

Community Protection (Offender Reporting) Amendment Bill 2007

EXPLANATORY MEMORANDUM

Clause 1. Short Title

Cites the short title of the Act as the Community Protection (Offender Reporting) Amendment Act 2007.

Clause 2. Commencement

Clauses 1 and 2 come into operation on Assent. The remaining provisions in the Bill come into operation on the day after Assent.

Clause 3. The Act amended

With the exception of the amendments contained in clause 13, the remaining provisions in the Bill are amendments to the *Community Protection (Offender Reporting) Act 2004*. Clause 13 contains consequential amendments to the *Working with Children (Criminal Record Checking) Act 2004*.

Clause 4. Section 26 amended

Section 26 of the Act currently requires a reportable offender to report certain personal details (such as their name, date of birth, address/es, employment, affiliations, certain assets, distinguishable body features, and information relating to previous offences) to the Commissioner of Police. The proposed amendments to section 26, contained in clause 4 of the Bill, will require reportable offenders to disclose information relating to their 'online' identity. This includes their telephone number or email address that is regularly used; the name of the Internet service provider and Internet carriage service that is used to access the Internet; any online name used when communicating via the Internet; and, any website or Internet communication service where the offender's name (either real, alias, email or chat name) is used.

Due to the increasing number of offenders using online resources as a medium to facilitate their offences, it is appropriate to require reportable offenders to report their information relating to their online use. Similar amendments have been made to statutes in Arizona, Kentucky and Virginia (United States of America) where reportable offenders are required to provide police with all their online information and identifiers.

Clause 5. Section 29A inserted

Section 29A has been inserted to provide for reportable offenders to report any intended absence from their place of residence to the Commissioner of Police. This section has been introduced as there are currently no provisions requiring reportable offenders to disclose their travels (absence from residency) that occur within Western Australia.

Proposed section 29A specifically requires reportable offenders to report when they leave their usual place of residence to travel within Western Australia for

seven or more consecutive days. In reporting their intended absence to Police, they must do so seven days before leaving (or if impracticable at least 24 hours after they have left) and provide details of the dates they are absent for and the address/es where they intend to visit. In the circumstance where a reportable offender changes their mind and decides not to leave their place of residence, they must advise the Commissioner of Police within seven days of having decided not to leave.

Clause 6. Section 30 amended

Section 30 of the Act currently requires a reportable offender to advise the Commissioner of Police of any intended travel elsewhere in Australia which is longer than 7 days. A reportable offender is also required to advise the Commissioner of Police of any intended travel outside of Australia, regardless of the duration.

Section 30(1) is to be repealed and replaced such that any intended travel outside of Western Australia [whether overseas or not], must be reported to the Commissioner of Police regardless of the duration of travel.

Clause 7. Section 31 amended

Currently Section 31 of the Act prescribes the requirements that a reportable offender must follow if they change their travel plans while out of Western Australia. As a consequence of the proposed new section 29A, subsections 31(1) and (2) of the Act are to be repealed and replaced with provisions that now also provide for the change of travel plans while in Western Australia. Reportable offenders will be required to state their change of plans as soon as practicable to the Commissioner of Police whether the travel from the place of residence occurs within or outside of Western Australia.

A minor amendment has also been made to subsection 31(3) of the Act by deleting the word "The" and inserting, "If subsection (1)(b) applies, the". This amendment provides for a reportable offender who changes their travel plans while out of Western Australia to report the changes to the Commissioner of Police via facsimile, email or as set out in the Regulations. For offenders who change their travel plans within Western Australia, the existing provisions of sections 34 and 35 of the Act will apply.

Clause 8. Section 32 amended

Section 32 of the Act requires a reportable offender to report back to the Commissioner of Police after they return to Western Australia following travel outside of the State. Such a report must be made within 7 days. Section 32 is to be amended by inserting a new subsection (2a) to provide that if the reportable offender has returned from travel outside of Australia then they will also have to provide the Commissioner of Police with their passport and any other documents that indicate where they travelled to while out of Australia. Subsection 32(3) will also be amended to provide that a reportable offender does not commit an offence against s.63 of the Act if they fail to report in accordance with section 32(2) or (2a) if the reportable offender does not remain in Western Australia for 14 or more consecutive days.

Clause 9. Section 79 amended

Section 79 prescribes for the modification of reporting obligations for participants in witness protection programs. To encompass the newly inserted section 29A, a minor amendment has been made to s.79 to include s.29A as a section that is applicable to Division 10.

Clause 10. Section 115A inserted

Since the enactment of the 'online grooming [cyber predator] offences in section 204B of *The Criminal Code* in March 2006, over 20 people have been convicted of those offences but are not automatically bound by the provisions of the *Community Protection (Offender Reporting) Act 2004*, as the offence in question is not a reportable offence at present. The proposed amendment contained in clause 12 of the Bill will rectify this situation for the future.

However, the provisions in clause 12 will not apply to persons who have already been convicted of these section 204B offences. Western Australia Police (WA Police) have endeavored to have these such offenders declared as reportable offenders through the 'offender reporting order' provisions of section 13 of the Act. Unfortunately, WA Police has been largely unsuccessful in this regard because the courts have not believed that the offender presents a risk to the community.

Clearly the nature of the offence is one where children are put at risk of sexual offences. The offenders who have been convicted of these offences, but who are not subject to an 'offender reporting order' are still posing a risk to children in the community and therefore need to be brought within the scope of the Act. The only way to achieve this is to make provision to the effect that any person who has been convicted of a section 204B offence, prior to the provisions of the Bill coming into effect, will be deemed to be a reportable offender for the purposes of the Act. Proposed section 115A will achieve this by deeming such offenders to have been convicted of a Class 2 offence for the purposes of the Act and for their reporting obligations to begin as soon as the provisions of the Bill become law.

Clause 11. Schedule 1 amended

Schedule 1 of the Act lists the Class 1 offences with respect to the *Criminal Code* and the *Crimes Act 1914 (Cmth)*. Under the provisions of sections 278 and 282 of *The Criminal Code* a person can be convicted of the offence of wilful murder. Likewise, under the provisions of sections 279 and 282 of *The Criminal Code*, a person can be convicted of the offence of murder.

On 10 September 2003, the *Criminal Code Amendment Bill 2003* was introduced into the Legislative Assembly. The Bill contained a number of amendments to *The Criminal Code*, including provisions which would have removed the distinction between wilful murder and murder. The Bill passed through the Legislative Assembly on 4 December 2003 and was subsequently introduced into the Legislative Council on 9 December 2003. Following its introduction into that House, the Bill was split, with the effect that the provisions in relation to the reform of wilful murder and murder were transferred into the *Criminal Code Amendment Bill (No.2) 2003*. That Bill lapsed with the prorogation of Parliament on 23 January 2005. It was hoped that the *Criminal Code Amendment Bill (No.2)*

2003 would be passed by Parliament before the *Community Protection (Offender Reporting) Act 2004* came into operation. On that basis, only the offence of murder under section 279 of *The Criminal Code* is listed as a Class 1 offence in Schedule 1 of the Act.

Advice was sought from the State Solicitors Office (SSO) as to whether a person convicted of the wilful murder of a child would be a reportable offender under the Act, even though the offence in question is not listed as a Class 1 offence. The advice from SSO was that as an element of wilful murder is the intention to cause a person's death, it is arguable that the wilful murder of a child is a reportable offence, namely murder, by virtue of the provisions of section 10(d) of the Act which deals with "intent" to commit offences.

WA Police has been operating on the basis of the SSO advice since the *Community Protection (Offender Reporting) Act 2004* came into operation. However, to put the matter beyond doubt, and so as to avoid any uncertainty in the future, Schedule 1 of the Act is to be amended to confirm that the offence of wilful murder of a child is a Class 1 offence for the purposes of the Act.

Clause 12. Schedule 2 amended

Schedule 2 lists the Class 2 offences with respect to the *Criminal Code*, the *Prostitution Act 2000*, the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*, the *Children and Community Services Act 2004*, the *Crimes Act 1914 (Cmth)*, and the *Customs Act 1901 (Cmth)*. The amendment to Schedule 2 is to insert the offences of s.204B(2), s. 204B(3), s.557K(4) and s.557K(6) of the *Criminal Code*. Sections 204B(2) and (3) relate to the indecent use of electronic communication in procuring children under the age of 16 [cyber predator offences]. Sections 557K(4) and 6) relate to the consorting of child sex offenders with each other, and the presence of a child sex offender near children. The effect of including these offences in Schedule 2 of the Act, is that if a person is convicted of any of these offences they will be subject to the reporting obligations of the Act for a period of 8 years.

Clause 13. Working with Children (Criminal Record Checking) Act 2004 consequentially amended

This clause amends the *Working with Children (Criminal Record Checking) Act 2004* to insert the offence of wilful murder in Schedule 2 of that Act, which will result in an offence of wilful murder being treated as a "Class 2 offence" for the purposes of that Act.

The clause also provides for transitional measures in relation to wilful murder offences where a person carrying out "child-related work", as defined by the *Working with Children (Criminal Record Checking) Act 2004*, was charged with, or convicted of, wilful murder following the commencement of section 24 of that Act and prior to the commencement of this clause. Upon commencement of this clause, such offences will be treated as a relevant change in the person's criminal record for the purposes of Part 3, Division 1 of the *Working with Children (Criminal Record Checking) Act 2004*.

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Section 30(1) is to be repealed and replaced such that any intended travel outside of Western Australia [whether overseas or not], must be reported to the Commissioner of Police regardless of the duration of travel.

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Currently Section 31 of the Act prescribes the requirements that a reportable offender must follow if they change their travel plans while out of Western Australia. As a consequence of the proposed new section 29A, subsections 31(1) and (2) of the Act are to be repealed and replaced with provisions that now also provide for the change of travel plans while in Western Australia. Reportable offenders will be required to state their change of plans as soon as practicable to the Commissioner of Police whether the travel from the place of residence occurs within or outside of Western Australia.

A minor amendment has also been made to subsection 31(3) of the Act by deleting the word "The" and inserting, "If subsection (1)(b) applies, the". This amendment provides for a reportable offender who changes their travel plans while out of Western Australia to report the changes to the Commissioner of Police via facsimile, email or as set out in the Regulations. For offenders who change their travel plans within Western Australia, the existing provisions of sections 34 and 35 of the Act will apply.

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Clause 9. Section 79 amended

Section 79 prescribes for the modification of reporting obligations for participants in witness protection programs. To encompass the newly inserted section 29A, a minor amendment has been made to s.79 to include s.29A as a section that is applicable to Division 10.

