**Firearms and Other Acts Amendment Bill 2021**

**Introduction Print**

EXPLANATORY MEMORANDUM

591273

BILL LA INTRODUCTION 7/9/2021

Clause Notes

Part 1—Preliminary

Clause 1 sets out the purposes of the Bill.

In summary, the purposes of the Bill are—

* to amend the **Control of Weapons Act 1990** to exempt protective services officers engaged in official duties from the operation of certain offences under that Act on or after 17 September 1995 and before 22 September 2020 regarding oleoresin capsicum spray; and
* to amend the **Criminal Procedure Act 2009**—
* to provide that section 387O of Division 7B of Part 8.2 of Chapter 8 is repealed on the fourth anniversary of the commencement of the Division; and
* to extend the operation of Division 7B of Part 8.2 Chapter 8, to enable the expanded phased trial and evaluation of Digitally Recorded Evidence in Chief to continue for a further two years, beyond the current legislative sunset date of 3 October 2022.
* to amend the **Evidence (Miscellaneous Provisions) Act 1958** to enable the Magistrates' Court to direct that an accused appear before the Magistrates' Court by audio visual link in limited circumstances in relation to a first remand hearing; and
* to amend the **Firearms Act 1996**—
* to enable the Chief Commissioner, following a temporary or permanent declaration under section 3A or 3B, to allow a person who held an existing firearms licence to retain or renew that licence for the purposes of possessing, carrying or using the reclassified firearm under the existing licence; and
* to clarify the form of documents regarding proof of identity to be provided to the Chief Commissioner; and
* in relation to the hire or loan, disposal and storage of firearms; and
* to clarify how firearms and firearms parts are to be sent by post by licensed firearms dealers; and
* to provide that it is an offence for a person to whom a firearm prohibition order applies to fail to notify the Chief Commissioner of a change of address; and
* to allow the Chief Commissioner to delegate the power to make a firearm prohibition order to chief superintendents, superintendents and inspectors who have responsibility over certain portfolios; and
* to make minor and technical amendments; and
* to amend the **Sex Offenders Registration Act 2004**—
* as a consequence of the enactment of the Combatting Child Sexual Exploitation Legislation Amendment Act 2019 of the Commonwealth and the Crimes Legislation Amendment (Sexual Crimes Against Children and Other Measures) Act 2020 of the Commonwealth; and
* to reduce the timeframe that a registrable offender is required to report their return to Victoria from interstate; and
* to amend the **Victoria Police Act 2013**—
* to enable a protective services officer to be promoted to the rank of protective services officer senior in the same position; and
* to validate the promotion of a protective services officer to the rank of a protective services officer senior in the same position on or after 1 April 2020.

Clause 2 provides for the commencement arrangements of the Bill.

Specifically, subclause (1) provides that the Bill (except Parts 5 and 6) come into operation on the day after the day the Bill receives the Royal Assent.

Subclause (2) provides that, subject to subclause (3), Parts 5 and 6 come into operation on a day or days to be proclaimed.

Subclause (3) provides for the default commencement of Parts 5 and 6 on 30 August 2022.

Part 2—Amendment of Control of Weapons Act 1990

Clause 3 inserts new section 18 into the **Control of Weapons Act 1990** to validate certain conduct of a protective services officer engaged in official duties with a prohibited weapon designed to discharge oleoresin capsicum spray so that the protective services officer is taken not to have committed a relevant offence against that Act as if an exemption was valid and in force at the time of the conduct.

It is an offence against the **Control of Weapons Act 1990** to engage in certain conduct with a prohibited weapon without an exemption or an approval granted under that Act.

On 18 September 2020, the Chief Commissioner of Police advised the then Minister for Police and Emergency Services that protective services officers were not covered by an exemption or an approval under the **Control of Weapons Act 1990** for the prohibited weapon that is used to discharge oleoresin capsicum spray. The Government took swift action to rectify this oversight and on 22 September 2020 an exemption order covering protective services officers equipped with the prohibited weapon used to discharge oleoresin capsicum spray was made by the Governor in Council.

