services Act 1982* and includes any equivalent order made under the laws of a foreign jurisdiction;

personal details means the information listed in section 13(1);

5 **physical disability** means—

- (a) the total or partial loss of any function of the body; or
- (b) the total or partial loss of any part of the body; or
- (c) the malfunctioning of any part of the body; or
- (d) the malformation or disfigurement of any part of the body,

10 whether permanent or temporary, but does not include intellectual disability;

prisoner has the same meaning as in the *Correctional Services Act 1982*;

register means the register of registrable offenders established under section 60;

registrable offence means—

- (a) a class 1 offence; or
- 15 (b) a class 2 offence; or
- (c) an offence that results in the making of a child sex offender registration order;

registrable offender has the meaning set out in section 6;

reporting obligations, in relation to a registrable offender, means the obligations imposed on him or her by Part 3;

20 **reporting period** means the period, as determined under Part 3 Division 5, during which a registrable offender must comply with his or her reporting obligations;

sentence, in relation to an offence, includes—

- (a) the imposition of a penalty for the offence, or the making of any other order or direction consequent on a finding of guilt in relation to the offence; and
- 25 (b) the making of a declaration under Part 8A of the *Criminal Law Consolidation Act 1935* that a person charged with the offence is liable to supervision; and
- (c) the making of a restraining order under section 99AA of the *Summary Procedure Act 1921* where the grounds for making the order consist of, or include, the commission of the offence; and
- 30 (d) the making of any equivalent order or declaration under the laws of a foreign jurisdiction;

strict supervision means—

- (a) supervision by a person or body whose functions or powers include supervision of persons in government custody or persons subject to a supervised sentence; and
- 35 (b) supervision by an authority of a foreign jurisdiction in the nature of an authority referred to in paragraph (a);

supervised sentence means—

- (a) parole; or

- (b) a sentence of home detention; or
- (c) a sentence of community service; or
- (d) a good behaviour bond under which the person entering into the bond is required to submit to strict supervision; or
- 5 (e) a supervision order within the meaning of Part 8A of the *Criminal Law Consolidation Act 1935* under which the person the subject of the order is released on licence;

supervising authority, in relation to an offender, means the authority prescribed by the regulations as the supervising authority in relation to the class of offender to which he or she belongs.

- 10 (2) For the purposes of this Act, offences **arise from the same incident** only if—
 - (a) they are committed by the offender within a single period of 24 hours and are committed against the same person; or
 - 15 (b) they are the result of a single act or omission of the offender (whether committed against the same person or not).
- (3) For the purposes of this Act and without limiting the meaning of **disability** given by subsection (1), a person has a disability if he or she is being detained as a result of a court declaring under Part 8A of the *Criminal Law Consolidation Act 1935* that the person is liable to supervision in relation to an offence.
- 20 (4) A reference to doing a thing **in person** in this Act is a reference to doing the thing by personal attendance at a place (and does not include attendance by telephone or by any other electronic means).
- 25 (5) A reference in this Act to the making of a restraining order under section 99AA of the *Summary Procedure Act 1921* includes a reference to the making of an order under section 19A of the *Criminal Law (Sentencing) Act 1988* that has effect as a restraining order under section 99AA of the *Summary Procedure Act 1921*.

5—Conduct equated with commission of an offence

If a court finds that a person has engaged in conduct that is not an offence but is sufficient to ground the making of a restraining order under section 99AA of the *Summary Procedure Act 1921*, that conduct is, for the purposes of this Act, equated with the commission of an offence.

Part 2—Offenders to whom Act applies

6—Who is a registrable offender?

- 35 (1) Subject to this section, a registrable offender is a person—
 - (a) whom a court has at any time (whether before, on or after the commencement of this section) sentenced for a class 1 or class 2 offence; or
 - (b) who is, or has been, subject to a child sex offender registration order.

Note—

This Act applies to persons sentenced by a court of a foreign jurisdiction for certain offences under the law of that jurisdiction—see the definitions of *court* and *sentence* in section 4, the description of class 1 and class 2 offences in Schedule 1 and the power to make an order under section 9(2).

Some requirements of this Act apply to certain people who are registrable offenders for the purposes of equivalent laws outside South Australia, even though they are not registrable offenders under this Act—see section 14.

- (2) A person who is—
- (a) a foreign registrable offender; or
 - (b) a New South Wales registrable offender,
- is also a registrable offender.
- (3) Unless he or she is a registrable offender because of subsection (2), a person is not a registrable offender merely because he or she—
- (a) while a child committed a class 1 or class 2 offence for which he or she has been sentenced; or
 - (b) is a person on whom a sentence has been imposed in respect of a single class 2 offence, if the sentence—
 - (i) did not include a term of imprisonment; and
 - (ii) was not a supervised sentence.
- (4) Unless he or she is a registrable offender because of subsection (2) or is, immediately before the commencement of this section, in government custody in relation to a registrable offence, a person is not a registrable offender merely because he or she was sentenced for—
- (a) a class 2 offence more than 8 years before the commencement of this section; or
 - (b) a class 1 offence more than 15 years before the commencement of this section.
- (5) A person is also not a registrable offender if he or she—
- (a) is receiving protection under a foreign witness protection law specified by the regulations for the purposes of this subsection; or
 - (b) has the same status as such a person under an order made under a corresponding law specified by the regulations for the purposes of this subsection.
- (6) A person ceases to be a registrable offender if—
- (a) his or her finding of guilt in respect of the only registrable offence that makes him or her a registrable offender for the purposes of this Act is quashed or set aside by a court; or
 - (b) his or her sentence in respect of that offence is reduced or altered so that he or she would have been a person described in subsection (3)(b) had the amended sentence been the original sentence; or

(c) he or she is a registrable offender only because he or she is, or has been, subject to a child sex offender registration order and that order is quashed by a court.

5 (7) For the purposes of this section, it is irrelevant whether or not a person may lodge, or has lodged, an appeal in respect of a finding of guilt, sentence or child sex offender registration order.

(8) For the purposes of subsection (3)(b), 2 or more class 2 offences arising from the same incident will be treated as a single class 2 offence.

7—Who is a foreign registrable offender?

10 A foreign registrable offender is a person who—

(a) has at any time (whether before, on or after the commencement of this section) been sentenced in a foreign jurisdiction for a foreign registrable offence of a prescribed class; and

15 (b) having been sentenced for that offence, would, if he or she were currently in that foreign jurisdiction, be required to report to the corresponding registrar in that jurisdiction for a particular period (the **recognised foreign reporting period**).

8—Who is a New South Wales registrable offender?

20 A New South Wales registrable offender is a person who had been in New South Wales at a time before the date specified by the regulations for the purposes of this section and whose reporting obligations under the New South Wales Act had begun at that time, other than a person who falls within a class of person whom the regulations prescribe not to be a New South Wales registrable offender for the purposes of this Act.

9—Child sex offender registration order

25 (1) A court may—

(a) on sentencing a person for an offence that is not a class 1 or class 2 offence; or

30 (b) on sentencing a person for a class 1 or class 2 offence committed while the person was a child; or

(c) on sentencing a person for a single class 2 offence where the sentence imposed does not include a term of imprisonment and is not a supervised sentence; or

35 (d) on making a restraining order against a person under section 99AA of the *Summary Procedure Act 1921*,

order that the person comply with the reporting obligations of this Act.

- (2) The Magistrates Court may order that a person who has been sentenced for an offence against the law of a foreign jurisdiction (and who is not otherwise a registrable offender in respect of that offence) comply with the reporting obligations of this Act.

Note—

5 A person who has been sentenced for an offence against the law of a foreign jurisdiction may be a registrable offender, in the absence of such an order, because the offence was a class 1 or 2 offence or because the person is a foreign registrable offender.

- (3) The court may only make an order under this section if, after taking into account any matter that it considers appropriate, it is satisfied that the person poses a risk to the sexual safety of any child or children.
- 10
- (4) For the purposes of subsection (3), it is not necessary that the court be able to identify a risk to a particular child or particular children.
- (5) The court may only make an order under this section on the application of—
- (a) in the case of an order under subsection (1)(a), (b) or (c)—the prosecution; or
- 15 (b) in the case of an order under subsection (1)(d) or subsection (2)—a police officer.
- (6) For the purposes of subsection (1)(c), 2 or more class 2 offences arising from the same incident will be treated as a single class 2 offence.

10—Appeal against order

- 20 (1) If a court makes a child sex offender registration order, an appeal lies against the making of that order in the same way as an appeal against a sentence imposed by the court.
- (2) On an appeal, the appellate court may—
- (a) confirm, vary or quash the order; and
- 25 (b) make ancillary orders and directions.

