

Serial 139  
Sex Offender and Child Homicide Offender Public Website (Daniel's Law)  
Bill 2015  
Mr Elferink

A Bill for an Act to establish the Sex Offender and Child Homicide Offender  
Public Website, and for related purposes



NORTHERN TERRITORY OF AUSTRALIA

SEX OFFENDER AND CHILD HOMICIDE OFFENDER PUBLIC WEBSITE  
(DANIEL'S LAW) ACT 2015

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Act No. [ ] of 2015

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# NORTHERN TERRITORY OF AUSTRALIA

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Act No. [ ] of 2015

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An Act to establish the Sex Offender and Child Homicide Offender Public Website, and for related purposes

[Assented to [ ] 2015]  
[Second reading [ ] 2015]

The Legislative Assembly of the Northern Territory enacts as follows:

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Sex Offender and Child Homicide Offender Public Website (Daniel's Law) Act 2015*.

### 2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

### 3 Interpretation

(1) In this Act:

***affected person***, for Part 4, Division 1, see section 17.

***child homicide offender*** means a reportable offender mentioned in Schedule 1, item 5 to the Offender Reporting Act.

**details**, in relation to a person at a particular time, means the following:

- (a) the person's name at the time, together with any other name by which the person is known at the time, or had been known before the time;
- (b) the person's date of birth;
- (c) for each offence that resulted in the person becoming a reportable offender:
  - (i) a reference to the provision of the Act that constituted the offence; and
  - (ii) the common name of the offence (derived from the heading of the section of that Act or otherwise); and
  - (iii) the year or range of years during which the offence was committed;
- (d) a photograph of the person taken shortly before the time;
- (e) the general location area as prescribed by regulation:
  - (i) if the person is or was a sex offender or child homicide offender whose whereabouts are unknown at the time – in which the person resided immediately before their whereabouts became unknown; or
  - (ii) otherwise – in which the person resides.

**earliest publication date**, see section 13(3).

**Offender Reporting Act** means the *Child Protection (Offender Reporting and Registration) Act*.

**panel**, see section 8(1).

**public place** means any of the following:

- (a) a place open to or used by the public;
- (b) a place to which the public is permitted to have access whether on payment of a fee or otherwise;
- (c) a road or road-related area, court, alley or thoroughfare that the public are allowed to use, despite that it may be on private property.



**relevant offender** means a person who:

- (a) is subject to reporting obligations under the Offender Reporting Act; and
- (b) is one or more of the following:
  - (i) a sex offender or child homicide offender whose reporting period is 15 years;
  - (ii) a sex offender or child homicide offender whose reporting period is the rest of the person's life;
  - (iii) a person who was a reportable offender under section 38(b) of the Offender Reporting Act but who later attained the age of 18 years;
  - (iv) a sex offender or child homicide offender whose whereabouts are unknown.

**relevant victim**, in relation to a relevant offender at a particular time, means a person who is one of the following:

- (a) a victim of an offence that resulted in the offender becoming a reportable offender;
- (b) if the offender is a sex offender – a person who, at the time, is a parent or legal guardian of a victim of an offence that resulted in the offender becoming a reportable offender, if the victim of the offence is, at the time, under the age of 18 years or a person with a disability;
- (c) if the offender is a child homicide offender – a person who was a parent or legal guardian of the victim of the child homicide at the time of the child homicide.

**reportable offender**, see section 6 of the Offender Reporting Act.

**reporting period**, see section 3 of the Offender Reporting Act.

**reviewable decision**, for Part 4, Division 1, see section 16.

**sex offender** means a reportable offender other than a child homicide offender.

**Sex Offender and Child Homicide Offender Public Website**, see section 5(1).

**Tribunal** means the Civil and Administrative Tribunal.

**website** means the Sex Offender and Child Homicide Offender Public Website.

*Note for subsection (1)*

*The Interpretation Act contains definitions and other provisions that may be relevant to this Act.*

- (2) For this Act, a person is in custody if the person is:
  - (a) a prisoner, other than a non-custodial offender, within the meaning of the *Correctional Services Act*; or
  - (b) a person who is detained in a prison or other correctional facility (however described) in a place outside the Territory.
- (3) For this Act, a reportable offender's whereabouts are unknown if:
  - (a) the offender has not complied with their reporting obligations under the Offender Reporting Act; and
  - (b) enquiries have been made, including by the Police Force, but the offender has not been found.

