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CHILD PROTECTION LEGISLATION AMENDMENT (OFFENDERS REGISTRATION AND PROHIBITION ORDERS) BILL 2013

Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [8.45 p.m.], on behalf of the Hon. Michael Gallacher, I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Child Protection Legislation (Offenders Registration and Prohibition Orders) Amendment Bill 2013:

- implements the findings of the statutory review of the Child Protection (Offenders Prohibition Orders) Act, 2004; and
- introduces additional measures to the *Child Protection (Offenders Registration) Act 2000*. These were considered within the context of the statutory review.

The legislative amendments contained in this bill will improve the operation of both Acts, and will strengthen the framework for monitoring and managing child sex offenders and certain other individuals who are living in the community.

The *Child Protection (Offenders Prohibition Orders) Act 2004*—or CPPO Act as it is more commonly known—enables prohibition orders to be made against offenders who have committed sexual or other serious offences against children such as child murder, sexual intercourse with a child, acts of indecency against a child and possession of child abuse material.

These individuals are known under the *Child Protection (Offenders Registration) Act 2000* as "registrable persons".

The Child Protection (Offenders Prohibition Orders) Act recognises that certain registrable persons can still pose a risk to children even after they have completed their sentence and despite being subject to the registration and reporting requirements of the *Child Protection (Offenders Registration) Act 2000*.

Under the Child Protection (Offenders Prohibition Orders) Act two types of prohibition orders may be made: Child Protection Prohibition Orders and Contact Prohibition Orders.

Child Protection Prohibition Orders are intended as a means of managing registrable persons of the highest risk to children.

A Child Protection Prohibition Order works to prevent high-risk offenders from engaging in certain kinds of conduct that may be a precursor to their offending.

While the kind of contact that may be prohibited is not limited, examples of specific conduct that may be prohibited under a Child Protection Prohibition Order include:

- being in specified locations or kinds of locations;
- engaging in specified behaviour;
- being in specified employment or employment of a specified kind.

In determining whether to apply for a Child Protection Prohibition Order, police conduct a risk assessment of the registrable person to establish whether his or her current conduct, in conjunction with their previous convictions, is likely to pose a risk to children.

This puts the person's behaviour into a relevant context.

A Local Court may grant a Child Protection Prohibition Order if it is satisfied on the balance of probabilities that there is a reasonable cause to believe having regard to the nature and pattern of conduct of the person that the person poses a risk to the lives or sexual safety of one or more children or to children generally and the making of the order will reduce

that risk.

The Local Court will make this determination after considering a list of criteria outlined in section 5 (3) of the Child Protection (Offenders Prohibition Orders) Act.

Contact Prohibition Orders work to prevent a registrable person from contacting co-offenders or victims.

Police can apply to a Local Court for a Contact Prohibition Order if they have reasonable grounds to suspect that conduct may occur, that other orders, for example, Extended Supervision Orders would not prevent that contact, and that there are sufficient grounds to justify making the application.

The Local Court may grant a Contact Prohibition Order if it is satisfied that there are sufficient grounds to do so.

Child Protection Prohibition Orders can be made for a period of up to five years for an adult and two years for a young registrable person (a person who is under the age of 18 years).

A Contact Prohibition Order lasts for up to 12 months.

Section 24 of the Child Protection (Offenders Prohibition Orders) Act requires the Minister for Police and Emergency Services and the Attorney General to review the Act to determine whether its policy objectives remain valid, and whether its terms remain valid for securing those objectives.

To assist with the review, a discussion paper was circulated to stakeholders, who were invited to make submissions or comments that could assist with the statutory review of the Child Protection (Offenders Prohibition Orders) Act.

Submissions were received from across government as well as non-government agencies such as the Law Society of NSW, Legal Aid NSW, and the New South Wales Bar Association.

I thank them all for their contribution.

The review found that the policy objectives of the Child Protection (Offenders Prohibition Orders) Act remained valid, and that the terms of the Child Protection (Offenders Prohibition Orders) Act remained appropriate for securing those objectives.

However, a number of legislative recommendations were made to improve the operation of the Child Protection (Offenders Prohibition Orders) Act and these are contained in the bill which is before you today.

The object of the Child Protection Legislation (Offenders Registration and Prohibition Orders) Amendment Bill 2013 as they relate to the Child Protection (Offenders Prohibition Orders) Act are to:

- Expand the conduct that can be the subject of a Child Protection Prohibition Order to include: amongst other things, being a contractor, volunteer, trainee or religious leader.
- Increase the maximum penalty for the offence of failing to comply with a Child Protection Prohibition Order. and to provide for such an offence to be dealt with on indictment if the prosecutor so elects.
- Permit a Contact Prohibition Order being made if the Commissioner of Police and the registrable person who is to be subject to the order both consent to the making of the order.
- Limit the persons to whom the Commissioner of Police can delegate his functions of applying for certain orders against registrable persons under 18 years of age pursuant to the Child Protection (Offenders Prohibition Orders) Act.