Part 3—Reporting obligations

Division 1—Initial report

11—When report must be made

- (1) A registrable offender of a kind referred to in column 1 of the Table must report his or her personal details to the Commissioner within the period specified in relation to him or her in column 2 of the Table:

Table

<i>Column 1</i>	<i>Column 2</i>
<i>Registrable Offender</i>	<i>Period for Initial Report</i>
A registrable offender (other than a foreign registrable offender) who enters government custody in South Australia on or after the commencement of this section as a consequence of having been sentenced for a registrable offence and who ceases to be in government custody whilst in South Australia	Within 28 days after he or she ceases to be in government custody
A registrable offender (other than a foreign registrable offender) in government custody in South Australia immediately before the commencement of this section and who ceases to be in government custody whilst in South Australia	Within 28 days after he or she ceases to be in government custody
A registrable offender (other than a foreign registrable offender) who is in South Australia on the commencement of this section, but who is not in government custody at that time	Within 45 days after the commencement of this section
Any other person who becomes a registrable offender because he or she is sentenced for a class 1 or class 2 offence in South Australia or who becomes a registrable offender because of a child sex offender registration order made by a court in South Australia	Within 28 days after he or she is sentenced for the class 1 or class 2 offence or the child sex offender registration order is made (as the case may be)
A registrable offender who enters South Australia from a foreign jurisdiction and who has not previously been required under this section to report his or her personal details to the Commissioner	Within 14 days after entering and remaining in South Australia for 14 or more consecutive days, not counting any days spent in government custody
A foreign registrable offender who has not previously reported his or her personal details to the Commissioner and who is in South Australia on the date on which he or she becomes a foreign registrable offender	Within 28 days after he or she becomes a foreign registrable offender or 28 days after he or she ceases to be in government custody, whichever is the later

- 5 (2) A registrable offender who is leaving South Australia must, despite any period that would otherwise apply in relation to the registrable offender in accordance with subsection (1), report his or her personal details to the Commissioner before leaving South Australia unless he or she entered South Australia from a foreign jurisdiction and remained in South Australia for less than 14 consecutive days, not counting any days spent in government custody.

12—When new initial report must be made by offender whose previous reporting obligations have ceased

- 10 (1) If a registrable offender's reporting period expires but he or she is then sentenced for a registrable offence, he or she must report his or her personal details to the Commissioner—
- (a) within 28 days after he or she is sentenced for the registrable offence; or
 - (b) if the registrable offender is in government custody, within 28 days after he or she ceases to be in government custody,
- 15 whichever is the later.
- (2) If a registrable offender's reporting period expires but he or she then becomes a foreign registrable offender who must, under section 35, continue to comply with the reporting obligations imposed by this Part for any period, he or she must report his or her personal details to the Commissioner—
- 20 (a) within 28 days after he or she becomes a foreign registrable offender; or
 - (b) if the registrable offender is in government custody, within 28 days after he or she ceases to be in government custody,
- 25 whichever is the later.
- (3) If a registrable offender's reporting obligations are suspended by an order under section 38 (or an equivalent order in a foreign jurisdiction) and that order ceases to have effect under section 42 (or an equivalent provision of the laws of a foreign jurisdiction), he or she must report his or her personal details to the Commissioner—
- 30 (a) within 28 days after the order ceases to have effect; or
 - (b) if the registrable offender is in government custody, within 28 days after he or she ceases to be in government custody,
- 35 whichever is the later.
- (4) If a registrable offender is not in South Australia at the time he or she would be required under subsection (1), (2) or (3) to report his or her personal details to the Commissioner, the registrable offender must report his or her personal details within 14 days after entering and remaining in South Australia for 14 or more consecutive days, not counting any days spent in government custody.
- 40 (5) A registrable offender who is leaving South Australia must, despite any period that would otherwise apply in relation to the registrable offender in accordance with subsections (1) to (3), report his or her personal details to the Commissioner before leaving South Australia unless he or she entered South Australia from a foreign jurisdiction and remained in South Australia for less than 14 consecutive days, not counting any days spent in government custody.

13—Initial report by registrable offender of personal details

(1) The details the registrable offender must report are as follows:

- (a) his or her name, together with any other name by which he or she is, or has previously been, known;
- 5 (b) in respect of each name other than his or her current name, the period during which he or she was known by that other name;
- (c) his or her date of birth;
- (d) the address of each of the premises at which he or she generally resides or, if he or she does not generally reside at any particular premises, the name of
10 each of the localities in which he or she can generally be found;
- (e) the names and ages of any children who generally reside in the same household as that in which he or she generally resides, or with whom he or she has regular unsupervised contact;
- (f) if he or she is working—
 - 15 (i) the nature of the work; and
 - (ii) the name of his or her employer (if any); and
 - (iii) the address of each of the premises at which he or she generally works or, if he or she does not generally work at any particular
20 premises, the name of each of the localities at which he or she generally works;
- (g) details of his or her affiliation with any club or organisation that has child membership or child participation in its activities;
- (h) the make, model, colour and registration number of any motor vehicle owned by, or generally driven by, him or her;
- 25 (i) details of any tattoos or permanent distinguishing marks that he or she has (including details of any tattoo or mark that has been removed);
- (j) whether he or she has ever been found guilty in any foreign jurisdiction of a registrable offence or of an offence that required him or her to report to a
30 corresponding registrar or been subject to a corresponding child sex offender registration order and, if so, where that finding occurred or that order was made;
- (k) if he or she has been in government custody since he or she was sentenced or released from government custody (as the case may be) in respect of a
35 registrable offence or foreign registrable offence, details of when and where that government custody occurred;
- (l) if, at the time of making a report under this Division, he or she leaves, or intends to leave, South Australia to travel elsewhere in Australia on an average of at least once a month (irrespective of the length of any such absence)—
 - 40 (i) in general terms, the reason for travelling; and
 - (ii) in general terms, the frequency and destinations of the travel.

-
- (2) For the purposes of this section—
- (a) a registrable offender does not generally reside at any particular premises unless he or she resides at those premises for at least 14 days (whether consecutive or not) in any period of 12 months; and
 - 5 (b) a child does not generally reside in the same household as a registrable offender unless they reside together in that household for at least 14 days (whether consecutive or not) in any period of 12 months; and
 - (c) a registrable offender does not have regular unsupervised contact with a child unless he or she has unsupervised contact with the child for at least 14 days
10 (whether consecutive or not) in any period of 12 months; and
 - (d) a registrable offender does not generally work at any particular premises unless he or she works at those premises for at least 14 days (whether consecutive or not) in any period of 12 months; and
 - 15 (e) a registrable offender does not generally drive a particular motor vehicle unless the person drives that vehicle on at least 14 days (whether consecutive or not) in any period of 12 months.
- (3) For the purposes of this section, a person is *working* if he or she—
- (a) carries out work under a contract of employment or a contract for services (whether written or unwritten); or
 - 20 (b) carries out work as a self-employed person or as a sub-contractor; or
 - (c) carries out work as a minister of religion or as part of the duties of a religious or spiritual vocation; or
 - (d) undertakes practical training as part of an educational or vocational course; or
 - 25 (e) carries out work as a volunteer including the performance of unpaid community work in accordance with an order of a court.

14—Persons required to report under corresponding law

- (1) This section applies to a person (other than one to whom Division 9 applies) who has been required to report to a corresponding registrar, irrespective of whether he or she is a registrable offender for the purposes of this Act.
- 30 (2) Unless the person has previously complied with the obligation imposed by this section, he or she must, within 7 days after entering and remaining in South Australia, contact (by telephoning South Australia Police or another prescribed means) the Commissioner.
- (3) The Commissioner must advise the person whether he or she is a registrable offender for the purposes of this Act and any reporting obligations that he or she has under this Act.
35
- (4) A person is not guilty of an offence against section 44 because of a failure to comply with the reporting obligation imposed by subsection (2) if he or she—
 - (a) is not a registrable offender for the purposes of this Act; or
 - 40 (b) has not been notified of that reporting obligation; or

- (c) does not remain in South Australia for 14 or more consecutive days, not counting any days spent in government custody; or
- (d) reports in accordance with section 11.