#### **4 Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 4*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

## **Part 2 Sex Offender and Child Homicide Offender Public Website**

### **5 Website**

- (1) The Commissioner of Police must establish and maintain a website (the **Sex Offender and Child Homicide Offender Public Website**) for this Act.
- (2) The Commissioner of Police must publish the details of relevant offenders:
  - (a) on the website; and
  - (b) in any other way the Commissioner of Police considers appropriate.

## **6            Publication on and removal from website of details**

- (1) The Commissioner of Police must post on the website (and may publish in another way) the details in relation to a relevant offender in accordance with section 13.
- (2) The Commissioner of Police must remove from the website the details in relation to a relevant offender in accordance with section 14.

## **7            Material change to details**

- (1) As soon as practicable after the Commissioner of Police is satisfied that there has been a material change to a detail published on the website in relation to a relevant offender, the Commissioner of Police must post that change on the website.
- (2) If the Commissioner of Police has also published the details in relation to a relevant offender in another way, the Commissioner of Police may also publish the change in that other way.

# **Part 3            Publication of details**

## **Division 1        Panel**

### **8            Panel**

- (1) A panel (the *panel*) is established for this Act.
- (2) The panel consists of the following members:
  - (a) the Commissioner of Police;
  - (b) the Commissioner of Correctional Services;
  - (c) the Chief Executive Officer of the Agency.
- (3) The panel, and each member of the panel, have the functions conferred on them under this Act.
- (4) The panel, and each member of the panel, have the powers necessary to perform their functions.

### **9            Delegation**

A member of the panel may delegate any of the member's powers and functions under this Act to a person employed in the organisation that the member heads.

## **Division 2            Panel decision**

### **10            Decision of panel on publication of details**

- (1) After taking into account all information the panel considers relevant, the panel must make one of the following decisions about the publication of the details in relation to a sex offender or child homicide offender:
  - (a) if the panel is satisfied of a matter mentioned in section 11 – the decision must be that the details must not be published;
  - (b) if the panel is satisfied that the offender is a sex offender or child homicide offender and paragraph (a) does not apply – the decision must be that the details must be published.
- (2) The panel must give a decision notice as soon as practicable after making a decision about the publication of the details in relation to a sex offender or child homicide offender:
  - (a) to each relevant victim, if the victim:
    - (i) has registered under the *Victims of Crime Rights and Services Act*, or
    - (ii) has requested that the panel inform the victim of a decision about the publication of the details in relation to the offender; and
  - (b) if the decision is that details in relation to the offender must be published – to the offender.
- (3) In this section:

**decision notice**, for a decision, means a written notice setting out:

- (a) the decision and the reasons for it; and
- (b) any right the person to whom the notice is to be given has, under this or another Act, to apply for a review of, or to appeal, the decision.

## **11            Details not to be published**

The panel must make a decision that the details in relation to a relevant offender must not be published if satisfied of any of the following:

- (a) that publication would contravene:
  - (i) an order under section 57 of the *Evidence Act* made during a proceeding in relation to an offence that resulted in the relevant offender becoming a reportable offender; or
  - (ii) another order, made during such a proceeding, that restricts or prohibits publication of particulars in relation to a person;
- (b) that the significant harm to a relevant victim that would be caused by the publication outweighs any benefit of the publication to any other relevant victim and any public benefit in that publication;
- (c) that there are other valid reasons not to publish the details, including that to publish them would:
  - (i) prejudice the investigation of a contravention (or possible contravention) of a law in force in the Territory; or
  - (ii) prejudice the fair trial of a person.

## **12            Reconsideration of decision**

- (1) The panel must reconsider a decision made under section 10 in relation to a sex offender or child homicide offender on application by a relevant victim.
- (2) The panel may reconsider a decision made under section 10 in relation to a sex offender or child homicide offender on the panel's own initiative.
- (3) When the panel reconsiders a decision, it must take into account all information the panel considers relevant and make a decision to:
  - (a) confirm the decision; or
  - (b) set aside the decision and substitute a new decision.
- (4) Section 10(2) applies, with the necessary changes, to a decision under subsection (3).