Clause 10. Section 115A inserted

Since the enactment of the 'online grooming [cyber predator] offences in section 204B of *The Criminal Code* in March 2006, over 20 people have been convicted of those offences but are not automatically bound by the provisions of the *Community Protection (Offender Reporting) Act 2004*, as the offence in question is not a reportable offence at present. The proposed amendment contained in clause 12 of the Bill will rectify this situation for the future.

However, the provisions in clause 12 will not apply to persons who have already been convicted of these section 204B offences. Western Australia Police (WA Police) have endeavored to have these such offenders declared as reportable offenders through the 'offender reporting order' provisions of section 13 of the Act. Unfortunately, WA Police has been largely unsuccessful in this regard because the courts have not believed that the offender presents a risk to the community.

Clearly the nature of the offence is one where children are put at risk of sexual offences. The offenders who have been convicted of these offences, but who are not subject to an 'offender reporting order' are still posing a risk to children in the community and therefore need to be brought within the scope of the Act. The only way to achieve this is to make provision to the effect that any person who has been convicted of a section 204B offence, prior to the provisions of the Bill coming into effect, will be deemed to be a reportable offender for the purposes of the Act. Proposed section 115A will achieve this by deeming such offenders to have been convicted of a Class 2 offence for the purposes of the Act and for their reporting obligations to begin as soon as the provisions of the Bill become law.

Clause 11. Schedule 1 amended

Schedule 1 of the Act lists the Class 1 offences with respect to the *Criminal Code* and the *Crimes Act 1914 (Cmth)*. Under the provisions of sections 278 and 282 of *The Criminal Code* a person can be convicted of the offence of wilful murder. Likewise, under the provisions of sections 279 and 282 of *The Criminal Code*, a person can be convicted of the offence of murder.

On 10 September 2003, the *Criminal Code Amendment Bill 2003* was introduced into the Legislative Assembly. The Bill contained a number of amendments to *The Criminal Code*, including provisions which would have removed the distinction between wilful murder and murder. The Bill passed through the Legislative Assembly on 4 December 2003 and was subsequently introduced into the Legislative Council on 9 December 2003. Following its introduction into that House, the Bill was split, with the effect that the provisions in relation to the reform of wilful murder and murder were transferred into the *Criminal Code Amendment Bill (No.2) 2003*. That Bill lapsed with the prorogation of Parliament on 23 January 2005. It was hoped that the *Criminal Code Amendment Bill (No.2)*

2003 would be passed by Parliament before the *Community Protection (Offender Reporting) Act 2004* came into operation. On that basis, only the offence of murder under section 279 of *The Criminal Code* is listed as a Class 1 offence in Schedule 1 of the Act.

Advice was sought from the State Solicitors Office (SSO) as to whether a person convicted of the wilful murder of a child would be a reportable offender under the Act, even though the offence in question is not listed as a Class 1 offence. The advice from SSO was that as an element of wilful murder is the intention to cause a person's death, it is arguable that the wilful murder of a child is a reportable offence, namely murder, by virtue of the provisions of section 10(d) of the Act which deals with "intent" to commit offences.

WA Police has been operating on the basis of the SSO advice since the *Community Protection (Offender Reporting) Act 2004* came into operation. However, to put the matter beyond doubt, and so as to avoid any uncertainty in the future, Schedule 1 of the Act is to be amended to confirm that the offence of wilful murder of a child is a Class 1 offence for the purposes of the Act.

Clause 12. Schedule 2 amended

Schedule 2 lists the Class 2 offences with respect to the *Criminal Code*, the *Prostitution Act 2000*, the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*, the *Children and Community Services Act 2004*, the *Crimes Act 1914 (Cmth)*, and the *Customs Act 1901 (Cmth)*. The amendment to Schedule 2 is to insert the offences of s.204B(2), s. 204B(3), s.557K(4) and s.557K(6) of the *Criminal Code*. Sections 204B(2) and (3) relate to the indecent use of electronic communication in procuring children under the age of 16 [cyber predator offences]. Sections 557K(4) and 6) relate to the consorting of child sex offenders with each other, and the presence of a child sex offender near children. The effect of including these offences in Schedule 2 of the Act, is that if a person is convicted of any of these offences they will be subject to the reporting obligations of the Act for a period of 8 years.

Clause 13. *Working with Children (Criminal Record Checking) Act 2004* consequentially amended

This clause amends the *Working with Children (Criminal Record Checking) Act 2004* to insert the offence of wilful murder in Schedule 2 of that Act, which will result in an offence of wilful murder being treated as a "Class 2 offence" for the purposes of that Act.

The clause also provides for transitional measures in relation to wilful murder offences where a person carrying out "child-related work", as defined by the *Working with Children (Criminal Record Checking) Act 2004*, was charged with, or convicted of, wilful murder following the commencement of section 24 of that Act and prior to the commencement of this clause. Upon commencement of this clause, such offences will be treated as a relevant change in the person's criminal record for the purposes of Part 3, Division 1 of the *Working with Children (Criminal Record Checking) Act 2004*.

Community Protection (Offender Reporting) Amendment Bill 2007

EXPLANATORY MEMORANDUM

Clause 1. Short Title

Cites the short title of the Act as the Community Protection (Offender Reporting) Amendment Act 2007.

Clause 2. Commencement

Clauses 1 and 2 come into operation on Assent. The remaining provisions in the Bill come into operation on the day after Assent.

Clause 3. The Act amended

With the exception of the amendments contained in clause 13, the remaining provisions in the Bill are amendments to the *Community Protection (Offender Reporting) Act 2004*. Clause 13 contains consequential amendments to the *Working with Children (Criminal Record Checking) Act 2004*.

Clause 4. Section 26 amended

Section 26 of the Act currently requires a reportable offender to report certain personal details (such as their name, date of birth, address/es, employment, affiliations, certain assets, distinguishable body features, and information relating to previous offences) to the Commissioner of Police. The proposed amendments to section 26, contained in clause 4 of the Bill, will require reportable offenders to disclose information relating to their 'online' identity. This includes their telephone number or email address that is regularly used; the name of the Internet service provider and Internet carriage service that is used to access the Internet; any online name used when communicating via the Internet; and, any website or Internet communication service where the offender's name (either real, alias, email or chat name) is used.

Due to the increasing number of offenders using online resources as a medium to facilitate their offences, it is appropriate to require reportable offenders to report their information relating to their online use. Similar amendments have been made to statutes in Arizona, Kentucky and Virginia (United States of America) where reportable offenders are required to provide police with all their online information and identifiers.

Clause 5. Section 29A inserted

Section 29A has been inserted to provide for reportable offenders to report any intended absence from their place of residence to the Commissioner of Police. This section has been introduced as there are currently no provisions requiring reportable offenders to disclose their travels (absence from residency) that occur within Western Australia.

Proposed section 29A specifically requires reportable offenders to report when they leave their usual place of residence to travel within Western Australia for

seven or more consecutive days. In reporting their intended absence to Police, they must do so seven days before leaving (or if impracticable at least 24 hours after they have left) and provide details of the dates they are absent for and the address/es where they intend to visit. In the circumstance where a reportable offender changes their mind and decides not to leave their place of residence, they must advise the Commissioner of Police within seven days of having decided not to leave.

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2003 would be passed by Parliament before the *Community Protection (Offender Reporting) Act 2004* came into operation. On that basis, only the offence of murder under section 279 of *The Criminal Code* is listed as a Class 1 offence in Schedule 1 of the Act.

Advice was sought from the State Solicitors Office (SSO) as to whether a person convicted of the wilful murder of a child would be a reportable offender under the Act, even though the offence in question is not listed as a Class 1 offence. The advice from SSO was that as an element of wilful murder is the intention to cause a person's death, it is arguable that the wilful murder of a child is a reportable offence, namely murder, by virtue of the provisions of section 10(d) of the Act which deals with "intent" to commit offences.

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Clause 13. Working with Children (Criminal Record Checking) Act 2004 consequentially amended

This clause amends the *Working with Children (Criminal Record Checking) Act 2004* to insert the offence of wilful murder in Schedule 2 of that Act, which will result in an offence of wilful murder being treated as a "Class 2 offence" for the purposes of that Act.

The clause also provides for transitional measures in relation to wilful murder offences where a person carrying out "child-related work", as defined by the *Working with Children (Criminal Record Checking) Act 2004*, was charged with, or convicted of, wilful murder following the commencement of section 24 of that Act and prior to the commencement of this clause. Upon commencement of this clause, such offences will be treated as a relevant change in the person's criminal record for the purposes of Part 3, Division 1 of the *Working with Children (Criminal Record Checking) Act 2004*.

Community Protection (Offender Reporting) Amendment Bill 2007

EXPLANATORY MEMORANDUM

Clause 1. Short Title

Cites the short title of the Act as the Community Protection (Offender Reporting) Amendment Act 2007.

Clause 2. Commencement

Clauses 1 and 2 come into operation on Assent. The remaining provisions in the Bill come into operation on the day after Assent.

Clause 3. The Act amended

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Community Protection (Offender Reporting) Amendment Bill 2007

EXPLANATORY MEMORANDUM

Clause 1. Short Title

Cites the short title of the Act as the Community Protection (Offender Reporting) Amendment Act 2007.

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Section 79 prescribes for the modification of reporting obligations for participants in witness protection programs. To encompass the newly inserted section 29A, a minor amendment has been made to s.79 to include s.29A as a section that is applicable to Division 10.

Clause 10. Section 115A inserted

Since the enactment of the 'online grooming [cyber predator] offences in section 204B of *The Criminal Code* in March 2006, over 20 people have been convicted of those offences but are not automatically bound by the provisions of the *Community Protection (Offender Reporting) Act 2004*, as the offence in question is not a reportable offence at present. The proposed amendment contained in clause 12 of the Bill will rectify this situation for the future.

However, the provisions in clause 12 will not apply to persons who have already been convicted of these section 204B offences. Western Australia Police (WA Police) have endeavored to have these such offenders declared as reportable offenders through the 'offender reporting order' provisions of section 13 of the Act. Unfortunately, WA Police has been largely unsuccessful in this regard because the courts have not believed that the offender presents a risk to the community.

Clearly the nature of the offence is one where children are put at risk of sexual offences. The offenders who have been convicted of these offences, but who are not subject to an 'offender reporting order' are still posing a risk to children in the community and therefore need to be brought within the scope of the Act. The only way to achieve this is to make provision to the effect that any person who has been convicted of a section 204B offence, prior to the provisions of the Bill coming into effect, will be deemed to be a reportable offender for the purposes of the Act. Proposed section 115A will achieve this by deeming such offenders to have been convicted of a Class 2 offence for the purposes of the Act and for their reporting obligations to begin as soon as the provisions of the Bill become law.