Division 2—Ongoing reporting obligations

15—Registrable offender must report annually

- (1) A registrable offender must report his or her personal details to the Commissioner each year.
- (2) The registrable offender must make the report by the end of the calendar month in which the anniversary of the date on which he or she first reported in accordance with this Act or a corresponding law falls.
- (3) If the registrable offender has been in government custody since he or she last reported his or her personal details under this section, the details he or she must report include details of when and where that custody occurred.
- (4) If a registrable offender's reporting period expires, but he or she is then required to report again under section 12, the reference to the date on which he or she first reported is to be read as a reference to the date on which he or she first reported in respect of the current reporting period.

16—Registrable offender must report changes to relevant personal details

- (1) A registrable offender must report to the Commissioner any change in his or her personal details within 14 days after that change occurs.
- (2) For the purposes of subsection (1), a change occurs in the premises or household where the registrable offender or a child generally resides, or as to when the registrable offender has unsupervised contact with a child, or in the premises where the registrable offender generally works, or the motor vehicle that he or she generally drives, only on the expiry of the relevant 14 day period referred to in section 13(2).
- (3) If the personal details of a registrable offender (other than one to whom Division 9 applies) change while he or she is not in South Australia, he or she must report the change to the Commissioner within 14 days after entering and remaining in South Australia for 14 or more consecutive days, not counting any days spent in government custody.

Note—

Under section 32, certain reporting obligations of a registrable offender are suspended while he or she is out of South Australia unless Division 9 applies to him or her.

- (4) A registrable offender who is in government custody for 14 or more consecutive days must report his or her personal details to the Commissioner—
 - (a) within 28 days after he or she ceases to be in government custody; or
 - (b) before leaving South Australia,whichever occurs first.

17—Intended absence from South Australia to be reported

- (1) This section applies if a registrable offender—
- (a) intends to leave South Australia for 14 or more consecutive days to travel elsewhere in Australia; or
 - (b) intends to leave South Australia to travel out of Australia.
- (2) At least 7 days before leaving South Australia, the registrable offender must report the intended travel to the Commissioner and must provide details of—
- (a) each State, Territory or country to which he or she intends to go while out of South Australia; and
 - (b) the approximate dates during which he or she intends to be in each of those States, Territories or countries; and
 - (c) each address or location within each State, Territory or country at which he or she intends to reside (to the extent that they are known) and the approximate dates during which he or she intends to reside at those addresses or locations; and
 - (d) if he or she intends to return to South Australia, the approximate date on which he or she intends to return; and
 - (e) if he or she does not intend to return to South Australia—a statement of that intention.
- (3) If circumstances arise making it impracticable for a registrable offender to make the report 7 days before he or she leaves, it is sufficient compliance with subsection (2) if the registrable offender reports the required information to the Commissioner at least 24 hours before leaving South Australia.

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

- (1) This section applies if a registrable offender who is out of South Australia decides—
- (a) to extend a stay elsewhere in Australia beyond 13 days; or
 - (b) to change any details given to the Commissioner under section 17.
- (2) As soon as practicable after making the decision, the registrable offender must—
- (a) if subsection (1)(a) applies, report the details required by section 17(2) to the Commissioner (including those details as they relate to the travel that has already been completed); or
 - (b) if subsection (1)(b) applies, report the changed details to the Commissioner.
- (3) The registrable offender must make the report—
- (a) by writing sent by post or transmitted electronically to the Commissioner or to any other address permitted by the regulations; or
 - (b) in any other manner permitted by the regulations.

19—Registrable offender to report return to South Australia or decision not to leave

- (1) This section applies if a registrable offender was required to report that he or she intended to leave South Australia under section 17.

(2) If the registrable offender left South Australia, he or she must report his or her return to South Australia to the Commissioner within 14 days after entering and remaining in South Australia for 14 or more consecutive days, not counting any days spent in government custody.

5 (3) If the registrable offender decides not to leave South Australia, he or she must report his or her change of intention to the Commissioner within 14 days after deciding not to leave.

20—Report of other absences from South Australia

10 (1) This section applies if a registrable offender, at the time of making a report under this Division, leaves, or intends to leave, South Australia to travel elsewhere in Australia on an average of at least once a month (irrespective of the length of any such absence).

(2) The registrable offender must report the following details to the Commissioner:

(a) in general terms, the reason for travelling;

(b) in general terms, the frequency and destinations of the travel.

15 Division 3—Provisions applying to all reporting obligations

21—Where report is to be made

(1) A report under this Part is to be made—

(a) if a direction is given in accordance with the regulations as to the police station at which the report is to be made—at the police station so directed; or

20 (b) if no direction is given under paragraph (a)—at a place approved (either generally or in a particular case) by the Commissioner.

(2) This section does not apply if, under section 22(2), a report is permitted to be made in a way that is inconsistent with this section.

22—How report is to be made

25 (1) A registrable offender must attend in person to make the following reports under this Part:

(a) a report required by Division 1 (initial report);

(b) a report required by section 15 (annual report);

30 (c) a report of a change of address of the premises at which he or she generally resides or, if he or she does not generally reside at any particular premises, of the localities in which he or she can generally be found;

(d) a report of the acquisition of, removal of, or change to, any tattoo or permanent distinguishing mark.

35 (2) A registrable offender may make any other report that he or she is required to make by attending in person or by making the report in another way permitted by the Commissioner or the regulations, either generally or in a particular case.

40 (3) Only a police officer approved for the purpose by the Commissioner may receive a report made by a registrable offender attending in person and only a police officer or other person approved for the purpose by the Commissioner may receive a report made in another way in accordance with subsection (2).

- (4) If a registrable offender attending in person is a child or has a disability that renders it impossible or impracticable for him or her to make the report, the registrable offender will, nevertheless, be taken to make the report if—
- 5 (a) in the case of a registrable offender who is a child—a parent or guardian of the child or, if neither a parent nor guardian is available, an adult who knows, and is accompanying, the registrable offender makes the report (so far as is reasonably possible) on the registrable offender's behalf; or
- 10 (b) in the case of a registrable offender who is an adult who has a disability—a parent, guardian, carer or other adult person nominated by the registrable offender who is accompanying the registrable offender makes the report (so far as is reasonably possible) on the registrable offender's behalf.
- (5) Similarly, if a registrable offender who is permitted, in accordance with subsection (2), to make a report otherwise than by attending in person is a child or has a disability that renders it impossible or impracticable for him or her to make the report, the registrable offender will, nevertheless, be taken to make the report if—
- 15 (a) in the case of a registrable offender who is a child—a parent or guardian of the child or, if neither a parent nor guardian is available, an adult who knows the registrable offender makes the report (so far as is reasonably possible) on the registrable offender's behalf; or
- 20 (b) in the case of a registrable offender who is an adult who has a disability—a parent, guardian, carer or other adult person nominated by the registrable offender makes the report (so far as is reasonably possible) on the registrable offender's behalf.

23—Right to privacy and support when reporting

- 25 (1) A person making a report under this Part at a police station or a place approved by the Commissioner—
- (a) is entitled to make the report out of the hearing of members of the public; and
- 30 (b) is entitled to be accompanied by a support person of his or her own choosing and, in the case of a child, must be accompanied by a parent or guardian of the child or, if neither a parent or guardian is available, an adult who knows the registrable offender.
- (2) A police officer or other person receiving the report may arrange for an interpreter to be present when a person is making a report under this Part.
- 35 (3) A police officer or other person receiving the report must not allow an interpreter to be present when a person is making a report under this Part unless the interpreter has signed an undertaking not to disclose any information derived from the report unless required or authorised by or under any Act or law to do so.

24—Receipt of information to be acknowledged

- 40 (1) As soon as practicable after receiving a report under this Part, the police officer or other person receiving the report must acknowledge the making of the report.

Child Sex Offenders Registration Bill 2006

Part 3—Reporting obligations

Division 3—Provisions applying to all reporting obligations

- (2) The acknowledgment must be in writing, must be given to the person who made the report and must include—
- (a) the name and signature of the police officer or other person who received the report; and
 - (b) the date and time when, and the place where, the report was received; and
 - (c) a copy of the information that was reported.
- (3) The Commissioner must ensure that a copy of every acknowledgment is retained.

25—Additional matters to be provided

- (1) If a report is required to be made by attending in person, the person making the report must also—
- (a) present for inspection the registrable offender's driver's licence (if any) or any other form of identification or other document reasonably required by the police officer receiving the report to verify or support details in the report; and
 - (b) provide a photograph of the registrable offender's head and face of a type suitable for use in an Australian passport; and
 - (c) if not the registrable offender, present for inspection his or her driver's licence (if any) or any other form of identification reasonably required by the police officer receiving the report.
- (2) The police officer receiving the report may waive any requirements of subsection (1) if the police officer is otherwise satisfied as to the identity of the person making the report.
- (3) The police officer receiving the report may copy any document presented to the police officer for inspection under subsection (1)(a) or (c).
- (4) If a report is made otherwise than in person, the regulations may specify—
- (a) the circumstances in which—
 - (i) information will be required concerning the identity of the registrable offender and the identity of the person making the report; or
 - (ii) a document will be required verifying or supporting details in the report; and
 - (b) the manner in which that information or document is to be provided, but may not require an original document to be provided.