New section 18 operates to cover protective services officers over the entire period during which an exemption did not apply. This period spans from 17 September 1995 being the first date that a prohibited weapon used to discharge oleoresin capsicum spray may have been available to a protective services officer, through to 22 September 2020 which is the date that an exemption was granted by the Governor in Council under the **Control of Weapons Act 1990**.

In the period 17 September 1995 to 22 September 2020 the **Control of Weapons Act 1990** and statutory rules made under that Act have been amended on multiple occasions. New section 18 is drafted to reflect the state of the law in relation to the relevant offence and the prescribed prohibited weapon at each relevant time.

New section 18(1) validates the conduct of a protective services officer that would otherwise constitute an offence against the **Control of Weapons Act 1990** where the conduct is constituted by a protective services officer engaged in official duties who brought a prohibited weapon into Victoria or caused a prohibited weapon to be brought into or sent into Victoria or who possessed, used or carried a prohibited weapon. In this case, the protective services officer is taken not to have committed a relevant offence as if a valid exemption had been granted and was in force at the time of the protective services officer's conduct.

New section 18(2) inserts the definition of ***exemption*** for the purposes of subsection (1). Paragraph (a) in the definition reflects the Governor in Council's power to grant an exemption as it applied on or after 17 September 1995 and before the commencement of amendments made by sections 6 and 9 of the **Control of Weapons (Amendment) Act 2000**. Paragraph (b) in the definition reflects the Governor in Council's exemption power as it applied on or after 17 December 2000.

New section 18(3) validates the conduct of a protective services officer that would otherwise constitute an offence against section 5(1A) of the **Control of Weapons Act 1990** where the conduct is constituted by a protective services officer engaged in official duties who possessed, used or carried a prohibited weapon in a licensed premises or in a public place that is in the immediate vicinity of a licensed premises. These offences were inserted into the **Control of Weapons Act 1990** by section 4(1) of the **Justice Legislation Amendment Act 2007** which came into operation on 8 November 2007.

New section 18(4) validates the conduct of a protective services officer that would otherwise constitute an offence against section 5AA of the **Control of Weapons Act 1990** on or after 16 May 2012 and before 22 September 2020. This reflects the commencement of section 4 of the **Control of Weapons and Firearms Acts Amendment Act 2012**, which came into operation on 16 May 2012, and which moved the offence in paragraph 5(1)(e) of the **Control of Weapons Act 1990** to new section 5AA of the **Control of Weapons Act 1990** and relates to conduct that is possess, use or carry a prohibited weapon without an exemption.

New section 18(5) provides that section 18 does not apply to a protective services officer who is a ***prohibited person*** on or after 17 December 2000 and before 22 September 2020. This reflects amendments made by section 5(1) of the **Control of Weapons (Amendment) Act 2000**, which came into operation on 17 December 2000, to the **Control of Weapons Act 1990** to provide that an exemption does not apply to a person who is a ***prohibited person*** within the meaning of the **Firearms Act 1996**.

New section 18(6) inserts the definitions ***prohibited weapon***, ***protective services officer***, and ***relevant offence*** for the purposes of section 18.

The definition of ***prohibited weapon*** refers to an article designed or adapted to discharge oleoresin capsicum spray (however described). Paragraph (a) refers to a prescribed weapon within the meaning of section 3 of the **Control of Weapons Act 1990** as it applied before the commencement of section 5(2) of the **Control of Weapons (Amendment) Act 2000**, which came into operation on 17 December 2000; paragraph (b) reflects the prohibited weapon prescribed on and after that date.

The definition of ***protective services officer*** refers to a protective services officer both before and after the commencement of the **Victoria Police Act 2013** on 1 July 2014. Paragraph (a) refers to a protective services officer appointed under section 118B of the **Police Regulation Act 1958**; paragraph (b) refers to a protective services officer within the meaning of the **Victoria Police Act 2013** on or after 1 July 2014.

The definition of ***relevant offence*** reflects the various iterations of the offences against the **Control of Weapons Act 1990** that the conduct addressed by new section 18 may constitute.

Paragraph (a) in the definition of ***relevant offence*** refers to an offence against section 5(1)(a), (b) or (d) of the **Control of Weapons Act 1990** as in force before the commencement of section 6 of the **Control of Weapons (Amendment) Act 2000**, which came into operation on 17 December 2000, and is constituted by conduct that is bring into Victoria or cause to be brought or sent into Victoria or possess, carry or use a prescribed weapon without an exemption.