## **Division 3            Publication on website**

### **13            Time for publication of details on website**

- (1) This section applies if the panel decides under section 10, or decides after reconsidering a decision under section 12, that details of a relevant offender must be published.
- (2) The Commissioner of Police must publish on the website the details in relation to a relevant offender as soon as practicable after the ***earliest publication date***.
- (3) For subsection (1), the ***earliest publication date***, in relation to the details of a relevant offender, is the latest of the following:
  - (a) 28 days after the panel decides that the details are to be published;
  - (b) if the panel reconsiders under section 12 the decision that the details are to be published and the publication has not yet taken place – 28 days after the reconsideration;
  - (c) a date, more than 28 days after deciding, or reconsidering the decision, specified by the panel (for example, to allow for an offender to be released from custody);
  - (d) if one (or more) applications for review are made under section 18, the day on which the Tribunal makes its decision on the review, or the latest of the reviews;
  - (e) the day on which the relevant offender enters the Territory;
  - (f) if the relevant offender is a Territory reportable offender – the day on which the offender is released from custody in the Territory.

- (4) In this section:

***Territory reportable offender***, see section 7 of the Offender Reporting Act.

### **14            Time for removal from website of details**

The Commissioner of Police must remove from the website the details in relation to a person:

- (a) if a decision to remove those details is made by the panel after a reconsideration under section 12 – as soon as practicable after the decision; or

- (b) if a decision to remove those details is made by the Tribunal on review under section 18 – as soon as practicable after the Commissioner of Police becomes aware of the Tribunal decision; or
- (c) as soon as practicable after the Commissioner of Police becomes aware that one of the following has occurred:
  - (i) the person has died;
  - (ii) if the person was a reportable offender who was a relevant offender only because the person's whereabouts were unknown – the person's whereabouts are no longer unknown;
  - (iii) the person is in custody or otherwise ceases to be a relevant offender.

#### **Division 4            Offender not permanently in Territory**

##### **15            Relevant offender not permanently in Territory**

- (1) This section applies in relation to a relevant offender who is not a permanent resident in the Territory, but who:
  - (a) lives or works in the Territory from time to time; or
  - (b) visits the Territory from time to time.
- (2) This section also applies, with any necessary changes, in relation to a relevant offender who is a permanent resident of the Territory but who leaves the Territory for periods longer than 14 days from time to time.
- (3) If the relevant offender enters the Territory after the commencement of this Act, the panel may consider under section 10 whether or not the details in relation to the offender are to be published, despite that the offender may have again left the Territory.
- (4) If the decision under section 10, or after a reconsideration under section 12, is that the details are to be published, the earliest publication date applies in relation to the first publication of the details.
- (5) If the relevant offender is in the Territory on the earliest publication date, the Commissioner of Police may publish the details on the website in accordance with section 13.

- (6) If the relevant offender is not in the Territory on the earliest publication date, the Commissioner of Police:
- (a) must defer publication of the details until the Commissioner becomes aware that the relevant offender has entered the Territory; and
  - (b) on becoming aware the offender has entered the Territory, must publish the details on the website.
- (7) Once the relevant offender's details have been published initially, the Commissioner of Police:
- (a) must remove the details from the website when the Commissioner becomes aware the offender has left the Territory for a period expected to be longer than 14 days; and
  - (b) may again publish the details on becoming aware the offender has re-entered the Territory.

## **Part 4            Miscellaneous matters**

### **Division 1        Jurisdiction of Tribunal**

#### **16            Meaning of *reviewable decision***

A ***reviewable decision*** is a decision of the panel under section 10 or 12 that details in relation to a sex offender or child homicide offender must or must not be published.

#### **17            Meaning of *affected person***

An ***affected person*** for a reviewable decision is:

- (a) a relevant victim; or
- (b) if the decision is that details in relation to a sex offender or child homicide offender must be published – the offender.

#### **18            Jurisdiction of Civil and Administrative Tribunal**

An affected person for a reviewable decision may apply to the Tribunal for a review of the decision.