26—Power to take fingerprints or fingerscan

- (1) A police officer receiving a report made in person under this Part may take, or may cause to be taken by a person authorised by him or her, the fingerprints or a fingerscan of the registrable offender if not reasonably satisfied as to the identity of the registrable offender after the police officer has examined all the material relating to identity provided or presented to him or her by, or on behalf of, the registrable offender.

- (2) A police officer may only take, or cause to be taken, the fingerprints or a fingerscan of a child under subsection (1) if the child is accompanied by his or her parent or guardian or, if neither a parent nor guardian is available, an adult who knows the child.

5 **27—Power to take photographs**

- (1) A police officer receiving a report made in person under this Part may take, or may cause to be taken by a person authorised by him or her, photographs of the registrable offender.
- (2) A police officer may only take, or cause to be taken, photographs of a child under subsection (1) if the child is accompanied by his or her parent or guardian or, if neither a parent nor guardian is available, an adult who knows the child.

10 **28—Reasonable force may be used**

- (1) Before attempting to exercise a power under section 26 or 27, the police officer must inform the registrable offender in language likely to be understood by him or her—
- 15 (a) of the purpose for which the power is to be exercised; and
- (b) that reasonable force may be used if the registrable offender refuses to voluntarily submit to the exercise of the power; and
- (c) that the fingerprints, fingerscan or photographs (as the case may be) will be retained by the Commissioner.
- (2) A police officer, or a person authorised by him or her, may use reasonable force to take the fingerprints, fingerscan or photographs of a registrable offender if—
- 20 (a) the registrable offender refuses to co-operate voluntarily; and
- (b) the use of reasonable force is authorised by a police officer in charge of a police station at the time of the request or a police officer of or above the rank of sergeant.

25 **29—Criminal Law (Forensic Procedures) Act 1998 not to apply**

The *Criminal Law (Forensic Procedures) Act 1998* does not apply to the taking of fingerprints or a fingerscan in accordance with section 26 or to the taking of photographs in accordance with section 27.

30 **30—Retention of material for certain purposes**

The Commissioner may, during the reporting period of a registrable offender, retain for law enforcement, crime prevention or child protection purposes any of the following taken under this Division from, or in relation to, the registrable offender:

- 35 (a) copies of any documents;
- (b) any fingerprints or fingerscans;
- (c) any photographs,

and, at the end of that period, the Commissioner must cause them to be destroyed.

31—Reporting by remote offenders

- (1) This section applies if a registrable offender resides more than 100 kilometres from the nearest police station.
- (2) A registrable offender need not comply with a time limit concerning the making of a report in person under this Part if, before the time limit expires, he or she or a person entitled to make the report on his or her behalf contacts the Commissioner and—
- (a) nominates a reasonable time and place at which the report will be made; and
 - (b) provides the Commissioner (by telephone or other means) with the information required to be reported under Division 1 or Division 2.
- (3) The Commissioner must ensure that there is a method of recording any information provided by a registrable offender in accordance with subsection (2).

Division 4—Suspension of reporting obligations

32—Suspension of reporting obligations

Any obligation imposed on a registrable offender by this Part is suspended for any period during which he or she—

- (a) is in government custody; or
- (b) is outside South Australia unless he or she is a person to whom Division 9 applies or the obligation is under section 18; or
- (c) is the subject of an order under Division 6 (or an equivalent order made under the laws of a foreign jurisdiction).

Division 5—Reporting period

33—When reporting obligations begin

For the purposes of this Division, a registrable offender's reporting obligations begin—

- (a) in the case of a person who is a registrable offender because of a child sex offender registration order made by a court in South Australia on the making of a restraining order against him or her under section 99AA of the *Summary Procedure Act 1921*—when the restraining order is made; or
- (b) in any other case—
 - (i) if the registrable offender is held in government custody in relation to the relevant registrable offence—when the registrable offender ceases to be in government custody in relation to the offence; or
 - (ii) if the registrable offender is not held in government custody in relation to the relevant registrable offence—when the registrable offender is sentenced for the offence.

34—Length of reporting period

- (1) A registrable offender of a kind referred to in column 1 of the Table must continue to comply with the reporting obligations imposed by this Part for the period specified in relation to him or her in column 2 of the Table:

5

Table	
<i>Column 1</i>	<i>Column 2</i>
<i>Registrable Offender</i>	<i>Period</i>
A registrable offender who is subject to a child sex offender registration order made by a court in South Australia on the making of a restraining order against him or her under section 99AA of the <i>Summary Procedure Act 1921</i>	The period for which the restraining order remains in force
A registrable offender who is subject to any other child sex offender registration order made by a court in South Australia	The period specified by the court in making the order
A registrable offender who is subject to a corresponding child sex offender registration order	The period for which the person is required to report in accordance with the corresponding law under which the order was made
A registrable offender who has only ever been found guilty of a single class 2 offence (where the sentence included a term of imprisonment or was a supervised sentence)	8 years
A registrable offender who has only ever been found guilty of a single class 1 offence	15 years
A registrable offender who has been found guilty of 2 class 2 offences	15 years
A registrable offender who has been found guilty of 2 or more class 1 offences	The remainder of the person's life
A registrable offender who has been found guilty of a class 1 offence and 1 or more class 2 offences	The remainder of the person's life
A registrable offender who has been found guilty of 3 or more class 2 offences.	The remainder of the person's life

Note—

A life-long reporting obligation may be suspended under Division 6.

- (2) A reference in subsection (1) to an offence extends to an offence committed before the commencement of that subsection or for which a person was sentenced before the commencement of that subsection.
- (3) For the purposes of this section—
- (a) 2 or more offences arising from the same incident are to be treated as a single offence; and
 - (b) 2 or more offences arising from the same incident are to be treated as a single class 1 offence if at least one of those offences is a class 1 offence.

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Note—

The meaning of *single offence* is qualified by section 4(2).

35—Reporting period for foreign registrable offenders

- 5 (1) Despite anything in this Part, a foreign registrable offender must continue to comply with the reporting obligations imposed by this Part for the recognised foreign reporting period referred to in section 7(b).
- 10 (2) For the purposes of this section, if a foreign registrable offender is a foreign registrable offender under the laws of more than one jurisdiction, the recognised foreign reporting period is the longest period for which he or she would be required to report to the corresponding registrar of a foreign jurisdiction.

36—Reporting period for New South Wales registrable offenders

- 15 (1) Subject to subsection (2), a New South Wales registrable offender must continue to comply with the reporting obligations imposed by this Part for the period he or she is required to report in accordance with the New South Wales Act.
- 20 (2) A New South Wales registrable offender who, on or after the date specified by the regulations for the purposes of section 8, is sentenced for a registrable offence or becomes a foreign registrable offender must continue to comply with the reporting obligations imposed by this Part for—
- (a) the period referred to in subsection (1); or
 - (b) the period that he or she is required to report in accordance with this Division (other than this section),
- whichever is longer.

Division 6—Exemption from reporting obligations

37—Supreme Court may exempt certain registrable offenders

- 25 (1) This Division applies to a registrable offender who is required to continue to comply with the reporting obligations imposed by this Part for the remainder of his or her life.
- (2) If—
- 30 (a) a period of 15 years has passed since he or she was last sentenced or released from government custody in respect of a registrable offence or a foreign registrable offence, whichever is later; and
 - (b) he or she did not become the subject of a life-long reporting period under a corresponding law whilst in a foreign jurisdiction before becoming the subject of such a period in South Australia; and
 - (c) he or she is not on parole in respect of a registrable offence,
- 35 the registrable offender may apply to the Supreme Court for an order suspending his or her reporting obligations.

38—Order for suspension

- (1) On an application under section 37(2), the Supreme Court may make an order suspending the registrable offender's reporting obligations.