Paragraph (b) in the definition of ***relevant offence*** refers to an offence against section 5(1)(a), (b) or (e) of the **Control of Weapons Act 1990** as in force before the commencement of section 5 of the **Control of Weapons Amendment Act 2010**, which came into operation on 22 August 2010, and is constituted by conduct that is bring into Victoria or cause to be brought into or sent into Victoria or possess, use or carry a prohibited weapon without an exemption.

Paragraph (c) in the definition of ***relevant offence*** refers to an offence against section 5(1)(a), (b) or (e) of the **Control of Weapons Act 1990** as in force before the commencement of section 3 of the **Control of Weapons and Firearms Acts Amendment Act 2012**, which came into operation on 16 May 2012, and is constituted by conduct that is bring into Victoria or cause to be brought into or sent into Victoria or possess, use or carry a prohibited weapon without an exemption.

Paragraph (d) in the definition of ***relevant offence*** refers to the current offences against section 5(1)(a) or (b) of the **Control of Weapons Act 1990** as they applyon or after 16 May 2012, which is the date on which section 3 of the **Control of Weapons and Firearms Acts Amendment Act 2012** came into operation and is constituted by conduct that is bring into Victoria or cause to be brought into or sent into Victoria a prohibited weapon without an exemption.

Part 3—Amendment of Criminal Procedure Act 2009

Clause 4 substitutes section 387P of the **Criminal Procedure Act 2009** to—

* provide for the repeal of section 387O on the 4th anniversary of the commencement of Division 7B; and
* provide for the repeal of Division 7B for the use of recorded evidence-in-chief of a complainant in family violence offence proceedings on the 6th anniversary of its commencement.

Part 4—Amendment of Evidence (Miscellaneous Provisions) Act 1958

Clause 5 substitutes section 42JA(3) of the **Evidence (Miscellaneous Provisions) Act 1958**, which concerns the appearance of an adult accused at a first remand hearing before the Magistrates' Court.

New section 42JA(3) provides that, unless the Magistrates' Court makes a direction under new section 42MAA(1) (inserted by clause 6), an accused, other than a child, who has been taken into custody and required to be brought before a bail justice or the Magistrates' Court within a reasonable time of being taken into custody to be dealt with according to law is, if being brought before the Magistrates' Court, required to be brought physically before the court.

This differs from current section 42JA(3), which provides that an adult accused must physically attend first remand hearings, unless the accused consents to appear by audio visual link. This amendment reflects that new section 42MAA(1) allows the Magistrates' Court to direct an accused to appear at a first remand hearing by audio visual link without their consent. However, physical attendance of the accused remains the default requirement for first remand hearings.

Clause 6 inserts new section 42MAA in the **Evidence (Miscellaneous Provisions) Act 1958**to enable the Magistrates' Court to direct that an adult accused appear before it by audio visual link at their first remand hearing.

The **Evidence (Miscellaneous Provisions) Act 1958** does not currently provide for a court to direct that an accused appear by audio visual link at a first remand hearing. New section 42MAA will allow the Magistrates' Court to do so in appropriate circumstances.

New section 42MAA(1) provides that the Magistrates' Court may direct that an accused appear before it by audio visual link in a proceeding in which, by virtue of section 42JA(3), physical attendance would otherwise be required if it is satisfied that appearance by audio visual link is consistent with the interests of justice and either—

* the accused consents to appear by audio visual link; or
* it is satisfied that exceptional circumstances exist.

Section 42M allows the court to make directions for audio visual link appearance for hearings other than first remand hearings. Consistent with section 42M(1), new section 42MAA(1) requires the Magistrates' Court, in making a direction, to be satisfied that the appearance is consistent with the interests of justice and, if consent is not provided, that exceptional circumstances exist. However, new section 42MAA(1) differs from section 42M(1) in that the direction can be made, in the absence of exceptional circumstances, if the accused gives their consent, rather than requiring the consent of all parties. The same definition of ***exceptional circumstances***, provided in section 42C, applies to new section 42MAA(1). Exceptional circumstances includes, but is not limited to, a state of emergency declared under section 198 of the **Public Health and Wellbeing Act 2008** or a state of disaster declared under section 23 of the **Emergency Management Act 1986** in an area where an accused is required to appear before a court or required to transit through in order to appear before a court.