## **Division 2            Information sharing**

### **19            Definition**

(1) In this Division:

***information sharing authority*** means:

- (a) a person who, as the Chief Executive Officer of an Agency, a public sector employee or a police officer:
    - (i) is acting under a law of the Territory in relation to a sex offender or child homicide offender; or
    - (ii) otherwise has relevant information in relation to a sex offender or child homicide offender or a relevant victim; or
  - (b) a relevant victim; or
  - (c) any other person or body prescribed by regulation.
- (2) The Regulations may specify that a person who, or a body that, would otherwise be an information sharing authority under subsection (1) is not an information sharing authority.

### **20            Sharing information**

- (1) The panel may request that an information sharing authority provide to the panel information about a reportable offender that the authority holds if:
- (a) the panel specifies the information to which, and the reportable offender to whom, the request relates; and
  - (b) the panel reasonably believes that the requested information would assist the panel to make a decision about whether the reportable offender is a relevant offender details in relation to whom must be published on, or removed from, the website.
- (2) The information sharing authority must, as soon as practicable after receiving the request:
- (a) subject to subsection (4), give so much of the requested information to the panel as the authority reasonably believes would assist the panel to make the decision mentioned in subsection (1)(b); and
  - (b) refuse to give any requested information in relation to which the authority does not hold that belief.

- (3) For the purposes of forming the belief mentioned in subsection (2)(a):
- (a) the information sharing authority may ask the panel to give the information sharing authority further information about the request; and
  - (b) the panel may give the further information.
- (4) The information sharing authority may refuse to give the panel so much of the requested information as is covered by any of the following:
- (a) the authority reasonably believes that giving the information could:
    - (i) prejudice the investigation of a contravention (or possible contravention) of a law in force in the Territory; or
    - (ii) prejudice a coronial inquest or inquiry; or
    - (iii) prejudice any proceedings in a court or tribunal; or
    - (iv) contravene any legal professional or client legal privilege; or
    - (v) enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained; or
    - (vi) endanger a person's life or physical safety, or cause distress to a relevant victim; or
    - (vii) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law in force in the Territory;
  - (b) a circumstance prescribed by regulation exists in relation to the information.
- (5) The information sharing authority must, at the same time the authority refuses to give the panel any or all of the requested information, give the panel written reasons for the refusal.

## **21            Interactions with other laws**

This Division has effect despite the operation of any other law of the Territory that prohibits or restricts the disclosure of information.

## Division 3 Liability

### 22 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function under this Act as:
- (a) a member of the panel; or
  - (b) the Commissioner of Police; or
  - (c) a person to whom a power or function under this Act has been delegated under section 9 or otherwise.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) In this section:

**exercise**, of a power, includes the purported exercise of the power.

**performance**, of a function, includes the purported performance of the function.

## Division 4 Offences

### 23 Conduct promoting abuse of offender or family member

- (1) A person (**person A**) commits an offence if person A:
- (a) intentionally engages in conduct; and
  - (b) is reckless as to whether the conduct is engaged in elsewhere than in private; and
  - (c) has knowledge that another person (**person B**) is a relevant offender in relation to whom details have been posted on the website; and
  - (d) is reckless as to whether the conduct is abuse towards, or would promote abuse of, person B or an immediate family member of person B.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (2) A person (**person A**) commits an offence if person A:
- (a) intentionally engages in conduct; and

- (b) is reckless as to whether the conduct is engaged in elsewhere than in private; and
- (c) is reckless as to whether another person (**person B**) is a relevant offender in relation to whom details have been posted on the website; and
- (d) is reckless as to whether the conduct is abuse towards, or would promote abuse of, person B or an immediate family member of person B.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (3) For subsection (1)(b) or (2)(b), conduct is taken to be engaged in elsewhere than in private if it:
  - (a) consists of any form of communication with the public or a section of the public; or
  - (b) occurs in a public place or in sight or hearing of a person who is in a public place.
- (4) Despite section 43AW of the Criminal Code, it is not a defence to a prosecution for an offence against subsection (2) if the defendant was under a mistaken belief about the status of person B as a relevant offender in relation to whom details had been posted on the website.
- (5) In this section:

**abuse**, in relation to a person, means conduct that is abusive or threatening to the person, or that shows serious ridicule of the person.