Clause 11. Schedule 1 amended

Schedule 1 of the Act lists the Class 1 offences with respect to the *Criminal Code* and the *Crimes Act 1914 (Cmth)*. Under the provisions of sections 278 and 282 of *The Criminal Code* a person can be convicted of the offence of wilful murder. Likewise, under the provisions of sections 279 and 282 of *The Criminal Code*, a person can be convicted of the offence of murder.

On 10 September 2003, the *Criminal Code Amendment Bill 2003* was introduced into the Legislative Assembly. The Bill contained a number of amendments to *The Criminal Code*, including provisions which would have removed the distinction between wilful murder and murder. The Bill passed through the Legislative Assembly on 4 December 2003 and was subsequently introduced into the Legislative Council on 9 December 2003. Following its introduction into that House, the Bill was split, with the effect that the provisions in relation to the reform of wilful murder and murder were transferred into the *Criminal Code Amendment Bill (No.2) 2003*. That Bill lapsed with the prorogation of Parliament on 23 January 2005. It was hoped that the *Criminal Code Amendment Bill (No.2)*

2003 would be passed by Parliament before the *Community Protection (Offender Reporting) Act 2004* came into operation. On that basis, only the offence of murder under section 279 of *The Criminal Code* is listed as a Class 1 offence in Schedule 1 of the Act.

Advice was sought from the State Solicitors Office (SSO) as to whether a person convicted of the wilful murder of a child would be a reportable offender under the Act, even though the offence in question is not listed as a Class 1 offence. The advice from SSO was that as an element of wilful murder is the intention to cause a person's death, it is arguable that the wilful murder of a child is a reportable offence, namely murder, by virtue of the provisions of section 10(d) of the Act which deals with "intent" to commit offences.

WA Police has been operating on the basis of the SSO advice since the *Community Protection (Offender Reporting) Act 2004* came into operation. However, to put the matter beyond doubt, and so as to avoid any uncertainty in the future, Schedule 1 of the Act is to be amended to confirm that the offence of wilful murder of a child is a Class 1 offence for the purposes of the Act.

Clause 12. Schedule 2 amended

Schedule 2 lists the Class 2 offences with respect to the *Criminal Code*, the *Prostitution Act 2000*, the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*, the *Children and Community Services Act 2004*, the *Crimes Act 1914 (Cmth)*, and the *Customs Act 1901 (Cmth)*. The amendment to Schedule 2 is to insert the offences of s.204B(2), s. 204B(3), s.557K(4) and s.557K(6) of the *Criminal Code*. Sections 204B(2) and (3) relate to the indecent use of electronic communication in procuring children under the age of 16 [cyber predator offences]. Sections 557K(4) and 6) relate to the consorting of child sex offenders with each other, and the presence of a child sex offender near children. The effect of including these offences in Schedule 2 of the Act, is that if a person is convicted of any of these offences they will be subject to the reporting obligations of the Act for a period of 8 years.

Clause 13. *Working with Children (Criminal Record Checking) Act 2004* consequentially amended

This clause amends the *Working with Children (Criminal Record Checking) Act 2004* to insert the offence of wilful murder in Schedule 2 of that Act, which will result in an offence of wilful murder being treated as a "Class 2 offence" for the purposes of that Act.

The clause also provides for transitional measures in relation to wilful murder offences where a person carrying out "child-related work", as defined by the *Working with Children (Criminal Record Checking) Act 2004*, was charged with, or convicted of, wilful murder following the commencement of section 24 of that Act and prior to the commencement of this clause. Upon commencement of this clause, such offences will be treated as a relevant change in the person's criminal record for the purposes of Part 3, Division 1 of the *Working with Children (Criminal Record Checking) Act 2004*.

Community Protection (Offender Reporting) Amendment Bill 2007

EXPLANATORY MEMORANDUM

Clause 1. Short Title

Cites the short title of the Act as the Community Protection (Offender Reporting) Amendment Act 2007.

Clause 2. Commencement

Clauses 1 and 2 come into operation on Assent. The remaining provisions in the Bill come into operation on the day after Assent.

Clause 3. The Act amended

With the exception of the amendments contained in clause 13, the remaining provisions in the Bill are amendments to the *Community Protection (Offender Reporting) Act 2004*. Clause 13 contains consequential amendments to the *Working with Children (Criminal Record Checking) Act 2004*.

Clause 4. Section 26 amended

Section 26 of the Act currently requires a reportable offender to report certain personal details (such as their name, date of birth, address/es, employment, affiliations, certain assets, distinguishable body features, and information relating to previous offences) to the Commissioner of Police. The proposed amendments to section 26, contained in clause 4 of the Bill, will require reportable offenders to disclose information relating to their 'online' identity. This includes their telephone number or email address that is regularly used; the name of the Internet service provider and Internet carriage service that is used to access the Internet; any online name used when communicating via the Internet; and, any website or Internet communication service where the offender's name (either real, alias, email or chat name) is used.

Due to the increasing number of offenders using online resources as a medium to facilitate their offences, it is appropriate to require reportable offenders to report their information relating to their online use. Similar amendments have been made to statutes in Arizona, Kentucky and Virginia (United States of America) where reportable offenders are required to provide police with all their online information and identifiers.

Clause 5. Section 29A inserted

Section 29A has been inserted to provide for reportable offenders to report any intended absence from their place of residence to the Commissioner of Police. This section has been introduced as there are currently no provisions requiring reportable offenders to disclose their travels (absence from residency) that occur within Western Australia.

Proposed section 29A specifically requires reportable offenders to report when they leave their usual place of residence to travel within Western Australia for

seven or more consecutive days. In reporting their intended absence to Police, they must do so seven days before leaving (or if impracticable at least 24 hours after they have left) and provide details of the dates they are absent for and the address/es where they intend to visit. In the circumstance where a reportable offender changes their mind and decides not to leave their place of residence, they must advise the Commissioner of Police within seven days of having decided not to leave.

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Section 30 of the Act currently requires a reportable offender to advise the Commissioner of Police of any intended travel elsewhere in Australia which is longer than 7 days. A reportable offender is also required to advise the Commissioner of Police of any intended travel outside of Australia, regardless of the duration.

Section 30(1) is to be repealed and replaced such that any intended travel outside of Western Australia [whether overseas or not], must be reported to the Commissioner of Police regardless of the duration of travel.

Clause 7. Section 31 amended

Currently Section 31 of the Act prescribes the requirements that a reportable offender must follow if they change their travel plans while out of Western Australia. As a consequence of the proposed new section 29A, subsections 31(1) and (2) of the Act are to be repealed and replaced with provisions that now also provide for the change of travel plans while in Western Australia. Reportable offenders will be required to state their change of plans as soon as practicable to the Commissioner of Police whether the travel from the place of residence occurs within or outside of Western Australia.

A minor amendment has also been made to subsection 31(3) of the Act by deleting the word "The" and inserting, "If subsection (1)(b) applies, the". This amendment provides for a reportable offender who changes their travel plans while out of Western Australia to report the changes to the Commissioner of Police via facsimile, email or as set out in the Regulations. For offenders who change their travel plans within Western Australia, the existing provisions of sections 34 and 35 of the Act will apply.

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Clause 13. *Working with Children (Criminal Record Checking) Act 2004* consequentially amended

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The clause also provides for transitional measures in relation to wilful murder offences where a person carrying out "child-related work", as defined by the *Working with Children (Criminal Record Checking) Act 2004*, was charged with, or convicted of, wilful murder following the commencement of section 24 of that Act and prior to the commencement of this clause. Upon commencement of this clause, such offences will be treated as a relevant change in the person's criminal record for the purposes of Part 3, Division 1 of the *Working with Children (Criminal Record Checking) Act 2004*.

Community Protection (Offender Reporting) Amendment Bill 2007

EXPLANATORY MEMORANDUM

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Cites the short title of the Act as the Community Protection (Offender Reporting) Amendment Act 2007.

Clause 2. Commencement

Clauses 1 and 2 come into operation on Assent. The remaining provisions in the Bill come into operation on the day after Assent.

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Clause 13. *Working with Children (Criminal Record Checking) Act 2004* consequentially amended

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Community Protection (Offender Reporting) Amendment Bill 2007

EXPLANATORY MEMORANDUM

Clause 1. Short Title

Cites the short title of the Act as the Community Protection (Offender Reporting) Amendment Act 2007.

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Clauses 1 and 2 come into operation on Assent. The remaining provisions in the Bill come into operation on the day after Assent.

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Schedule 1 of the Act lists the Class 1 offences with respect to the *Criminal Code* and the *Crimes Act 1914 (Cmth)*. Under the provisions of sections 278 and 282 of *The Criminal Code* a person can be convicted of the offence of wilful murder. Likewise, under the provisions of sections 279 and 282 of *The Criminal Code*, a person can be convicted of the offence of murder.

On 10 September 2003, the *Criminal Code Amendment Bill 2003* was introduced into the Legislative Assembly. The Bill contained a number of amendments to *The Criminal Code*, including provisions which would have removed the distinction between wilful murder and murder. The Bill passed through the Legislative Assembly on 4 December 2003 and was subsequently introduced into the Legislative Council on 9 December 2003. Following its introduction into that House, the Bill was split, with the effect that the provisions in relation to the reform of wilful murder and murder were transferred into the *Criminal Code Amendment Bill (No.2) 2003*. That Bill lapsed with the prorogation of Parliament on 23 January 2005. It was hoped that the *Criminal Code Amendment Bill (No.2)*

2003 would be passed by Parliament before the *Community Protection (Offender Reporting) Act 2004* came into operation. On that basis, only the offence of murder under section 279 of *The Criminal Code* is listed as a Class 1 offence in Schedule 1 of the Act.

Advice was sought from the State Solicitors Office (SSO) as to whether a person convicted of the wilful murder of a child would be a reportable offender under the Act, even though the offence in question is not listed as a Class 1 offence. The advice from SSO was that as an element of wilful murder is the intention to cause a person's death, it is arguable that the wilful murder of a child is a reportable offence, namely murder, by virtue of the provisions of section 10(d) of the Act which deals with "intent" to commit offences.

WA Police has been operating on the basis of the SSO advice since the *Community Protection (Offender Reporting) Act 2004* came into operation. However, to put the matter beyond doubt, and so as to avoid any uncertainty in the future, Schedule 1 of the Act is to be amended to confirm that the offence of wilful murder of a child is a Class 1 offence for the purposes of the Act.