New section 42MAA(2) provides that the Magistrates' Court may make a direction on its own motion, or on an application made by or on behalf of either party or a police officer up to 2 hours before the time at which the accused is due to appear. The 2 hour time frame does not apply to a direction made by the Magistrates' Court on its own motion. New section 42MAA(3) provides that an application under new section 42MAA(2)(b), for an accused to appear at their first remand hearing by audio visual link, is to be made orally or in writing to the Magistrates' Court. The timing and nature of an application under section 42MAA(2)(b) recognises that such applications may need to be made a short time before the first remand hearing, as the reason for appearance by audio visual link may not become apparent until shortly before the hearing.

New section 42MAA(4) provides that the exercise of power by the Magistrates' Court to direct, under section 42MAA(1), that a person appear by audio visual link is subject to any practice directions.

Clause 7 amends section 42UA(c) of the **Evidence (Miscellaneous Provisions) Act 1958**to provide that the head of jurisdiction of a court from time to time may issue practice directions, statements or notes relating to the exercise by the court of its discretion in relation to an application made in accordance with new section 42MAA. Section 42UA currently allows practice directions, statements or notes to be issued by the court in relation applications made in accordance with sections 42E, 42L, 42M, 42N and 42P.

Part 5—Amendment of Firearms Act 1996

Clause 8 makes a statute law revision to clarify that a device commonly known as a line thrower designed for establishing lines between structures or natural features and powered by compressed air or other compressed gases and used for rescue purposes, rescue training or rescue demonstration, is excluded from the definition of ***firearm*** in section 3(1) of the**Firearms Act 1996**.

Clause 9 inserts new section 3C into the **Firearms Act 1996** to empower the Chief Commissioner to allow a person to continue to be licensed or to renew a firearms license following a temporary or permanent declaration in accordance with section 3A or 3B of that Act.

New section 3C operates as a grandfathering provision. In the event that the Chief Commissioner makes a temporary or permanent declaration to reclassify a firearm to a higher category in accordance with section 3A or 3B of the **Firearms Act 1996**, new section 3C empowers the Chief Commissioner to allow a licence holder to retain a reclassified firearm on an existing licence or to renew an existing licence for the purposes of retaining the reclassified firearms on that licence. The Chief Commissioner must notify in writing the person of the Chief Commissioner's decision, which may be by means of electronic communication.

Clause 10 amends section 32 of the **Firearms Act 1996** to substitute the requirement to provide evidence of identity of an applicant for a license under Part 2 of that Act to meet the requirements of the Financial Transactions Report Act 1998 of the Commonwealth with a requirement to provide proof of identity in the form approved by the Chief Commissioner.

Clause 11 amends section 40(3)(b)(i) of the **Firearms Act 1996** to substitute the requirement to provide evidence of identity when nominating a person to replace the person nominated in an application under section 31 to meet the requirements of the Financial Transactions Report Act 1998 of the Commonwealth with a requirement to provide proof of identity in the form approved by the Chief Commissioner.

Clause 12 amends section 41(4)(b)(i) of the **Firearms Act 1996** to substitute the requirement to provide evidence of identity of an applicant for the renewal of a license under Part 2 of that Act to meet the requirements of the Financial Transactions Report Act 1998 of the Commonwealth with a requirement to provide proof of identity in the form approved by the Chief Commissioner.

Clause 13 amends section 64(a) of the **Firearms Act 1996** to substitute the requirement to provide evidence of identity of an applicant and any person the applicant proposes to employ in the business for a dealers license under Part 3 of that Act to meet the requirements of the Financial Transactions Report Act 1998 of the Commonwealth with a requirement to provide proof of identity in the form approved by the Chief Commissioner.

Clause 14 amends section 65(c)(i) of the **Firearms Act 1996** to substitute the requirement to provide evidence of identity of an applicant for a dealers license under Part 3 of that Act to meet the requirements of the Financial Transactions Report Act 1998 of the Commonwealth with a requirement to provide proof of identity in the form approved by the Chief Commissioner.