- (2) The Court must not make the order unless it is satisfied that the registrable offender does not pose a risk to the sexual safety of any child or children.
- (3) In deciding whether to make the order, the Court must take into account—
- (a) the seriousness of the registrable offender's registrable offences and foreign registrable offences; and
 - (b) the period of time since those offences were committed; and
 - (c) whether the registrable offender has ever been subject to a restraining order under section 99AA of the *Summary Procedure Act 1921*; and
 - (d) the age of the registrable offender, the age of the victims of those offences and the difference in age between the registrable offender and the victims of those offences, as at the time those offences were committed; and
 - (e) the registrable offender's present age; and
 - (f) the registrable offender's total criminal record; and
 - (g) any other matter the Court considers appropriate.

39—Commissioner is party to application

The Commissioner is a party to an application under section 37(2) and may make any submission to the Supreme Court in respect of the application.

40—No costs to be awarded

The Supreme Court may not award costs in respect of proceedings under this Division.

41—Restriction on right of unsuccessful applicant to re-apply for order

A registrable offender in respect of whom the Supreme Court refuses to make an order under this Division is not entitled to make a further application to the Court until 5 years have elapsed from the date of the refusal, unless the Court otherwise orders at the time of the refusal.

42—Cessation of order

- (1) An order made under this Division ceases to have effect if, at any time after the making of the order, the registrable offender—
- (a) is made subject to a child sex offender registration order; or
 - (b) is found guilty of a class 1 or class 2 offence; or
 - (c) becomes a foreign registrable offender who must under section 35 continue to comply with the reporting obligations imposed by this Part for any period.
- (2) An order that ceased to have effect in accordance with subsection (1) is revived—
- (a) in the case of an order that ceased to have effect in accordance with subsection (1)(a)—if the child sex offender registration order is quashed by a court or the registrable offender's finding of guilt in respect of the offence that resulted in the making of that order is quashed or set aside by a court; or
 - (b) in any other case—if the finding of guilt that caused the order to cease to have effect is quashed or set aside by a court.

- (3) For the purposes of this section, it is irrelevant whether or not a person may lodge, or has lodged, an appeal in respect of a child sex offender registration order or a finding of guilt.

43—Application for new order

- 5 (1) If an order ceases to have effect in accordance with section 42(1), the registrable offender may apply under this Division for a new order.
- (2) Section 41 does not apply with respect to an application referred to in subsection (1).
- 10 (3) If an order ceases to have effect in accordance with section 42(1)(b) or (c), on an application under this Division for a new order, section 37(2)(a) applies as if the period referred to were a period of 15 years (ignoring any period during which he or she was in government custody) since he or she last committed a registrable offence or a foreign registrable offence.

Division 7—Offences

44—Offence of failing to comply with reporting obligations

- 15 (1) A registrable offender must not fail to comply with any of his or her reporting obligations without a reasonable excuse.
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (2) In determining whether a person had a reasonable excuse for failing to comply with his or her reporting obligations, the court before which the proceedings are being
20 heard is to have regard to the following matters:
- (a) the person's age;
 - (b) whether the person has a disability that affects the person's ability to understand, or to comply with, those obligations;
 - 25 (c) whether the form of notification given to the registrable offender as to his or her obligations was adequate to inform him or her of those obligations, having regard to the offender's circumstances;
 - (d) any other matter the court considers appropriate.
- (3) It is a defence to proceedings for an offence of failing to comply with a reporting
30 obligation if it is established by or on behalf of the person charged with the offence that, at the time the offence is alleged to have occurred, the person had not received notice, and was otherwise unaware, of the obligation.

45—Offence of furnishing false or misleading information

- A person must not, in purported compliance with this Part, furnish information that the person knows to be false or misleading in a material particular.
- 35 Maximum penalty: \$10 000 or imprisonment for 2 years.

46—Time limit for prosecutions

Proceedings for an offence against this Act must be commenced within 2 years after the date on which the offence is alleged to have been committed unless the Attorney-General authorises the commencement of the proceedings at a later time.

47—Bar to prosecution for failing to report leaving South Australia

- (1) This section applies if a registrable offender leaves South Australia and is found guilty of failing to report his or her presence in a foreign jurisdiction as required by a corresponding law.
- 5 (2) The registrable offender is not to be prosecuted for a failure to comply with section 17 in respect of the travel out of South Australia.

Division 8—Notification of reporting obligations

48—Notice to be given to registrable offender

- (1) The Commissioner must give a registrable offender written notice of—
 - 10 (a) his or her reporting obligations; and
 - (b) the consequences that may arise if he or she fails to comply with those obligations.
- (2) A registrable offender is to be given a notice under this section as soon as practicable after any of the following events happens:
 - 15 (a) he or she is sentenced for a registrable offence in South Australia or made subject to a child sex offender registration order in South Australia;
 - (b) he or she is released from government custody in South Australia (whether in government custody for a registrable offence or not);
 - 20 (c) he or she enters South Australia, if he or she has not previously been given notice of his or her reporting obligations in South Australia;
 - (d) he or she becomes a foreign registrable offender, if he or she is in South Australia at that time.
- (3) Despite anything in this Division, the regulations may provide that a notice given under this section is not required to specify the registrable offender's reporting period if the regulations require a notice containing that information to be given at the time the registrable offender reports his or her personal details to the Commissioner.
25

49—Courts to provide information to Commissioner

- (1) This section applies if a court—
 - 30 (a) makes an order or imposes a sentence that has the effect of making a person a registrable offender for the purposes of this Act; or
 - (b) imposes a sentence on a person in relation to a registrable offence; or
 - (c) makes an order in relation to a registrable offender that has the effect of removing the person from the ambit of this Act.

Example—

- 35 Paragraph (c) would apply, for instance, if a court on appeal quashes a person's finding of guilt in relation to a class 1 or class 2 offence in respect of which he or she had been sentenced and that was the only offence in respect of which he or she had ever been found guilty.

(2) The court must ensure that details of the order or sentence are provided to the Commissioner as soon as practicable after the making or imposition of the order or sentence.

(3) In this section—

5 *court* does not include a court of a foreign jurisdiction.

50—Notice to be given when reporting period changes

(1) This section applies to a registrable offender whose reporting period has changed since he or she was last notified of his or her reporting period in South Australia.

10 (2) The Commissioner must give (or cause to be given) written notice to the registrable offender as soon as practicable after the change and in any event no later than the time the offender next reports in accordance with this Act.

51—Supervising authority to notify Commissioner of certain events

(1) This section applies if a registrable offender—

- 15 (a) ceases to be in government custody; or
(b) ceases to be subject to a supervised sentence; or
(c) ceases to be subject to a condition of parole requiring the person to be subject to supervision; or
(d) ceases to be an existing licensee,

20 regardless of the reason why the registrable offender was in custody, was subject to the sentence, was on parole or was a licensee.

(2) As soon as practicable before or after the relevant event listed in subsection (1) occurs, the supervising authority is to give written notice of the event to the Commissioner.

(3) The notice must include any details required by the regulations.

52—Notices may be given by Commissioner

25 The Commissioner may, at any time, cause written notice to be given to a registrable offender of—

- (a) his or her reporting obligations; and
(b) the consequences that may arise if he or she fails to comply with those obligations.

53—Failure to comply with procedural requirements does not affect registrable offender's obligations

A failure by a person other than a registrable offender to comply with any procedural requirement imposed on the person by this Part or the regulations does not, of itself, affect a registrable offender's reporting obligations.

Note—

This section aims to prevent a registrable offender who was not given notice of a reporting obligation by an official as required by this Part from arguing that the obligation does not apply to him or her as a result of that failure if there is evidence that the registrable offender was aware of the obligation through some other means. (If there is no such evidence then the registrable offender would have a defence to the charge under section 44(3) on the basis that he or she was not aware of the obligation.)

Division 9—Modified reporting procedures for protected witnesses

54—Who this Division applies to

(1) This Division applies to each of the following:

- (a) a registrable offender who is currently a participant in the State Witness Protection Program;
- (b) a registrable offender who is the subject of an order in force under this Division declaring that he or she is a person to whom this Division applies.

(2) This Division (except sections 56 to 58) also applies to a registrable offender who is receiving protection under a foreign witness protection law specified by the regulations for the purposes of this subsection, or who has the same status as such a person under an order made under a corresponding law specified by the regulations for the purposes of this subsection.

(3) In this Division—

State Witness Protection Program has the same meaning as in the *Witness Protection Act 1996*.

Note—

Section 6(5) excludes from the definition of *registrable offender* persons receiving protection under foreign witness protection laws prescribed for the purposes of that section or who have the same status as such persons under a corresponding law that is so prescribed.

55—Report need not be made in person

It is sufficient compliance with the requirements of this Part—

- (a) if a person to whom this Division applies reports such of the information that he or she is required to report under this Part as the Commissioner requires him or her to report and does so at the times, and in a manner, authorised by the Commissioner for the purposes of this section; and
- (b) if the acknowledgment of the making of a report is given in a manner approved by the Commissioner.