Clause 12. Schedule 2 amended

Schedule 2 lists the Class 2 offences with respect to the *Criminal Code*, the *Prostitution Act 2000*, the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*, the *Children and Community Services Act 2004*, the *Crimes Act 1914 (Cmth)*, and the *Customs Act 1901 (Cmth)*. The amendment to Schedule 2 is to insert the offences of s.204B(2), s. 204B(3), s.557K(4) and s.557K(6) of the *Criminal Code*. Sections 204B(2) and (3) relate to the indecent use of electronic communication in procuring children under the age of 16 [cyber predator offences]. Sections 557K(4) and 6) relate to the consorting of child sex offenders with each other, and the presence of a child sex offender near children. The effect of including these offences in Schedule 2 of the Act, is that if a person is convicted of any of these offences they will be subject to the reporting obligations of the Act for a period of 8 years.

Clause 13. Working with Children (Criminal Record Checking) Act 2004 consequentially amended

This clause amends the *Working with Children (Criminal Record Checking) Act 2004* to insert the offence of wilful murder in Schedule 2 of that Act, which will result in an offence of wilful murder being treated as a "Class 2 offence" for the purposes of that Act.

The clause also provides for transitional measures in relation to wilful murder offences where a person carrying out "child-related work", as defined by the *Working with Children (Criminal Record Checking) Act 2004*, was charged with, or convicted of, wilful murder following the commencement of section 24 of that Act and prior to the commencement of this clause. Upon commencement of this clause, such offences will be treated as a relevant change in the person's criminal record for the purposes of Part 3, Division 1 of the *Working with Children (Criminal Record Checking) Act 2004*.

Community Protection (Offender Reporting) Amendment Bill 2007

EXPLANATORY MEMORANDUM

Clause 1. Short Title

Cites the short title of the Act as the Community Protection (Offender Reporting) Amendment Act 2007.

Clause 2. Commencement

Clauses 1 and 2 come into operation on Assent. The remaining provisions in the Bill come into operation on the day after Assent.

Clause 3. The Act amended

With the exception of the amendments contained in clause 13, the remaining provisions in the Bill are amendments to the *Community Protection (Offender Reporting) Act 2004*. Clause 13 contains consequential amendments to the *Working with Children (Criminal Record Checking) Act 2004*.

Clause 4. Section 26 amended

Section 26 of the Act currently requires a reportable offender to report certain personal details (such as their name, date of birth, address/es, employment, affiliations, certain assets, distinguishable body features, and information relating to previous offences) to the Commissioner of Police. The proposed amendments to section 26, contained in clause 4 of the Bill, will require reportable offenders to disclose information relating to their 'online' identity. This includes their telephone number or email address that is regularly used; the name of the Internet service provider and Internet carriage service that is used to access the Internet; any online name used when communicating via the Internet; and, any website or Internet communication service where the offender's name (either real, alias, email or chat name) is used.

Due to the increasing number of offenders using online resources as a medium to facilitate their offences, it is appropriate to require reportable offenders to report their information relating to their online use. Similar amendments have been made to statutes in Arizona, Kentucky and Virginia (United States of America) where reportable offenders are required to provide police with all their online information and identifiers.

Clause 5. Section 29A inserted

Section 29A has been inserted to provide for reportable offenders to report any intended absence from their place of residence to the Commissioner of Police. This section has been introduced as there are currently no provisions requiring reportable offenders to disclose their travels (absence from residency) that occur within Western Australia.

Proposed section 29A specifically requires reportable offenders to report when they leave their usual place of residence to travel within Western Australia for

seven or more consecutive days. In reporting their intended absence to Police, they must do so seven days before leaving (or if impracticable at least 24 hours after they have left) and provide details of the dates they are absent for and the address/es where they intend to visit. In the circumstance where a reportable offender changes their mind and decides not to leave their place of residence, they must advise the Commissioner of Police within seven days of having decided not to leave.

Clause 6. Section 30 amended

Section 30 of the Act currently requires a reportable offender to advise the Commissioner of Police of any intended travel elsewhere in Australia which is longer than 7 days. A reportable offender is also required to advise the Commissioner of Police of any intended travel outside of Australia, regardless of the duration.

Section 30(1) is to be repealed and replaced such that any intended travel outside of Western Australia [whether overseas or not], must be reported to the Commissioner of Police regardless of the duration of travel.

Clause 7. Section 31 amended

Currently Section 31 of the Act prescribes the requirements that a reportable offender must follow if they change their travel plans while out of Western Australia. As a consequence of the proposed new section 29A, subsections 31(1) and (2) of the Act are to be repealed and replaced with provisions that now also provide for the change of travel plans while in Western Australia. Reportable offenders will be required to state their change of plans as soon as practicable to the Commissioner of Police whether the travel from the place of residence occurs within or outside of Western Australia.

A minor amendment has also been made to subsection 31(3) of the Act by deleting the word "The" and inserting, "If subsection (1)(b) applies, the". This amendment provides for a reportable offender who changes their travel plans while out of Western Australia to report the changes to the Commissioner of Police via facsimile, email or as set out in the Regulations. For offenders who change their travel plans within Western Australia, the existing provisions of sections 34 and 35 of the Act will apply.

Clause 8. Section 32 amended

Section 32 of the Act requires a reportable offender to report back to the Commissioner of Police after they return to Western Australia following travel outside of the State. Such a report must be made within 7 days. Section 32 is to be amended by inserting a new subsection (2a) to provide that if the reportable offender has returned from travel outside of Australia then they will also have to provide the Commissioner of Police with their passport and any other documents that indicate where they travelled to while out of Australia. Subsection 32(3) will also be amended to provide that a reportable offender does not commit an offence against s.63 of the Act if they fail to report in accordance with section 32(2) or (2a) if the reportable offender does not remain in Western Australia for 14 or more consecutive days.

Clause 9. Section 79 amended

Section 79 prescribes for the modification of reporting obligations for participants in witness protection programs. To encompass the newly inserted section 29A, a minor amendment has been made to s.79 to include s.29A as a section that is applicable to Division 10.

Clause 10. Section 115A inserted

Since the enactment of the 'online grooming [cyber predator] offences in section 204B of *The Criminal Code* in March 2006, over 20 people have been convicted of those offences but are not automatically bound by the provisions of the *Community Protection (Offender Reporting) Act 2004*, as the offence in question is not a reportable offence at present. The proposed amendment contained in clause 12 of the Bill will rectify this situation for the future.

However, the provisions in clause 12 will not apply to persons who have already been convicted of these section 204B offences. Western Australia Police (WA Police) have endeavored to have these such offenders declared as reportable offenders through the 'offender reporting order' provisions of section 13 of the Act. Unfortunately, WA Police has been largely unsuccessful in this regard because the courts have not believed that the offender presents a risk to the community.

Clearly the nature of the offence is one where children are put at risk of sexual offences. The offenders who have been convicted of these offences, but who are not subject to an 'offender reporting order' are still posing a risk to children in the community and therefore need to be brought within the scope of the Act. The only way to achieve this is to make provision to the effect that any person who has been convicted of a section 204B offence, prior to the provisions of the Bill coming into effect, will be deemed to be a reportable offender for the purposes of the Act. Proposed section 115A will achieve this by deeming such offenders to have been convicted of a Class 2 offence for the purposes of the Act and for their reporting obligations to begin as soon as the provisions of the Bill become law.

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2003 would be passed by Parliament before the *Community Protection (Offender Reporting) Act 2004* came into operation. On that basis, only the offence of murder under section 279 of *The Criminal Code* is listed as a Class 1 offence in Schedule 1 of the Act.

Advice was sought from the State Solicitors Office (SSO) as to whether a person convicted of the wilful murder of a child would be a reportable offender under the Act, even though the offence in question is not listed as a Class 1 offence. The advice from SSO was that as an element of wilful murder is the intention to cause a person's death, it is arguable that the wilful murder of a child is a reportable offence, namely murder, by virtue of the provisions of section 10(d) of the Act which deals with "intent" to commit offences.

WA Police has been operating on the basis of the SSO advice since the *Community Protection (Offender Reporting) Act 2004* came into operation. However, to put the matter beyond doubt, and so as to avoid any uncertainty in the future, Schedule 1 of the Act is to be amended to confirm that the offence of wilful murder of a child is a Class 1 offence for the purposes of the Act.

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Schedule 2 lists the Class 2 offences with respect to the *Criminal Code*, the *Prostitution Act 2000*, the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*, the *Children and Community Services Act 2004*, the *Crimes Act 1914 (Cmth)*, and the *Customs Act 1901 (Cmth)*. The amendment to Schedule 2 is to insert the offences of s.204B(2), s. 204B(3), s.557K(4) and s.557K(6) of the *Criminal Code*. Sections 204B(2) and (3) relate to the indecent use of electronic communication in procuring children under the age of 16 [cyber predator offences]. Sections 557K(4) and 6) relate to the consorting of child sex offenders with each other, and the presence of a child sex offender near children. The effect of including these offences in Schedule 2 of the Act, is that if a person is convicted of any of these offences they will be subject to the reporting obligations of the Act for a period of 8 years.

Clause 13. Working with Children (Criminal Record Checking) Act 2004 consequentially amended

This clause amends the *Working with Children (Criminal Record Checking) Act 2004* to insert the offence of wilful murder in Schedule 2 of that Act, which will result in an offence of wilful murder being treated as a "Class 2 offence" for the purposes of that Act.

The clause also provides for transitional measures in relation to wilful murder offences where a person carrying out "child-related work", as defined by the *Working with Children (Criminal Record Checking) Act 2004*, was charged with, or convicted of, wilful murder following the commencement of section 24 of that Act and prior to the commencement of this clause. Upon commencement of this clause, such offences will be treated as a relevant change in the person's criminal record for the purposes of Part 3, Division 1 of the *Working with Children (Criminal Record Checking) Act 2004*.

Community Protection (Offender Reporting) Amendment Bill 2007

EXPLANATORY MEMORANDUM

Clause 1. Short Title

Cites the short title of the Act as the Community Protection (Offender Reporting) Amendment Act 2007.

Clause 2. Commencement

Clauses 1 and 2 come into operation on Assent. The remaining provisions in the Bill come into operation on the day after Assent.

Clause 3. The Act amended

With the exception of the amendments contained in clause 13, the remaining provisions in the Bill are amendments to the *Community Protection (Offender Reporting) Act 2004*. Clause 13 contains consequential amendments to the *Working with Children (Criminal Record Checking) Act 2004*.