Clause 15 amends section 72(4)(a) of the **Firearms Act 1996** to substitute the requirement to provide evidence of identity of an applicant for renewal of a dealers license under Part 3 of that Act to meet the requirements of the Financial Transactions Report Act 1998 of the Commonwealth with a requirement to provide proof of identity in the form approved by the Chief Commissioner.

Cause 16 amends section 75(4)(b)(i) of the **Firearms Act 1996** to substitute the requirement to provide evidence of identity when nominating a person to replace the person nominated in the application under section 65 to meet the requirements of the Financial Transactions Report Act 1998 of the Commonwealth with a requirement to provide proof of identity in the form approved by the Chief Commissioner.

Clause 17 amends section 94(1), (2) and (3) of the **Firearms Act 1996** to substitute the requirement that when a licensed firearms dealer disposes of a category A or B longarm firearm, a category C or D longarm, a general category handgun or a category E longarm, or any other firearm (other than a Category A or B longarm firearm, a category C or D longarm, a general category handgun or a category E longarm), the person who the firearm or handgun is being disposed of to, must produce a valid licence to possess, carry or use the firearm or the handgun.

Clause 18 inserts new section 100A(2) into the **Firearms Act 1996** to limit the period that a licensed firearms dealer may hire or loan a firearm to a person to 30 days.

Clause 19 inserts new section 100B into the **Firearms Act 1996** to allow a person who hires or loans a firearm for the period referred to in section 100A(2), to on or before the expiry of the period make an application to the licensed firearms dealer to extend the period of the hire or loan of the firearm. This application must be made in writing and the licensed firearms dealer must not extend the period of the hire or loan of a firearm for a period of more than 30 days.

Clause 20 inserts new section 101C into the **Firearms Act 1996** to require a licensed firearms dealer who sends a firearm or firearm parts to another licensed firearms dealer by post within or outside Victoria to comply with requirements regarding packaging, labelling, transit and delivery of the firearm or firearm parts.

A licensed firearms dealer must ensure that any package containing a firearm or firearms parts is labelled in a way that does not identify the contents of the package. A licensed firearms dealer must also use a postal service or other courier service that electronically tracks the movement and delivery of the package and requires the licensed firearms dealer to whom the package is sent to personally receive the package.

Clause 21 inserts new section 112CA into the **Firearms Act 1996** to create an offence for a person to whom a firearms prohibition order applies to fail to notify the Chief Commissioner of any change to their residential address within 24 hours after that change occurs. A penalty of 50 penalty units or 12 months imprisonment applies to this offence.

Clause 22 substitutes section 112F(1)(e) of the **Firearms Act 1996** to expand the delegation power to make a firearms prohibition order to a person who has a rank of chief superintendent or superintendent.

Clause 22 also inserts new section 112F(1)(f) into the **Firearms Act 1996** to enable the Chief Commissioner to delegate the power to make a firearms prohibition order to a person who has the rank of inspector with responsibility over the following portfolio types—

(i) crime;

(ii) transit and public safety;

(iii) intelligence and covert support;

(iv) licensing and regulation;

(v) family violence;

(vi) counter terrorism;

(vii) tasking and coordination;

(viii) investigation and response;

(ix) local area commanders (police service areas);

(x) operational support.

Clause 23 amends section 123C(2)(b) of the **Firearms Act 1996** to update the format of the report outlining all the approved handgun target shooting matches and handgun target shoots conducted in a period which approved handgun target shooting clubs are required to provide to Victoria Police, to be in a form approved by the Chief Commissioner.

Clause 24 amends item 1(1) of Schedule 4 to the **Firearms Act 1996** to substitute storage requirements for Category A and B firearms to require that they be stored in a purpose-built steel storage receptacle that is of a thickness of at least 1⸱6 mm which complies with Australia/New Zealand Standard 1594:2002 (as amended from time to time). Substituted item 1(1) of Schedule 4 to the **Firearms Act 1996** further requires that if the receptacle weighs less than 150 kilograms when it is empty, it must be bolted to the structure of the premises where the firearm is authorised to be kept and locked with a lock of sturdy construction.