56—Order as to whether Division applies

- (1) The Commissioner must make an order declaring that a registrable offender who is a participant in the State Witness Protection Program either is, or is not, a person to whom this Division applies—
- 5 (a) when the registrable offender ceases to be a participant in the program as a consequence of a request under section 15(1)(a) of the *Witness Protection Act 1996*; or
- (b) when the Deputy Commissioner makes a decision under section 15(1)(b) of the *Witness Protection Act 1996* that the protection and assistance provided to
- 10 the registrable offender under the program be terminated.
- (2) On making such an order, the Commissioner must take reasonable steps to notify the registrable offender of the terms of the order.
- (3) A person who receives such a notification may, within 28 days after receiving it, apply in writing to the Commissioner for a review of the order.
- 15 (4) On receiving an application for a review, the Commissioner—
- (a) must review the order, and confirm or reverse it; and
- (b) before making a decision on the matter, must give the applicant a reasonable opportunity to state his or her case; and
- (c) after making a decision on the matter, must give written notice of the
- 20 decision to the applicant.
- (5) If the decision of the Commissioner is to confirm the order, the notice of the decision must inform the applicant of his or her rights under section 57.

57—Appeal to District Court

- 25 (1) A person who is aggrieved by a decision of the Commissioner in relation to an order under this Division may appeal against the decision to the Administrative and Disciplinary Division of the District Court.
- (2) Subject to this section, an appeal must be instituted within 1 month of the making of the decision appealed against.
- 30 (3) The Commissioner must, on application by a person affected by a decision that may be the subject of an appeal, give the person a written statement of the reasons for the decision.
- (4) If a written statement of the reasons for a decision is not given by the Commissioner at the time of making the decision and the person affected by the decision, within 1
- 35 month of the making of the decision, applies to the Commissioner for a written statement of reasons for the decision, the time for instituting an appeal runs from the time when the person receives the written statement of reasons.

58—When order takes effect

- (1) An order declaring that this Division applies to a registrable offender takes effect immediately.

- (2) An order declaring that this Division does not apply to a registrable offender takes effect—
- (a) at the end of 28 days after notice of the making of the order is given to the registrable offender; or
 - 5 (b) if an application referred to in section 56(3) is made before the end of that period, at the end of 3 days after notice is given to the applicant as referred to in section 56(4)(c); or
 - (c) if an appeal is instituted under section 57, on the date on which the appeal is determined,
- 10 whichever is the later.

59—Modification of ongoing reporting obligations

Sections 13(1), 17 to 20 and 47 apply with respect to a person to whom this Division applies as if any reference in them to South Australia were a reference to the jurisdiction in which the person generally resides.

15 Part 4—The register of child sex offenders

60—Register of child sex offenders

- (1) The Commissioner is to establish and maintain a register of registrable offenders.
- (2) The register is to contain the following information in respect of each registrable offender (to the extent that it is known by the Commissioner):
 - 20 (a) the registrable offender's name and other identifying particulars;
 - (b) details of each class 1 or class 2 offence of which the registrable offender has been found guilty or with which he or she has been charged;
 - (c) details of each offence of which the registrable offender has been found guilty that resulted in the making of a child sex offender registration order;
 - 25 (d) details of each restraining order made against the registrable offender under section 99AA of the *Summary Procedure Act 1921*;
 - (e) the date on which the registrable offender was sentenced for any registrable offence;
 - 30 (f) the date on which the registrable offender ceased to be in government custody in respect of a registrable offence, or entered or ceased to be in government custody in respect of any offence during his or her reporting period;
 - (g) any information reported in respect of the registrable offender under Part 3;
 - (h) any other information that the Commissioner considers appropriate to include in the register.

35 61—Access to register to be restricted

- (1) The Commissioner must ensure that the register, or any part of the register, is only accessed by a person, or a class of person, who is authorised to do so by the Commissioner in accordance with guidelines approved in accordance with this section.

- (2) The Commissioner must develop guidelines in relation to access to the register to ensure that access to information contained in the register is restricted to the greatest extent that is possible without interfering with the purpose of this Act.
- (3) Guidelines developed under this section must be approved by the Minister.
- 5 (4) For the purposes of this section, the register includes any information from any register maintained under a corresponding law that is accessible by the Commissioner, regardless of whether or not that information is physically part of the register.
- (5) This section has effect despite any other Act or law to the contrary.

62—Restriction on who may access personal information on protected witnesses

10 The Commissioner must ensure that information in the register about a person to whom Part 3 Division 9 applies that identifies, or might identify, the person cannot be accessed other than by a person authorised by the police officer or officer of an approved authority (within the meaning of the *Witness Protection Act 1996*)
15 responsible for the day to day operation of the State Witness Protection Program.

63—Registrable offender's rights in relation to register

- (1) If asked, in writing, to do so by a registrable offender, the Commissioner must provide the registrable offender with a copy of all the reportable information that is held in the register in relation to the registrable offender.
- 20 (2) The Commissioner must comply with subsection (1) as soon as practicable after being asked to do so.
- (3) A registrable offender may make a written request to the Commissioner to amend any reportable information held in the register in relation to the registrable offender that is incorrect (and the Commissioner must, if satisfied that it is incorrect, amend the information).
- 25 (4) The Commissioner must take reasonable steps to notify the registrable offender as to whether a request under subsection (3) is to be complied with.
- (5) If the Commissioner refuses to comply with such a request, the registrable offender may, within 1 month after receiving notification of that decision, apply in writing to the Police Complaints Authority for a review of the decision.
- 30 (6) In conducting a review under this section, the Police Complaints Authority may exercise the same powers as it may exercise in conducting a review of a determination under the *Freedom of Information Act 1991*.
- (7) In this section—

35 ***reportable information*** means any information supplied to the Commissioner by, or on behalf of, the registrable offender that the registrable offender is required to report to the Commissioner and that is still held in the register.

Part 5—Registrable offenders prohibited from child-related work

64—Interpretation

(1) In this Part—

5 ***child-related work*** means work involving contact with a child in connection with any of the following:

- (a) pre-schools or kindergartens;
- (b) child care centres;
- (c) educational institutions for children;
- 10 (d) child protection services;
- (e) juvenile detention centres;
- (f) refuges or other residential facilities used by children;
- (g) foster care for children;
- (h) hospital wards or out-patient services (whether public or private) in which
15 children are ordinarily patients;
- (i) overnight camps regardless of the type of accommodation or of how many children are involved;
- (j) clubs, associations or movements (including of a cultural, recreational or sporting nature) with significant child membership or involvement;
- 20 (k) programs or events for children provided by any institution, agency or organisation;
- (l) religious or spiritual organisations;
- (m) counselling or other support services for children;
- (n) commercial baby sitting or child minding services;
- 25 (o) commercial tuition services for children;
- (p) services for the transport of children;

commercial baby sitting or child minding services means baby sitting or child minding services that are provided on payment of a fee or reward;

30 ***commercial tuition services*** means tuition services (including of a cultural, recreational or sporting nature) that are provided on payment of a fee or reward;

contact means any form of contact between a person and a child and includes—

- (a) any form of physical contact; and
- (b) any form of oral communication, whether face to face or by telephone; and
- (c) any form of written communication, including electronic communication;

educational institutions for children includes Government schools within the meaning of the *Education Act 1972* and non-Government schools registered under Part 5 of that Act but does not include institutions the principal function of which is the education of students at the tertiary level;

officer—

- (a) in relation to a body corporate that is a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth, has the same meaning as in section 9 of that Act; and
- (b) in relation to any other body corporate, means any person (by whatever name called) who is concerned or takes part in the management of the body corporate;

work means—

- (a) performance of work—
 - (i) under a contract of employment or a contract for services (whether written or unwritten); or
 - (ii) as a self-employed person or as a sub-contractor; or
 - (iii) as a minister of religion or as part of the duties of a religious or spiritual vocation; or
 - (b) undertaking practical training as part of an educational or vocational course; or
 - (c) performance of work as a volunteer including the performance of unpaid community work in accordance with an order of a court.
- (2) For the purposes of this Act (and without limiting the circumstances in which a person may be found to be engaged in child-related work) a person is engaged in child-related work if he or she is—
- (a) an officer of a body corporate that is engaged in child-related work; or
 - (b) a member of the committee of management of an unincorporated body or association that is engaged in child-related work; or
 - (c) a member of a partnership that is engaged in child-related work.