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Section 26 of the Act currently requires a reportable offender to report certain personal details (such as their name, date of birth, address/es, employment, affiliations, certain assets, distinguishable body features, and information relating to previous offences) to the Commissioner of Police. The proposed amendments to section 26, contained in clause 4 of the Bill, will require reportable offenders to disclose information relating to their 'online' identity. This includes their telephone number or email address that is regularly used; the name of the Internet service provider and Internet carriage service that is used to access the Internet; any online name used when communicating via the Internet; and, any website or Internet communication service where the offender's name (either real, alias, email or chat name) is used.

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2003 would be passed by Parliament before the *Community Protection (Offender Reporting) Act 2004* came into operation. On that basis, only the offence of murder under section 279 of *The Criminal Code* is listed as a Class 1 offence in Schedule 1 of the Act.

Advice was sought from the State Solicitors Office (SSO) as to whether a person convicted of the wilful murder of a child would be a reportable offender under the Act, even though the offence in question is not listed as a Class 1 offence. The advice from SSO was that as an element of wilful murder is the intention to cause a person's death, it is arguable that the wilful murder of a child is a reportable offence, namely murder, by virtue of the provisions of section 10(d) of the Act which deals with "intent" to commit offences.

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Clause 13. *Working with Children (Criminal Record Checking) Act 2004* consequentially amended

This clause amends the *Working with Children (Criminal Record Checking) Act 2004* to insert the offence of wilful murder in Schedule 2 of that Act, which will result in an offence of wilful murder being treated as a "Class 2 offence" for the purposes of that Act.

The clause also provides for transitional measures in relation to wilful murder offences where a person carrying out "child-related work", as defined by the *Working with Children (Criminal Record Checking) Act 2004*, was charged with, or convicted of, wilful murder following the commencement of section 24 of that Act and prior to the commencement of this clause. Upon commencement of this clause, such offences will be treated as a relevant change in the person's criminal record for the purposes of Part 3, Division 1 of the *Working with Children (Criminal Record Checking) Act 2004*.

Community Protection (Offender Reporting) Amendment Bill 2007

EXPLANATORY MEMORANDUM

Clause 1. Short Title

Cites the short title of the Act as the Community Protection (Offender Reporting) Amendment Act 2007.

Clause 2. Commencement

Clauses 1 and 2 come into operation on Assent. The remaining provisions in the Bill come into operation on the day after Assent.

Clause 3. The Act amended

With the exception of the amendments contained in clause 13, the remaining provisions in the Bill are amendments to the *Community Protection (Offender Reporting) Act 2004*. Clause 13 contains consequential amendments to the *Working with Children (Criminal Record Checking) Act 2004*.

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WA Police has been operating on the basis of the SSO advice since the *Community Protection (Offender Reporting) Act 2004* came into operation. However, to put the matter beyond doubt, and so as to avoid any uncertainty in the future, Schedule 1 of the Act is to be amended to confirm that the offence of wilful murder of a child is a Class 1 offence for the purposes of the Act.

Clause 12. Schedule 2 amended

Schedule 2 lists the Class 2 offences with respect to the *Criminal Code*, the *Prostitution Act 2000*, the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*, the *Children and Community Services Act 2004*, the *Crimes Act 1914 (Cmth)*, and the *Customs Act 1901 (Cmth)*. The amendment to Schedule 2 is to insert the offences of s.204B(2), s. 204B(3), s.557K(4) and s.557K(6) of the *Criminal Code*. Sections 204B(2) and (3) relate to the indecent use of electronic communication in procuring children under the age of 16 [cyber predator offences]. Sections 557K(4) and 6) relate to the consorting of child sex offenders with each other, and the presence of a child sex offender near children. The effect of including these offences in Schedule 2 of the Act, is that if a person is convicted of any of these offences they will be subject to the reporting obligations of the Act for a period of 8 years.

Clause 13. *Working with Children (Criminal Record Checking) Act 2004* consequentially amended

This clause amends the *Working with Children (Criminal Record Checking) Act 2004* to insert the offence of wilful murder in Schedule 2 of that Act, which will result in an offence of wilful murder being treated as a "Class 2 offence" for the purposes of that Act.

The clause also provides for transitional measures in relation to wilful murder offences where a person carrying out "child-related work", as defined by the *Working with Children (Criminal Record Checking) Act 2004*, was charged with, or convicted of, wilful murder following the commencement of section 24 of that Act and prior to the commencement of this clause. Upon commencement of this clause, such offences will be treated as a relevant change in the person's criminal record for the purposes of Part 3, Division 1 of the *Working with Children (Criminal Record Checking) Act 2004*.

Community Protection (Offender Reporting) Amendment Bill 2007

EXPLANATORY MEMORANDUM

Clause 1. Short Title

Cites the short title of the Act as the Community Protection (Offender Reporting) Amendment Act 2007.

Clause 2. Commencement

Clauses 1 and 2 come into operation on Assent. The remaining provisions in the Bill come into operation on the day after Assent.

Clause 3. The Act amended

With the exception of the amendments contained in clause 13, the remaining provisions in the Bill are amendments to the *Community Protection (Offender Reporting) Act 2004*. Clause 13 contains consequential amendments to the *Working with Children (Criminal Record Checking) Act 2004*.

Clause 4. Section 26 amended

Section 26 of the Act currently requires a reportable offender to report certain personal details (such as their name, date of birth, address/es, employment, affiliations, certain assets, distinguishable body features, and information relating to previous offences) to the Commissioner of Police. The proposed amendments to section 26, contained in clause 4 of the Bill, will require reportable offenders to disclose information relating to their 'online' identity. This includes their telephone number or email address that is regularly used; the name of the Internet service provider and Internet carriage service that is used to access the Internet; any online name used when communicating via the Internet; and, any website or Internet communication service where the offender's name (either real, alias, email or chat name) is used.

Due to the increasing number of offenders using online resources as a medium to facilitate their offences, it is appropriate to require reportable offenders to report their information relating to their online use. Similar amendments have been made to statutes in Arizona, Kentucky and Virginia (United States of America) where reportable offenders are required to provide police with all their online information and identifiers.

Clause 5. Section 29A inserted

Section 29A has been inserted to provide for reportable offenders to report any intended absence from their place of residence to the Commissioner of Police. This section has been introduced as there are currently no provisions requiring reportable offenders to disclose their travels (absence from residency) that occur within Western Australia.

Proposed section 29A specifically requires reportable offenders to report when they leave their usual place of residence to travel within Western Australia for

seven or more consecutive days. In reporting their intended absence to Police, they must do so seven days before leaving (or if impracticable at least 24 hours after they have left) and provide details of the dates they are absent for and the address/es where they intend to visit. In the circumstance where a reportable offender changes their mind and decides not to leave their place of residence, they must advise the Commissioner of Police within seven days of having decided not to leave.

Clause 6. Section 30 amended

Section 30 of the Act currently requires a reportable offender to advise the Commissioner of Police of any intended travel elsewhere in Australia which is longer than 7 days. A reportable offender is also required to advise the Commissioner of Police of any intended travel outside of Australia, regardless of the duration.

Section 30(1) is to be repealed and replaced such that any intended travel outside of Western Australia [whether overseas or not], must be reported to the Commissioner of Police regardless of the duration of travel.

Clause 7. Section 31 amended

Currently Section 31 of the Act prescribes the requirements that a reportable offender must follow if they change their travel plans while out of Western Australia. As a consequence of the proposed new section 29A, subsections 31(1) and (2) of the Act are to be repealed and replaced with provisions that now also provide for the change of travel plans while in Western Australia. Reportable offenders will be required to state their change of plans as soon as practicable to the Commissioner of Police whether the travel from the place of residence occurs within or outside of Western Australia.

A minor amendment has also been made to subsection 31(3) of the Act by deleting the word "The" and inserting, "If subsection (1)(b) applies, the". This amendment provides for a reportable offender who changes their travel plans while out of Western Australia to report the changes to the Commissioner of Police via facsimile, email or as set out in the Regulations. For offenders who change their travel plans within Western Australia, the existing provisions of sections 34 and 35 of the Act will apply.

Clause 8. Section 32 amended

Section 32 of the Act requires a reportable offender to report back to the Commissioner of Police after they return to Western Australia following travel outside of the State. Such a report must be made within 7 days. Section 32 is to be amended by inserting a new subsection (2a) to provide that if the reportable offender has returned from travel outside of Australia then they will also have to provide the Commissioner of Police with their passport and any other documents that indicate where they travelled to while out of Australia. Subsection 32(3) will also be amended to provide that a reportable offender does not commit an offence against s.63 of the Act if they fail to report in accordance with section 32(2) or (2a) if the reportable offender does not remain in Western Australia for 14 or more consecutive days.

Clause 9. Section 79 amended

Section 79 prescribes for the modification of reporting obligations for participants in witness protection programs. To encompass the newly inserted section 29A, a minor amendment has been made to s.79 to include s.29A as a section that is applicable to Division 10.

Clause 10. Section 115A inserted

Since the enactment of the 'online grooming [cyber predator] offences in section 204B of *The Criminal Code* in March 2006, over 20 people have been convicted of those offences but are not automatically bound by the provisions of the *Community Protection (Offender Reporting) Act 2004*, as the offence in question is not a reportable offence at present. The proposed amendment contained in clause 12 of the Bill will rectify this situation for the future.

However, the provisions in clause 12 will not apply to persons who have already been convicted of these section 204B offences. Western Australia Police (WA Police) have endeavored to have these such offenders declared as reportable offenders through the 'offender reporting order' provisions of section 13 of the Act. Unfortunately, WA Police has been largely unsuccessful in this regard because the courts have not believed that the offender presents a risk to the community.

Clearly the nature of the offence is one where children are put at risk of sexual offences. The offenders who have been convicted of these offences, but who are not subject to an 'offender reporting order' are still posing a risk to children in the community and therefore need to be brought within the scope of the Act. The only way to achieve this is to make provision to the effect that any person who has been convicted of a section 204B offence, prior to the provisions of the Bill coming into effect, will be deemed to be a reportable offender for the purposes of the Act. Proposed section 115A will achieve this by deeming such offenders to have been convicted of a Class 2 offence for the purposes of the Act and for their reporting obligations to begin as soon as the provisions of the Bill become law.