**immediate family member**, in relation to a person, means one of the following:

- (a) a spouse or de facto partner of the person;
- (b) a parent (including a stepmother or stepfather) or grandparent of the person;
- (c) a child (including a stepchild) or grandchild of the person;
- (d) a brother or sister (including a half-brother or half-sister) of the person.

## **24 Publication or display of details**

- (1) The Minister may grant permission to a person to publish or display a detail, on any conditions the Minister considers appropriate.
- (2) A person commits an offence if the person:
  - (a) is reckless as to whether another person is a relevant offender in relation to whom details have been posted on the website; and
  - (b) intentionally publishes or displays a detail in relation to the other person; and
  - (c) does so otherwise than in accordance with a permission granted under subsection (1).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) Strict liability applies to subsection (2)(c).
- (4) A person commits an offence if:
  - (a) the person has published on the Internet, or displayed, a detail in relation to a relevant offender in accordance with a permission granted under subsection (1); and
  - (b) the Commissioner of Police has removed the detail from the website; and
  - (c) the person is reckless as to whether the Commissioner has removed the detail from the website; and
  - (d) 30 days have passed since the Commissioner has removed the detail from the website; and
  - (e) the person has not removed the detail from the Internet or display.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (5) Strict liability applies to subsection (4)(a), (b), (d) and (e).

(6) It is a defence to a prosecution for an offence against subsection (4):

- (a) for publication of a detail on the Internet – if the defendant has taken all reasonable steps to remove the detail from the Internet but, for technical reasons not within the control of the defendant, the details remain accessible on the Internet; or
- (b) for display of a detail – if the defendant has taken all reasonable steps to remove the detail from the display.

(7) In this section:

**display** means display in or within view of a public place.

## **25        Criminal liability of executive officer of body corporate**

(1) An executive officer of a body corporate commits an offence if:

- (a) the body corporate commits an offence by contravening section 23 or 24 (a **relevant offence**) and the officer was reckless about whether the contravention would happen; and
- (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
- (c) the officer recklessly failed to take reasonable steps to prevent the contravention.

Maximum penalty:        The maximum penalty that may be imposed on an individual for the relevant offence.

(2) Strict liability applies to subsection (1)(b).

(3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:

- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
  - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
  - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);

- (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
- (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (4) Subsection (3) does not limit the matters the court may consider.
- (5) This section does not affect the liability of the body corporate.
- (6) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (7) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (8) In this section:

**executive officer**, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

## **Division 5 Regulations and guidelines**

### **26 Regulations**

The Administrator may make regulations under this Act.

### **27 Guidelines**

- (1) The Minister may issue guidelines, consistent with this Act and the Regulations, relating to the performance of functions by the panel or the Commissioner of Police.
- (2) The panel and the Commissioner of Police must have regard to the guidelines when performing functions under this Act.

## **Part 5 Transitional matter for Sex Offender and Child Homicide Offender Public Website (Daniel's Law) Act 2015**

### **28 Application to pre-commencement offenders**

This Act applies in relation to a sex offender or child homicide offender even if the only offence that resulted in the offender becoming a reportable offender occurred before the commencement of the *Sex Offender and Child Homicide Offender*

*Public Website (Daniel's Law) Act 2015.*

## **Part 6 Consequential amendments**

### **Division 1 Child Protection (Offender Reporting and Registration) Act**

#### **29 Act amended**

This Division amends the *Child Protection (Offender Reporting and Registration) Act*.

#### **30 Schedule 1 amended**

Schedule 1, item 5

*omit*

162 or 163

*insert*

156 or 160

### **Division 2 Information Act**

#### **31 Act amended**

This Division amends the *Information Act*.

#### **32 Section 49D inserted**

After section 49D, in Part 4, Division 2

*insert*

#### **49E Information under *Sex Offender and Child Homicide Offender Public Website (Daniel's Law) Act***

Information is exempt under section 44 if it:

- (a) is obtained or created in relation to the making of a decision, or any deliberations leading to the making of a decision, of the panel under the *Sex Offender and Child Homicide Offender Public Website (Daniel's Law) Act*, or
- (b) is information considered by the panel before the panel makes a decision under that Act.



**Division 3            Expiry of Part**

**33            Expiry of Part**

This Part expires on the day after it commences.