65—Registrable offender excluded from child-related work

(1) A registrable offender must not—

- (a) apply for; or
- (b) engage in,

work that is child-related work.

Maximum penalty: Imprisonment for 5 years.

(2) In proceedings for an offence against subsection (1), it is a defence to the charge for the accused to prove that, at the time the offence is alleged to have been committed, he or she did not know that the work was child-related work.

66—Offence to fail to disclose charges

- 5 (1) A person engaged in child-related work (including work under a contract for services) who is charged with a class 1 or class 2 offence must disclose the charge to his or her employer within 7 days after becoming aware of the filing of the charge or, in the case of a charge that is pending immediately before the commencement of this subsection, within 7 days after that commencement.

Maximum penalty: \$5 000.

- 10 (2) A person who applies for work (including work under a contract for services) that is child-related work and against whom there is a pending charge of a class 1 or class 2 offence must disclose the charge to his or her prospective employer at the time of making the application.

Maximum penalty: \$5 000.

- 15 (3) A person who has (whether before or after the commencement of this subsection) applied for work (including work under a contract for services) that is child-related work and who, while the application is still current, is charged with a class 1 or class 2 offence must disclose the charge to his or her prospective employer within 7 days after becoming aware of the filing of the charge or, in the case of a charge that is pending immediately before the commencement of this subsection, within 7 days after that commencement.

20 Maximum penalty: \$5 000.

- (4) This section does not apply in relation to a charge of a class 1 or class 2 offence that was allegedly committed by a person while he or she was a child.

- 25 (5) In proceedings for an offence against this section, it is a defence to the charge for the accused to prove that, at the time the offence against this section is alleged to have been committed, he or she did not know that the work was child-related work.

Part 6—Miscellaneous

67—Confidentiality of information

- 30 (1) A person who has, or has had, access to information about a registrable offender obtained under this Act must not disclose the information unless the disclosure is made in accordance with the information disclosure principles set out in Schedule 2.

- (2) A person who intentionally or recklessly discloses information in contravention of subsection (1) is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

- 35 (3) A person who has, or has had, access to information about a person obtained under section 66 must not disclose the information except—

(a) to a court or tribunal in the course of legal proceedings; or

(b) pursuant to an order of a court or tribunal; or

40 (c) to a law enforcement or prosecution authority of this State or of a foreign jurisdiction or any other authority established by the government of this State or of a foreign jurisdiction to facilitate law enforcement or the prosecution of offences; or

- (d) to a legal practitioner for the purpose of obtaining legal advice or representation; or
- (e) with the written authority of the person to whom the information relates; or
- (f) to the Police Complaints Authority, or the branch of South Australia Police established under Part 3 of the *Police (Complaints and Disciplinary Proceedings) Act 1985*, for the purposes of an investigation under that Act or under this Act; or
- (g) as required or authorised by or under any Act or law.

- (4) A person who intentionally or recklessly discloses information in contravention of subsection (3) is guilty of an offence.

Maximum penalty: \$5 000.

68—Restriction on publication

A person must not intentionally or recklessly publish by newspaper, radio, television or in any other way, a report containing information that has been disclosed in contravention of section 67.

Maximum penalty: Imprisonment for 5 years.

69—*State Records Act 1997* and *Freedom of Information Act 1991* not to apply

- (1) The *State Records Act 1997* does not apply to information obtained under this Act.
- (2) Information obtained under this Act is not liable to disclosure under the *Freedom of Information Act 1991*.

70—Immunity of persons engaged in administration of Act

- (1) No personal liability attaches to a person engaged in the administration of this Act for an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of official powers or functions.
- (2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

71—Effect of spent convictions

- (1) The fact that an offence in respect of which a registrable offender has been found guilty becomes spent does not affect—
 - (a) the status of the offence as a registrable offence for the purposes of this Act in respect of the registrable offender; or
 - (b) any reporting obligations of the registrable offender.
- (2) For the purposes of this section, an offence becomes spent if, under a law in any jurisdiction, the registrable offender is permitted to not disclose the fact that he or she was convicted or found guilty of the offence.

72—Evidentiary

(1) In proceedings under this Act, a certificate signed by the Commissioner, or a police officer holding a position designated in writing by the Commissioner for the purposes of this section, certifying that the register—

- 5 (a) at any particular date contained information specified in the certificate; or
 (b) indicated that, during any particular period, a specified person failed to notify information as required by this Act,

is evidence, and in the absence of evidence to the contrary is proof, of the details specified in the certificate.

10 (2) For the purposes of this Act, a certificate that would be evidence under a corresponding law that at a specified time, or during a specified period, a person was required to report to a corresponding registrar under that Act is evidence, and in the absence of evidence to the contrary is proof, of the facts stated in the certificate.

73—Regulations

15 (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may make provision as to the following matters:

- 20 (a) matters incidental to the making of reports under Part 3 including—
 (i) the manner and form in which a report must be made; and
 (ii) the nature of any verifying documentation or evidence to be produced in support of a report; and
 (iii) requiring that a report contain additional information to that required by that Part;
- 25 (b) the form of, or the information to be included in, any notice or other document that is required by this Act to be given to registrable offenders;
- (c) the manner and form in which the register is to be established and maintained, including the manner and form in which information is to be entered in the register;
- 30 (d) requiring or permitting the Commissioner to remove specified information, or information of a specified class, from the register;
- (e) the notification of reporting obligations to registrable offenders, including the following:
- 35 (i) the manner and form in which the information is to be given to registrable offenders;
- (ii) permitting the person notifying a registrable offender to ask the registrable offender to acknowledge being given the notice;
- (iii) making special provision for the notification of registrable offenders who are children or who have disabilities or other special needs;

- 5
- (iv) permitting or requiring a person or body to be notified of a registrable offender's status as a child or person who has a disability or other special need to facilitate notification and reporting;
- (v) providing for the notification to be given to a carer of, or a person nominated by, a registrable offender who may be unable to understand his or her reporting obligations or the consequences of failing to comply with those obligations;
- 10
- (vi) requiring that a registrable offender be given additional information to that required by this Act;
- (vii) requiring a person or body to provide specified information to registrable offenders concerning their reporting obligations;
- (viii) requiring a person or body to inform the Commissioner—
- 15
- (A) that a registrable offender has left the custody or control of the person or body; or
- (B) that the person or body has given specified information to a registrable offender; or
- (C) that, in the opinion of the person or body, a registrable offender does or does not have the legal capacity to understand specified information;
- 20
- (ix) requiring a person or body to give the Commissioner any acknowledgment by a registrable offender of the receipt of a notice or any other specified information that is held by the person or body;
- (f) empowering the Commissioner to give directions as to which police stations are to be used as a venue for the making of reports;
- 25
- (g) providing that a police station, or a class of police station, is not to be used as a venue for the making of reports without the consent of the Commissioner;
- (h) requiring a person or body to create records for the purposes of this Act and to retain those records for a specified period or an unlimited period;
- 30
- (i) prescribing any other matter required or permitted by this Act to be prescribed or that it is necessary or convenient to prescribe to give effect to this Act.
- (3) The regulations—
- (a) may be of general or limited application; and
- 35
- (b) may make different provision according to the persons, things or circumstances to which they are expressed to apply; and
- (c) may require a matter affected by the regulations to be—
- (i) in accordance with a specified standard or specified requirement; or
- (ii) approved by, or to the satisfaction of, a specified person or a specified class of person; or
- 40
- (iii) as specified in both subparagraphs (i) and (ii); and

- (d) may confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
- (e) may provide in a specified case or class of case for the exemption of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions, and either wholly or to such an extent as is specified; and
- (f) may impose a penalty not exceeding \$2 500 for a contravention of the regulations.

Schedule 1—Class 1 and 2 offences

Part 1—Preliminary

1—Interpretation

- (1) In this Schedule—

sexual offence means any of the following offences committed against a child:

- (a) an offence against section 48 of the *Criminal Law Consolidation Act 1935* (rape); or
- (b) an offence against section 49 of the *Criminal Law Consolidation Act 1935* (unlawful sexual intercourse); or
- (c) an offence against section 56 of the *Criminal Law Consolidation Act 1935* (indecent assault).

- (2) A description of an offence appearing in brackets in this Schedule is for convenience of reference only.