Clause 11. Schedule 1 amended

Schedule 1 of the Act lists the Class 1 offences with respect to the *Criminal Code* and the *Crimes Act 1914 (Cmth)*. Under the provisions of sections 278 and 282 of *The Criminal Code* a person can be convicted of the offence of wilful murder. Likewise, under the provisions of sections 279 and 282 of *The Criminal Code*, a person can be convicted of the offence of murder.

On 10 September 2003, the *Criminal Code Amendment Bill 2003* was introduced into the Legislative Assembly. The Bill contained a number of amendments to *The Criminal Code*, including provisions which would have removed the distinction between wilful murder and murder. The Bill passed through the Legislative Assembly on 4 December 2003 and was subsequently introduced into the Legislative Council on 9 December 2003. Following its introduction into that House, the Bill was split, with the effect that the provisions in relation to the reform of wilful murder and murder were transferred into the *Criminal Code Amendment Bill (No.2) 2003*. That Bill lapsed with the prorogation of Parliament on 23 January 2005. It was hoped that the *Criminal Code Amendment Bill (No.2)*

2003 would be passed by Parliament before the *Community Protection (Offender Reporting) Act 2004* came into operation. On that basis, only the offence of murder under section 279 of *The Criminal Code* is listed as a Class 1 offence in Schedule 1 of the Act.

Advice was sought from the State Solicitors Office (SSO) as to whether a person convicted of the wilful murder of a child would be a reportable offender under the Act, even though the offence in question is not listed as a Class 1 offence. The advice from SSO was that as an element of wilful murder is the intention to cause a person's death, it is arguable that the wilful murder of a child is a reportable offence, namely murder, by virtue of the provisions of section 10(d) of the Act which deals with "intent" to commit offences.

WA Police has been operating on the basis of the SSO advice since the *Community Protection (Offender Reporting) Act 2004* came into operation. However, to put the matter beyond doubt, and so as to avoid any uncertainty in the future, Schedule 1 of the Act is to be amended to confirm that the offence of wilful murder of a child is a Class 1 offence for the purposes of the Act.

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Schedule 2 lists the Class 2 offences with respect to the *Criminal Code*, the *Prostitution Act 2000*, the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*, the *Children and Community Services Act 2004*, the *Crimes Act 1914 (Cmth)*, and the *Customs Act 1901 (Cmth)*. The amendment to Schedule 2 is to insert the offences of s.204B(2), s. 204B(3), s.557K(4) and s.557K(6) of the *Criminal Code*. Sections 204B(2) and (3) relate to the indecent use of electronic communication in procuring children under the age of 16 [cyber predator offences]. Sections 557K(4) and 6) relate to the consorting of child sex offenders with each other, and the presence of a child sex offender near children. The effect of including these offences in Schedule 2 of the Act, is that if a person is convicted of any of these offences they will be subject to the reporting obligations of the Act for a period of 8 years.

Clause 13. *Working with Children (Criminal Record Checking) Act 2004* consequentially amended

This clause amends the *Working with Children (Criminal Record Checking) Act 2004* to insert the offence of wilful murder in Schedule 2 of that Act, which will result in an offence of wilful murder being treated as a "Class 2 offence" for the purposes of that Act.

The clause also provides for transitional measures in relation to wilful murder offences where a person carrying out "child-related work", as defined by the *Working with Children (Criminal Record Checking) Act 2004*, was charged with, or convicted of, wilful murder following the commencement of section 24 of that Act and prior to the commencement of this clause. Upon commencement of this clause, such offences will be treated as a relevant change in the person's criminal record for the purposes of Part 3, Division 1 of the *Working with Children (Criminal Record Checking) Act 2004*.

Community Protection (Offender Reporting) Amendment Bill 2007

EXPLANATORY MEMORANDUM

Clause 1. Short Title

Cites the short title of the Act as the Community Protection (Offender Reporting) Amendment Act 2007.

Clause 2. Commencement

Clauses 1 and 2 come into operation on Assent. The remaining provisions in the Bill come into operation on the day after Assent.

Clause 3. The Act amended

With the exception of the amendments contained in clause 13, the remaining provisions in the Bill are amendments to the *Community Protection (Offender Reporting) Act 2004*. Clause 13 contains consequential amendments to the *Working with Children (Criminal Record Checking) Act 2004*.

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2003 would be passed by Parliament before the *Community Protection (Offender Reporting) Act 2004* came into operation. On that basis, only the offence of murder under section 279 of *The Criminal Code* is listed as a Class 1 offence in Schedule 1 of the Act.

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Clause 12. Schedule 2 amended

Schedule 2 lists the Class 2 offences with respect to the *Criminal Code*, the *Prostitution Act 2000*, the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*, the *Children and Community Services Act 2004*, the *Crimes Act 1914 (Cmth)*, and the *Customs Act 1901 (Cmth)*. The amendment to Schedule 2 is to insert the offences of s.204B(2), s. 204B(3), s.557K(4) and s.557K(6) of the *Criminal Code*. Sections 204B(2) and (3) relate to the indecent use of electronic communication in procuring children under the age of 16 [cyber predator offences]. Sections 557K(4) and 6) relate to the consorting of child sex offenders with each other, and the presence of a child sex offender near children. The effect of including these offences in Schedule 2 of the Act, is that if a person is convicted of any of these offences they will be subject to the reporting obligations of the Act for a period of 8 years.

Clause 13. Working with Children (Criminal Record Checking) Act 2004 consequentially amended

This clause amends the *Working with Children (Criminal Record Checking) Act 2004* to insert the offence of wilful murder in Schedule 2 of that Act, which will result in an offence of wilful murder being treated as a "Class 2 offence" for the purposes of that Act.

The clause also provides for transitional measures in relation to wilful murder offences where a person carrying out "child-related work", as defined by the *Working with Children (Criminal Record Checking) Act 2004*, was charged with, or convicted of, wilful murder following the commencement of section 24 of that Act and prior to the commencement of this clause. Upon commencement of this clause, such offences will be treated as a relevant change in the person's criminal record for the purposes of Part 3, Division 1 of the *Working with Children (Criminal Record Checking) Act 2004*.

Community Protection (Offender Reporting) Amendment Bill 2007

EXPLANATORY MEMORANDUM

Clause 1. Short Title

Cites the short title of the Act as the Community Protection (Offender Reporting) Amendment Act 2007.

Clause 2. Commencement

Clauses 1 and 2 come into operation on Assent. The remaining provisions in the Bill come into operation on the day after Assent.

Clause 3. The Act amended

With the exception of the amendments contained in clause 13, the remaining provisions in the Bill are amendments to the *Community Protection (Offender Reporting) Act 2004*. Clause 13 contains consequential amendments to the *Working with Children (Criminal Record Checking) Act 2004*.

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Clause 13. *Working with Children (Criminal Record Checking) Act 2004* consequentially amended

This clause amends the *Working with Children (Criminal Record Checking) Act 2004* to insert the offence of wilful murder in Schedule 2 of that Act, which will result in an offence of wilful murder being treated as a "Class 2 offence" for the purposes of that Act.

The clause also provides for transitional measures in relation to wilful murder offences where a person carrying out "child-related work", as defined by the *Working with Children (Criminal Record Checking) Act 2004*, was charged with, or convicted of, wilful murder following the commencement of section 24 of that Act and prior to the commencement of this clause. Upon commencement of this clause, such offences will be treated as a relevant change in the person's criminal record for the purposes of Part 3, Division 1 of the *Working with Children (Criminal Record Checking) Act 2004*.

Community Protection (Offender Reporting) Amendment Bill 2007

EXPLANATORY MEMORANDUM

Clause 1. Short Title

Cites the short title of the Act as the Community Protection (Offender Reporting) Amendment Act 2007.

Clause 2. Commencement

Clauses 1 and 2 come into operation on Assent. The remaining provisions in the Bill come into operation on the day after Assent.

Clause 3. The Act amended

With the exception of the amendments contained in clause 13, the remaining provisions in the Bill are amendments to the *Community Protection (Offender Reporting) Act 2004*. Clause 13 contains consequential amendments to the *Working with Children (Criminal Record Checking) Act 2004*.

Clause 4. Section 26 amended

Section 26 of the Act currently requires a reportable offender to report certain personal details (such as their name, date of birth, address/es, employment, affiliations, certain assets, distinguishable body features, and information relating to previous offences) to the Commissioner of Police. The proposed amendments to section 26, contained in clause 4 of the Bill, will require reportable offenders to disclose information relating to their 'online' identity. This includes their telephone number or email address that is regularly used; the name of the Internet service provider and Internet carriage service that is used to access the Internet; any online name used when communicating via the Internet; and, any website or Internet communication service where the offender's name (either real, alias, email or chat name) is used.

Due to the increasing number of offenders using online resources as a medium to facilitate their offences, it is appropriate to require reportable offenders to report their information relating to their online use. Similar amendments have been made to statutes in Arizona, Kentucky and Virginia (United States of America) where reportable offenders are required to provide police with all their online information and identifiers.

Clause 5. Section 29A inserted

Section 29A has been inserted to provide for reportable offenders to report any intended absence from their place of residence to the Commissioner of Police. This section has been introduced as there are currently no provisions requiring reportable offenders to disclose their travels (absence from residency) that occur within Western Australia.

Proposed section 29A specifically requires reportable offenders to report when they leave their usual place of residence to travel within Western Australia for

seven or more consecutive days. In reporting their intended absence to Police, they must do so seven days before leaving (or if impracticable at least 24 hours after they have left) and provide details of the dates they are absent for and the address/es where they intend to visit. In the circumstance where a reportable offender changes their mind and decides not to leave their place of residence, they must advise the Commissioner of Police within seven days of having decided not to leave.

Clause 6. Section 30 amended

Section 30 of the Act currently requires a reportable offender to advise the Commissioner of Police of any intended travel elsewhere in Australia which is longer than 7 days. A reportable offender is also required to advise the Commissioner of Police of any intended travel outside of Australia, regardless of the duration.

Section 30(1) is to be repealed and replaced such that any intended travel outside of Western Australia [whether overseas or not], must be reported to the Commissioner of Police regardless of the duration of travel.

Clause 7. Section 31 amended

Currently Section 31 of the Act prescribes the requirements that a reportable offender must follow if they change their travel plans while out of Western Australia. As a consequence of the proposed new section 29A, subsections 31(1) and (2) of the Act are to be repealed and replaced with provisions that now also provide for the change of travel plans while in Western Australia. Reportable offenders will be required to state their change of plans as soon as practicable to the Commissioner of Police whether the travel from the place of residence occurs within or outside of Western Australia.