Substituted item 2(1) of Schedule 4 to the **Firearms Act 1996** requires Category C and D firearms to be stored in a purpose‑built steel storage receptacle that is of a thickness of at least 1⸱6 mm which complies with Australia/New Zealand Standard 1594:2002 (as amended from time to time). Substituted item 2(1) of Schedule 4 to the **Firearms Act 1996** further requires that if the receptacle weighs less than 150 kilograms when it is empty, it must be bolted to the structure of the premises where the firearm is authorised to be kept and locked with a lock of sturdy construction.

These amendments create consistency between the storage requirements for Category A and B firearms and Category C and D firearms.

Part 6—Amendment of Sex Offenders Registration Act 2004

Clause 25 substitutes the definition of ***strict supervision*** in section 3(1) of the **Sex Offenders Registration Act 2004** to reflect machinery of government changes.

Clause 26 amends section 11A(3) and (4) of the **Sex Offenders Registration Act 2004** to remove references to child pornography offences for consistency with the amendments made by clauses 34 and 35 of the Bill and following the repeal of the definition of ***child pornography material*** in the Crimes Act 1914 of the Commonwealth and the repeal of associated offences in the Criminal Code Act 1995 of the Commonwealth.

Clause 27 amends section 20(2) of the **Sex Offenders Registration Act 2004** to reduce the time that a registrable offender has to report his or her return to Victoria to the Chief Commissioner of Police from 14 days to 7 days. This amendment provides for consistency with other reporting periods in the **Sex Offenders Registration Act 2004** and is intended to reduce opportunity for a registrable offender to travel undetected for short periods outside Victoria.

Clause 28 substitutes a reference to the Department of Health and Human Services in section 66M(2) of the **Sex Offenders Registration Act 2004** to reflect machinery of government changes.

Clause 29 substitutes a reference to the Department of Health and Human Services in section 66R(3) of the **Sex Offenders Registration Act 2004** to reflect machinery of government changes.

Clause 30 repeals section 73H of the **Sex Offenders Registration Act 2004** which is a transitional provision with no further work to do.

Clause 31 repeals section 73I of the **Sex Offenders Registration Act 2004** which is a transitional provision with no further work to do.

Clause 32 inserts new section 73K into the **Sex Offenders Registration Act 2004** to provide for a person to apply for a registration exemption order under section 11A of that Act in respect of offences against the Criminal Code of the Commonwealth relating to the use of a carriage service for child abuse material. These offences may occur in the context of a consenting relationship between a young adult and a child under 16 and is consistent with the intention of the registration exemption order scheme.

Clause 33 repeals item 8A(viii) of Schedule 1 to the **Sex Offenders Registration Act 2004**,which relates to "grooming" child to engage in sexual activity outside Australia, because clause 34 of the Bill inserts this offence in item 28B of Schedule 2 to the **Sex Offenders Registration Act 2004**.

The Bill reclassifies the offence "grooming" child to engage in sexual activity outside Australia (section 272.15(1) of the Criminal Code of the Commonwealth) from a Class 1 offence (Schedule 1) to a Class 2 offence (Schedule 2) to provide for consistency with other Australian jurisdictions including New South Wales, Tasmania, Western Australia, the Australian Capital Territory and the Northern Territory.

Clause 34 substitutes items 28AA, 28AB, 28AC and 28A of Schedule 2 to the **Sex Offenders Registration Act 2004** to update the list of registrable offences following the commencement of the Combatting Child Sexual Exploitation Legislation Amendment Act 2019 of the Commonwealth and the Crimes Legislation Amendment (Sexual Crimes Against Children and Other Measures) Act 2020 of the Commonwealth so that a person convicted of the new Commonwealth child sex offences in Victoria is a registrable offender.

The new Commonwealth child sex offences inserted as Class 2 offences in Schedule 2 are—

* item 28B(ii)—section 272.15A of the Criminal Code of the Commonwealth ("grooming" person to make it easier to engage in sexual activity with a child outside Australia)
* item 28B(viii)—section 273A.1 of the Criminal Code of the Commonwealth (possession of child-like sex dolls etc); and
* item 28D(ii)—section 474.22A(1) of the Criminal Code of the Commonwealth (possessing or controlling child abuse material obtained or accessed using a carriage service except if the offence only relates to material that depicts, represents or describes a person who is, or appears to be, or is implied to be, a victim of cruelty or physical abuse, where the cruelty or physical abuse is not sexual).