Part 2—Class 1 offences

2—Class 1 offences

The following are class 1 offences:

- (a) an offence against section 11 of the *Criminal Law Consolidation Act 1935* (murder) if—
- (i) the victim was a child; and
- (ii) the offence arises from the same incident as a sexual offence;
- (b) an offence against section 29(1) of the *Criminal Law Consolidation Act 1935* (endangering the life of a person) if—
- (i) the person whose life was likely to be endangered was a child; and
- (ii) the offence arises from the same incident as a sexual offence;
- (c) an offence against section 39 of the *Criminal Law Consolidation Act 1935* (kidnapping) if the person was sentenced on the basis that the kidnapping was done with the intention of committing a sexual offence against a child;
- (d) an offence against section 48 of the *Criminal Law Consolidation Act 1935* (rape) if the victim was a child;

- (e) an offence against section 49 of the *Criminal Law Consolidation Act 1935* (unlawful sexual intercourse);
- (f) an offence against section 59 of the *Criminal Law Consolidation Act 1935* (abduction) if the victim was a child;
- 5 (g) an offence against section 66(1) of the *Criminal Law Consolidation Act 1935* (inflicting sexual servitude) if the victim was a child;
- (h) an offence against section 66(2) of the *Criminal Law Consolidation Act 1935* (unduly influencing a person to provide commercial sexual services) if the victim was a child;
- 10 (i) an offence against section 68(1) of the *Criminal Law Consolidation Act 1935* (use of a child in commercial sexual services);
- (j) an offence of persistent sexual abuse of a child (see section 74 of the *Criminal Law Consolidation Act 1935*);
- (k) an offence resulting in the person being sentenced under section 20B(1)(b) of the *Criminal Law (Sentencing) Act 1988*;
- 15 (l) an indictable offence committed against a child that results in the person being sentenced under section 23 of the *Criminal Law (Sentencing) Act 1988*;
- (m) a conspiracy to commit, or an attempt to commit, an offence referred to in any of the preceding paragraphs;
- 20 (n) an offence of aiding, abetting, counselling or procuring the commission of an offence referred to in any of the preceding paragraphs;
- (o) an offence against a law previously in force in this State that corresponds to an offence referred to in any of the preceding paragraphs;
- (p) an offence against the law of a foreign jurisdiction that corresponds to an offence referred to in any of the preceding paragraphs;
- 25 (q) an offence against section 50BA, 50BB, 50DA or 50DB of the *Crimes Act 1914* of the Commonwealth;
- (r) an offence against section 270.6 of the *Criminal Code* of the Commonwealth if the victim was a child.

30 **Part 3—Class 2 offences**

3—Class 2 offences

The following are class 2 offences:

- (a) an offence against section 13 of the *Criminal Law Consolidation Act 1935* (manslaughter) if—
 - 35 (i) the victim was a child; and
 - (ii) the offence arises from the same incident as a sexual offence;
- (b) an offence against section 29(2) of the *Criminal Law Consolidation Act 1935* (creating risk of serious harm to a person) if—
 - (i) the person who was likely to suffer serious harm was a child; and

-
- (ii) the offence arises from the same incident as a sexual offence;
- (c) an offence against section 56 of the *Criminal Law Consolidation Act 1935* (indecent assault) if the victim was a child;
- 5 (d) an offence against section 58 of the *Criminal Law Consolidation Act 1935* (gross indecency);
- (e) an offence against section 60 of the *Criminal Law Consolidation Act 1935* (procuring sexual intercourse) if the person procured to have sexual intercourse was a child;
- 10 (f) an offence against section 63 of the *Criminal Law Consolidation Act 1935* (production or dissemination of child pornography);
- (g) an offence against section 63A of the *Criminal Law Consolidation Act 1935* (possession of child pornography);
- (h) an offence against section 63B(1) or (3) of the *Criminal Law Consolidation Act 1935* (procuring child to commit an indecent act etc);
- 15 (i) an offence against section 67 of the *Criminal Law Consolidation Act 1935* (deceptive recruiting for commercial sexual services) if the victim is a child;
- (j) an offence against section 68(2) or (3) of the *Criminal Law Consolidation Act 1935* (use of children in commercial sexual services);
- 20 (k) an offence against section 72 of the *Criminal Law Consolidation Act 1935* (incest) if the person with whom the offender had sexual intercourse was under the age of 17 years;
- (l) a conspiracy to commit, or an attempt to commit, an offence referred to in any of the preceding paragraphs;
- 25 (m) an offence of aiding, abetting, counselling or procuring the commission of an offence referred to in any of the preceding paragraphs;
- (n) an offence against a law previously in force in this State that corresponds to an offence referred to in any of the preceding paragraphs;
- (o) an offence against the law of a foreign jurisdiction that corresponds to an offence referred to in any of the preceding paragraphs;
- 30 (p) an offence against section 50BC or 50BD of the *Crimes Act 1914* of the Commonwealth;
- (q) an offence against section 270.7 of the *Criminal Code* of the Commonwealth if the victim was a child;
- (r) an offence against section 271.4 of the *Criminal Code* of the Commonwealth;
- 35 (s) an offence against section 271.7 of the *Criminal Code* of the Commonwealth;
- (t) an offence against section 474.19 of the *Criminal Code* of the Commonwealth;
- (u) an offence against section 474.20 of the *Criminal Code* of the Commonwealth;
- 40 (v) an offence against section 474.22 of the *Criminal Code* of the Commonwealth;

- (w) an offence against section 474.23 of the *Criminal Code* of the Commonwealth;
- (x) an offence against section 474.26 of the *Criminal Code* of the Commonwealth;
- 5 (y) an offence against section 474.27 of the *Criminal Code* of the Commonwealth.

Schedule 2—Information disclosure principles

1—Interpretation

In this Schedule—

10 *personal information* means—

- (a) information obtained under this Act that identifies, or could reasonably identify, a person as a registrable offender; or
- (b) any other information about a registrable offender obtained under this Act if the recipient of the information is known to be aware that the person is a
- 15 registrable offender.

Example—

Disclosing the address of a registrable offender to a person who knows that he or she is a registrable offender.

2—General principles governing disclosure

20 The following principles must be applied in relation to the disclosure of personal information:

- (a) the information must not be disclosed unless—
 - (i) there are good reasons for the disclosure; and
 - (ii) the disclosure is otherwise made in accordance with this Schedule;
- 25 (b) an assessment must be made before the information is disclosed of the risks associated with disclosure and any risks associated with non-disclosure;
- (c) the information disclosed must be proportionate to the purpose of the disclosure;
- (d) the information disclosed must be reliable and accurate;
- 30 (e) details of the disclosure must be documented.

3—Authorisation of disclosure

If personal information may only be disclosed with authorisation in accordance with clause 5, then the information must not be disclosed unless the Commissioner, or a person authorised by the Commissioner for the purpose of this Schedule, has given

35 written authorisation for the disclosure.

4—Circumstances where information may be disclosed without authorisation

Personal information about a registrable offender may be disclosed without authorisation in the following circumstances:

- (a) if the registrable offender consents to the disclosure of the information;
- (b) if the disclosure is required by an order of a court or tribunal;
- (c) if the disclosure is made to a supervising authority in connection with the supervision of the registrable offender;
- (d) if the disclosure is made to a law enforcement or prosecution authority of this State or of a foreign jurisdiction and is reasonably required for the purpose of investigating a suspected registrable offence;
- (e) if the disclosure is made to a legal practitioner for the purpose of obtaining legal advice or representation relating to a matter under this Act;
- (f) if the disclosure is made to the Police Complaints Authority, or the branch of South Australia Police established under Part 3 of the *Police (Complaints and Disciplinary Proceedings) Act 1985*, for the purposes of an investigation under that Act or under this Act;
- (g) if the disclosure is required under any other Act or law;
- (h) if the disclosure is of a type prescribed by regulation for the purposes of this clause.

5—Circumstances where information may be disclosed with authorisation

Personal information about a registrable offender may only be disclosed with authorisation in the following circumstances:

- (a) if the disclosure is to be made to a person exercising official duties under an Act relating to the care or protection of children;
- (b) if the disclosure is made to a government or non-government agency for the purpose of safeguarding the welfare of the registrable offender;
- (c) if the disclosure relates to information already in the public domain;
- (d) if the disclosure is of a type prescribed by regulation for the purposes of this clause.

Schedule 3—Related amendments

Part 1—Preliminary

1—Amendment provisions

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

Part 2—Amendment of *Criminal Law (Sentencing) Act 1988*

2—Amendment of section 10—Matters to which a sentencing court should have regard

Section 10—after subsection (4) insert:

- 5 (4a) Despite any other provision of this Act, in determining sentence for an offence a court must not have regard to any consequences that may arise under the *Child Sex Offenders Registration Act 2006*.