A minor amendment has also been made to subsection 31(3) of the Act by deleting the word "The" and inserting, "If subsection (1)(b) applies, the". This amendment provides for a reportable offender who changes their travel plans while out of Western Australia to report the changes to the Commissioner of Police via facsimile, email or as set out in the Regulations. For offenders who change their travel plans within Western Australia, the existing provisions of sections 34 and 35 of the Act will apply.

Clause 8. Section 32 amended

Section 32 of the Act requires a reportable offender to report back to the Commissioner of Police after they return to Western Australia following travel outside of the State. Such a report must be made within 7 days. Section 32 is to be amended by inserting a new subsection (2a) to provide that if the reportable offender has returned from travel outside of Australia then they will also have to provide the Commissioner of Police with their passport and any other documents that indicate where they travelled to while out of Australia. Subsection 32(3) will also be amended to provide that a reportable offender does not commit an offence against s.63 of the Act if they fail to report in accordance with section 32(2) or (2a) if the reportable offender does not remain in Western Australia for 14 or more consecutive days.

Clause 9. Section 79 amended

Section 79 prescribes for the modification of reporting obligations for participants in witness protection programs. To encompass the newly inserted section 29A, a minor amendment has been made to s.79 to include s.29A as a section that is applicable to Division 10.

Clause 10. Section 115A inserted

Since the enactment of the 'online grooming [cyber predator] offences in section 204B of *The Criminal Code* in March 2006, over 20 people have been convicted of those offences but are not automatically bound by the provisions of the *Community Protection (Offender Reporting) Act 2004*, as the offence in question is not a reportable offence at present. The proposed amendment contained in clause 12 of the Bill will rectify this situation for the future.

However, the provisions in clause 12 will not apply to persons who have already been convicted of these section 204B offences. Western Australia Police (WA Police) have endeavored to have these such offenders declared as reportable offenders through the 'offender reporting order' provisions of section 13 of the Act. Unfortunately, WA Police has been largely unsuccessful in this regard because the courts have not believed that the offender presents a risk to the community.

Clearly the nature of the offence is one where children are put at risk of sexual offences. The offenders who have been convicted of these offences, but who are not subject to an 'offender reporting order' are still posing a risk to children in the community and therefore need to be brought within the scope of the Act. The only way to achieve this is to make provision to the effect that any person who has been convicted of a section 204B offence, prior to the provisions of the Bill coming into effect, will be deemed to be a reportable offender for the purposes of the Act. Proposed section 115A will achieve this by deeming such offenders to have been convicted of a Class 2 offence for the purposes of the Act and for their reporting obligations to begin as soon as the provisions of the Bill become law.

Clause 11. Schedule 1 amended

Schedule 1 of the Act lists the Class 1 offences with respect to the *Criminal Code* and the *Crimes Act 1914 (Cmth)*. Under the provisions of sections 278 and 282 of *The Criminal Code* a person can be convicted of the offence of wilful murder. Likewise, under the provisions of sections 279 and 282 of *The Criminal Code*, a person can be convicted of the offence of murder.

On 10 September 2003, the *Criminal Code Amendment Bill 2003* was introduced into the Legislative Assembly. The Bill contained a number of amendments to *The Criminal Code*, including provisions which would have removed the distinction between wilful murder and murder. The Bill passed through the Legislative Assembly on 4 December 2003 and was subsequently introduced into the Legislative Council on 9 December 2003. Following its introduction into that House, the Bill was split, with the effect that the provisions in relation to the reform of wilful murder and murder were transferred into the *Criminal Code Amendment Bill (No.2) 2003*. That Bill lapsed with the prorogation of Parliament on 23 January 2005. It was hoped that the *Criminal Code Amendment Bill (No.2)*

2003 would be passed by Parliament before the *Community Protection (Offender Reporting) Act 2004* came into operation. On that basis, only the offence of murder under section 279 of *The Criminal Code* is listed as a Class 1 offence in Schedule 1 of the Act.

Advice was sought from the State Solicitors Office (SSO) as to whether a person convicted of the wilful murder of a child would be a reportable offender under the Act, even though the offence in question is not listed as a Class 1 offence. The advice from SSO was that as an element of wilful murder is the intention to cause a person's death, it is arguable that the wilful murder of a child is a reportable offence, namely murder, by virtue of the provisions of section 10(d) of the Act which deals with "intent" to commit offences.

WA Police has been operating on the basis of the SSO advice since the *Community Protection (Offender Reporting) Act 2004* came into operation. However, to put the matter beyond doubt, and so as to avoid any uncertainty in the future, Schedule 1 of the Act is to be amended to confirm that the offence of wilful murder of a child is a Class 1 offence for the purposes of the Act.

Clause 12. Schedule 2 amended

Schedule 2 lists the Class 2 offences with respect to the *Criminal Code*, the *Prostitution Act 2000*, the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*, the *Children and Community Services Act 2004*, the *Crimes Act 1914 (Cmth)*, and the *Customs Act 1901 (Cmth)*. The amendment to Schedule 2 is to insert the offences of s.204B(2), s. 204B(3), s.557K(4) and s.557K(6) of the *Criminal Code*. Sections 204B(2) and (3) relate to the indecent use of electronic communication in procuring children under the age of 16 [cyber predator offences]. Sections 557K(4) and 6) relate to the consorting of child sex offenders with each other, and the presence of a child sex offender near children. The effect of including these offences in Schedule 2 of the Act, is that if a person is convicted of any of these offences they will be subject to the reporting obligations of the Act for a period of 8 years.

Clause 13. *Working with Children (Criminal Record Checking) Act 2004* consequentially amended

This clause amends the *Working with Children (Criminal Record Checking) Act 2004* to insert the offence of wilful murder in Schedule 2 of that Act, which will result in an offence of wilful murder being treated as a "Class 2 offence" for the purposes of that Act.

The clause also provides for transitional measures in relation to wilful murder offences where a person carrying out "child-related work", as defined by the *Working with Children (Criminal Record Checking) Act 2004*, was charged with, or convicted of, wilful murder following the commencement of section 24 of that Act and prior to the commencement of this clause. Upon commencement of this clause, such offences will be treated as a relevant change in the person's criminal record for the purposes of Part 3, Division 1 of the *Working with Children (Criminal Record Checking) Act 2004*.

Community Protection (Offender Reporting) Amendment Bill 2007

EXPLANATORY MEMORANDUM

Clause 1. Short Title

Cites the short title of the Act as the Community Protection (Offender Reporting) Amendment Act 2007.

Clause 2. Commencement

Clauses 1 and 2 come into operation on Assent. The remaining provisions in the Bill come into operation on the day after Assent.

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Section 26 of the Act currently requires a reportable offender to report certain personal details (such as their name, date of birth, address/es, employment, affiliations, certain assets, distinguishable body features, and information relating to previous offences) to the Commissioner of Police. The proposed amendments to section 26, contained in clause 4 of the Bill, will require reportable offenders to disclose information relating to their 'online' identity. This includes their telephone number or email address that is regularly used; the name of the Internet service provider and Internet carriage service that is used to access the Internet; any online name used when communicating via the Internet; and, any website or Internet communication service where the offender's name (either real, alias, email or chat name) is used.

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However, the provisions in clause 12 will not apply to persons who have already been convicted of these section 204B offences. Western Australia Police (WA Police) have endeavored to have these such offenders declared as reportable offenders through the 'offender reporting order' provisions of section 13 of the Act. Unfortunately, WA Police has been largely unsuccessful in this regard because the courts have not believed that the offender presents a risk to the community.

Clearly the nature of the offence is one where children are put at risk of sexual offences. The offenders who have been convicted of these offences, but who are not subject to an 'offender reporting order' are still posing a risk to children in the community and therefore need to be brought within the scope of the Act. The only way to achieve this is to make provision to the effect that any person who has been convicted of a section 204B offence, prior to the provisions of the Bill coming into effect, will be deemed to be a reportable offender for the purposes of the Act. Proposed section 115A will achieve this by deeming such offenders to have been convicted of a Class 2 offence for the purposes of the Act and for their reporting obligations to begin as soon as the provisions of the Bill become law.

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Schedule 1 of the Act lists the Class 1 offences with respect to the *Criminal Code* and the *Crimes Act 1914 (Cmth)*. Under the provisions of sections 278 and 282 of *The Criminal Code* a person can be convicted of the offence of wilful murder. Likewise, under the provisions of sections 279 and 282 of *The Criminal Code*, a person can be convicted of the offence of murder.

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2003 would be passed by Parliament before the *Community Protection (Offender Reporting) Act 2004* came into operation. On that basis, only the offence of murder under section 279 of *The Criminal Code* is listed as a Class 1 offence in Schedule 1 of the Act.

Advice was sought from the State Solicitors Office (SSO) as to whether a person convicted of the wilful murder of a child would be a reportable offender under the Act, even though the offence in question is not listed as a Class 1 offence. The advice from SSO was that as an element of wilful murder is the intention to cause a person's death, it is arguable that the wilful murder of a child is a reportable offence, namely murder, by virtue of the provisions of section 10(d) of the Act which deals with "intent" to commit offences.

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Clause 12. Schedule 2 amended

Schedule 2 lists the Class 2 offences with respect to the *Criminal Code*, the *Prostitution Act 2000*, the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*, the *Children and Community Services Act 2004*, the *Crimes Act 1914 (Cmth)*, and the *Customs Act 1901 (Cmth)*. The amendment to Schedule 2 is to insert the offences of s.204B(2), s. 204B(3), s.557K(4) and s.557K(6) of the *Criminal Code*. Sections 204B(2) and (3) relate to the indecent use of electronic communication in procuring children under the age of 16 [cyber predator offences]. Sections 557K(4) and 6) relate to the consorting of child sex offenders with each other, and the presence of a child sex offender near children. The effect of including these offences in Schedule 2 of the Act, is that if a person is convicted of any of these offences they will be subject to the reporting obligations of the Act for a period of 8 years.

Clause 13. *Working with Children (Criminal Record Checking) Act 2004* consequentially amended

This clause amends the *Working with Children (Criminal Record Checking) Act 2004* to insert the offence of wilful murder in Schedule 2 of that Act, which will result in an offence of wilful murder being treated as a "Class 2 offence" for the purposes of that Act.

The clause also provides for transitional measures in relation to wilful murder offences where a person carrying out "child-related work", as defined by the *Working with Children (Criminal Record Checking) Act 2004*, was charged with, or convicted of, wilful murder following the commencement of section 24 of that Act and prior to the commencement of this clause. Upon commencement of this clause, such offences will be treated as a relevant change in the person's criminal record for the purposes of Part 3, Division 1 of the *Working with Children (Criminal Record Checking) Act 2004*.