Clause 34 makes consequential amendments arising from the repeal of the definition of ***child pornography material*** in the Crimes Act 1914 of the Commonwealth and the repeal of associated offences in the Criminal Code Act 1995 of the Commonwealth.

Items omitted as a consequence of the repeal of certain offences in the Criminal Code Act 1995 of the Commonwealth are—

* item 28AB(iv)—section 273.5(1) of the Criminal Code of the Commonwealth (possessing, controlling, producing, distributing or obtaining child pornography material outside Australia);
* item 28AC(i)—section 471.16 of the Criminal Code of the Commonwealth (using a postal or similar service for child pornography material);
* item 28AC(ii)—section 471.17 of the Criminal Code of the Commonwealth (possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service);
* item 28A(i)—section 474.19(1) of the Criminal Code of the Commonwealth (using a carriage service for child pornography material); and
* item 28A(ii)—section 474.20(1) of the Criminal Code of the Commonwealth (possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service).

Clause 35 repeals items 3 and 4 and substitutes item 5 of Schedule 5 to the **Sex Offenders Registration Act 2004** arising from the repeal of the definition of ***child pornography material*** in the Crimes Act 1914 of the Commonwealth and the repeal of associated offences in the Criminal Code Act 1995 of the Commonwealth.

Items omitted as a consequence of the repeal of certain offences in the Criminal Code Act 1995 of the Commonwealth are—

* item 5(c)—section 273.5(1) of the Criminal Code of the Commonwealth (possessing, controlling, producing, distributing or obtaining child pornography material outside Australia);
* item 5(d)—section 471.16(1) and (2) of the Criminal Code of the Commonwealth (using a postal or similar service for child pornography material);
* item 5(e)—section 471.17(1) of the Criminal Code of the Commonwealth (possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service);
* item 5(g)—section 474.19(1) of the Criminal Code of the Commonwealth (using a carriage service for child pornography material); and
* item 5(h)—section 474.20(1) of the Criminal Code of the Commonwealth (possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service).

Part 7—Amendment of Victoria Police Act 2013

Clause 36 inserts a new subsection (2A) in section 40 of the **Victoria Police Act 2013** to enable the promotion of a protective services officer holding a position to the rank of protective services officer senior in the same position without the need to comply with the appointment process in section 40(2) of that Act. This amendment implements a commitment in the Victoria Police (Police Officers, Protective Services Officers, Police Reservists and Police Recruits) Enterprise Agreement 2019. That Agreement enables the promotion of a protective services officer to the rank of protective services officer senior in the same position on completion of the required components of the Victoria Police Education Program and after four years of service and satisfactory performance.

Clause 37 inserts a new section 44A in the **Victoria Police Act 2013** to validate the promotion of a protective services officer to the rank of a protective services officer Senior in the same position made in accordance with the Victoria Police (Police Officers, Protective Services Officers, Police Reservists and Police Recruits) Enterprise Agreement 2019. The provision will validate these promotions made from 1 April 2020 (the commencement date of the Agreement) until the commencement of Part 7 of this Bill. No appeals have been lodged with respect to these promotions and no persons are expected to be adversely affected by the retrospective operation of these provisions.

Clause 38 amends section 142(2) of the **Victoria Police Act 2013** to insert a new sub-paragraph (ab). This amendment removes the right to appeal a promotion of a protective services officer to the rank of protective services officer senior in the same position after the required satisfactory service and educational attainment specified in the Victoria Police (Police Officers, Protective Services Officers, Police Reservists and Police Recruits) Enterprise Agreement 2019.

Part 8—Repeal of this Act

Clause 39 provides for the automatic repeal of the amending Act on 30 August 2023.

The repeal of the amending Act does not affect in any way the continuing operation of the amendments made by that Act (see section 15(1) of the **Interpretation of Legislation Act 1984**).