Community Protection (Offender Reporting) Amendment Bill 2007

EXPLANATORY MEMORANDUM

Clause 1. Short Title

Cites the short title of the Act as the Community Protection (Offender Reporting) Amendment Act 2007.

Clause 2. Commencement

Clauses 1 and 2 come into operation on Assent. The remaining provisions in the Bill come into operation on the day after Assent.

Clause 3. The Act amended

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Section 26 of the Act currently requires a reportable offender to report certain personal details (such as their name, date of birth, address/es, employment, affiliations, certain assets, distinguishable body features, and information relating to previous offences) to the Commissioner of Police. The proposed amendments to section 26, contained in clause 4 of the Bill, will require reportable offenders to disclose information relating to their 'online' identity. This includes their telephone number or email address that is regularly used; the name of the Internet service provider and Internet carriage service that is used to access the Internet; any online name used when communicating via the Internet; and, any website or Internet communication service where the offender's name (either real, alias, email or chat name) is used.

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Community Protection (Offender Reporting) Amendment Bill 2007

EXPLANATORY MEMORANDUM

Clause 1. Short Title

Cites the short title of the Act as the Community Protection (Offender Reporting) Amendment Act 2007.

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Section 29A has been inserted to provide for reportable offenders to report any intended absence from their place of residence to the Commissioner of Police. This section has been introduced as there are currently no provisions requiring reportable offenders to disclose their travels (absence from residency) that occur within Western Australia.

Proposed section 29A specifically requires reportable offenders to report when they leave their usual place of residence to travel within Western Australia for

seven or more consecutive days. In reporting their intended absence to Police, they must do so seven days before leaving (or if impracticable at least 24 hours after they have left) and provide details of the dates they are absent for and the address/es where they intend to visit. In the circumstance where a reportable offender changes their mind and decides not to leave their place of residence, they must advise the Commissioner of Police within seven days of having decided not to leave.

Clause 6. Section 30 amended

Section 30 of the Act currently requires a reportable offender to advise the Commissioner of Police of any intended travel elsewhere in Australia which is longer than 7 days. A reportable offender is also required to advise the Commissioner of Police of any intended travel outside of Australia, regardless of the duration.

Section 30(1) is to be repealed and replaced such that any intended travel outside of Western Australia [whether overseas or not], must be reported to the Commissioner of Police regardless of the duration of travel.

Clause 7. Section 31 amended

Currently Section 31 of the Act prescribes the requirements that a reportable offender must follow if they change their travel plans while out of Western Australia. As a consequence of the proposed new section 29A, subsections 31(1) and (2) of the Act are to be repealed and replaced with provisions that now also provide for the change of travel plans while in Western Australia. Reportable offenders will be required to state their change of plans as soon as practicable to the Commissioner of Police whether the travel from the place of residence occurs within or outside of Western Australia.

A minor amendment has also been made to subsection 31(3) of the Act by deleting the word "The" and inserting, "If subsection (1)(b) applies, the". This amendment provides for a reportable offender who changes their travel plans while out of Western Australia to report the changes to the Commissioner of Police via facsimile, email or as set out in the Regulations. For offenders who change their travel plans within Western Australia, the existing provisions of sections 34 and 35 of the Act will apply.

Clause 8. Section 32 amended

Section 32 of the Act requires a reportable offender to report back to the Commissioner of Police after they return to Western Australia following travel outside of the State. Such a report must be made within 7 days. Section 32 is to be amended by inserting a new subsection (2a) to provide that if the reportable offender has returned from travel outside of Australia then they will also have to provide the Commissioner of Police with their passport and any other documents that indicate where they travelled to while out of Australia. Subsection 32(3) will also be amended to provide that a reportable offender does not commit an offence against s.63 of the Act if they fail to report in accordance with section 32(2) or (2a) if the reportable offender does not remain in Western Australia for 14 or more consecutive days.

Clause 9. Section 79 amended

Section 79 prescribes for the modification of reporting obligations for participants in witness protection programs. To encompass the newly inserted section 29A, a minor amendment has been made to s.79 to include s.29A as a section that is applicable to Division 10.

Clause 10. Section 115A inserted

Since the enactment of the 'online grooming [cyber predator] offences in section 204B of *The Criminal Code* in March 2006, over 20 people have been convicted of those offences but are not automatically bound by the provisions of the *Community Protection (Offender Reporting) Act 2004*, as the offence in question is not a reportable offence at present. The proposed amendment contained in clause 12 of the Bill will rectify this situation for the future.

However, the provisions in clause 12 will not apply to persons who have already been convicted of these section 204B offences. Western Australia Police (WA Police) have endeavored to have these such offenders declared as reportable offenders through the 'offender reporting order' provisions of section 13 of the Act. Unfortunately, WA Police has been largely unsuccessful in this regard because the courts have not believed that the offender presents a risk to the community.

Clearly the nature of the offence is one where children are put at risk of sexual offences. The offenders who have been convicted of these offences, but who are not subject to an 'offender reporting order' are still posing a risk to children in the community and therefore need to be brought within the scope of the Act. The only way to achieve this is to make provision to the effect that any person who has been convicted of a section 204B offence, prior to the provisions of the Bill coming into effect, will be deemed to be a reportable offender for the purposes of the Act. Proposed section 115A will achieve this by deeming such offenders to have been convicted of a Class 2 offence for the purposes of the Act and for their reporting obligations to begin as soon as the provisions of the Bill become law.

Clause 11. Schedule 1 amended

Schedule 1 of the Act lists the Class 1 offences with respect to the *Criminal Code* and the *Crimes Act 1914 (Cmth)*. Under the provisions of sections 278 and 282 of *The Criminal Code* a person can be convicted of the offence of wilful murder. Likewise, under the provisions of sections 279 and 282 of *The Criminal Code*, a person can be convicted of the offence of murder.

On 10 September 2003, the *Criminal Code Amendment Bill 2003* was introduced into the Legislative Assembly. The Bill contained a number of amendments to *The Criminal Code*, including provisions which would have removed the distinction between wilful murder and murder. The Bill passed through the Legislative Assembly on 4 December 2003 and was subsequently introduced into the Legislative Council on 9 December 2003. Following its introduction into that House, the Bill was split, with the effect that the provisions in relation to the reform of wilful murder and murder were transferred into the *Criminal Code Amendment Bill (No.2) 2003*. That Bill lapsed with the prorogation of Parliament on 23 January 2005. It was hoped that the *Criminal Code Amendment Bill (No.2)*

2003 would be passed by Parliament before the *Community Protection (Offender Reporting) Act 2004* came into operation. On that basis, only the offence of murder under section 279 of *The Criminal Code* is listed as a Class 1 offence in Schedule 1 of the Act.

Advice was sought from the State Solicitors Office (SSO) as to whether a person convicted of the wilful murder of a child would be a reportable offender under the Act, even though the offence in question is not listed as a Class 1 offence. The advice from SSO was that as an element of wilful murder is the intention to cause a person's death, it is arguable that the wilful murder of a child is a reportable offence, namely murder, by virtue of the provisions of section 10(d) of the Act which deals with "intent" to commit offences.

WA Police has been operating on the basis of the SSO advice since the *Community Protection (Offender Reporting) Act 2004* came into operation. However, to put the matter beyond doubt, and so as to avoid any uncertainty in the future, Schedule 1 of the Act is to be amended to confirm that the offence of wilful murder of a child is a Class 1 offence for the purposes of the Act.

Clause 12. Schedule 2 amended

Schedule 2 lists the Class 2 offences with respect to the *Criminal Code*, the *Prostitution Act 2000*, the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*, the *Children and Community Services Act 2004*, the *Crimes Act 1914 (Cmth)*, and the *Customs Act 1901 (Cmth)*. The amendment to Schedule 2 is to insert the offences of s.204B(2), s. 204B(3), s.557K(4) and s.557K(6) of the *Criminal Code*. Sections 204B(2) and (3) relate to the indecent use of electronic communication in procuring children under the age of 16 [cyber predator offences]. Sections 557K(4) and 6) relate to the consorting of child sex offenders with each other, and the presence of a child sex offender near children. The effect of including these offences in Schedule 2 of the Act, is that if a person is convicted of any of these offences they will be subject to the reporting obligations of the Act for a period of 8 years.

Clause 13. *Working with Children (Criminal Record Checking) Act 2004* consequentially amended

This clause amends the *Working with Children (Criminal Record Checking) Act 2004* to insert the offence of wilful murder in Schedule 2 of that Act, which will result in an offence of wilful murder being treated as a "Class 2 offence" for the purposes of that Act.

The clause also provides for transitional measures in relation to wilful murder offences where a person carrying out "child-related work", as defined by the *Working with Children (Criminal Record Checking) Act 2004*, was charged with, or convicted of, wilful murder following the commencement of section 24 of that Act and prior to the commencement of this clause. Upon commencement of this clause, such offences will be treated as a relevant change in the person's criminal record for the purposes of Part 3, Division 1 of the *Working with Children (Criminal Record Checking) Act 2004*.

Community Protection (Offender Reporting) Amendment Bill 2007

EXPLANATORY MEMORANDUM

Clause 1. Short Title

Cites the short title of the Act as the Community Protection (Offender Reporting) Amendment Act 2007.

Clause 2. Commencement

Clauses 1 and 2 come into operation on Assent. The remaining provisions in the Bill come into operation on the day after Assent.

Clause 3. The Act amended

With the exception of the amendments contained in clause 13, the remaining provisions in the Bill are amendments to the *Community Protection (Offender Reporting) Act 2004*. Clause 13 contains consequential amendments to the *Working with Children (Criminal Record Checking) Act 2004*.

Clause 4. Section 26 amended

Section 26 of the Act currently requires a reportable offender to report certain personal details (such as their name, date of birth, address/es, employment, affiliations, certain assets, distinguishable body features, and information relating to previous offences) to the Commissioner of Police. The proposed amendments to section 26, contained in clause 4 of the Bill, will require reportable offenders to disclose information relating to their 'online' identity. This includes their telephone number or email address that is regularly used; the name of the Internet service provider and Internet carriage service that is used to access the Internet; any online name used when communicating via the Internet; and, any website or Internet communication service where the offender's name (either real, alias, email or chat name) is used.

Due to the increasing number of offenders using online resources as a medium to facilitate their offences, it is appropriate to require reportable offenders to report their information relating to their online use. Similar amendments have been made to statutes in Arizona, Kentucky and Virginia (United States of America) where reportable offenders are required to provide police with all their online information and identifiers.

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