Schedule 1 [1] to the bill amends section 8 (1) (d) of the Child Protection (Offenders Prohibition Orders) Act to expand the kinds of conduct that may be subject to a Child Protection Prohibition Order.

The amendment provides that a Child Protection Prohibition Order made under the Child Protection (Offenders Prohibition Orders) Act may prohibit a person being a worker of a specified kind.

The amendment aligns the term "worker" with the meaning provided under the *Child Protection (Working with Children) Act 2012*. The term is also provided in the *Child Protection (Offenders Registration) Act 2000*.

Under the *Child Protection (Working with Children) Act 2012* a "worker" means any person who is engaged in work in any of the following capacities: as an employee a self-employed person or as a contractor or subcontractor a volunteer person undertaking practical training as part of a vocational or educational course (other than a school student undertaking work experience) and a person acting in a role of a religious leader.

Schedule 1 [2] increases the penalty for the offence of contravening a Child Protection Prohibition Order under section 13 of the Child Protection (Offenders Prohibition Orders) Act.

Previously, the penalty for breaching such an order was set at a maximum of 100 penalty units or two years' imprisonment, or both.

Given that the Child Protection (Offenders Prohibition Orders) Act deals with high-risk registrable persons, it is proposed to amend section 13 of the Act to increase the penalty for subsequent breaches of a prohibition order to 500 penalty units or imprisonment for five years, or both.

This makes it consistent with offences provided at sections 17 and 18 of the *Child Protection (Offenders Registration) Act 2000* and will act as a deterrent to high-risk registrable persons from committing multiple breaches of their Child Protection Prohibition Orders.

In amending section 13, schedule 1 [3] makes it a defence to the offence of contravening a Child Protection Prohibition Order if it is established by or on behalf of the registrable person that at the time the offence is alleged to have occurred the person had not received a copy of the Child Protection Prohibition Order, or was otherwise unaware of his or her obligations under that order.

This offence may be dealt with summarily unless a prosecutor elects to have the offence dealt with on indictment schedule 1 [6] and [7].

This will be achieved via an amendment to Table 2 of schedule 1 to the *Criminal Procedure Act 1986* schedule 3 to the bill. ,

Schedule 1 [4] to the bill amends section 16C of the Child Protection (Offenders Prohibition Orders) Act to allow Contact Prohibition Orders to be granted by consent.

Section 16C of the Child Protection (Offenders Prohibition Orders) Act presently enables a Local Court to make a contact prohibition order if it is satisfied that there are sufficient grounds for making the order.

Amending section 16C makes the provision consistent with section 10 of the Child Protection (Offenders Prohibition Orders) Act which allows for the expeditious disposition of applications for Child Protection Prohibition Orders where respondents have consented to the order being sought.

The amended section 16C(1) will now enable the Local Court to make a Contact Prohibition Order if it is satisfied that there are sufficient grounds for making the order, or if the Commissioner of Police and the registrable person consent to the making of the order.

Schedule 1 [5] to the bill prevents the Commissioner of Police from delegating the ability to:

- make applications for a Child Protection Prohibition Order, or a Contact Prohibition Order;
- or to vary or revoke either of those orders which may be made against a young registrable person, unless the delegation is made to a police officer, or to police officers of a class prescribed by the regulations.

This will ensure that there continues to be appropriate supervision and monitoring of any applications relating to high-risk juvenile offenders.

Under the *Child Protection (Offenders Registration) Act 2000*, which I will refer to as the Act, a registrable person must report personal information to police for set periods of time while they are living in the community.

The relevant personal information that must be reported is prescribed under section 9 of the Act.

The types of personal information that may be reported to police includes information such as their name and date of birth address where they work, what car they drive, and details of their computer usage (including details such as their Internet access, Internet Service Provider, email addresses and chat room and instant messaging user names).

On conviction this information must be provided to police within seven days of the date of sentence (or release from custody if the sentence was one of imprisonment).

Ongoing obligations include reporting annually to police and reporting any changes (such as a change of address) to police in the interim.

Police currently rely on intelligence reports and the criminal behaviour of a registrable person to assess if any risks are posed in relation to reoffending.

However, police are at present unable to confirm whether a registrable person has complied with their reporting requirements under the Act, in terms of the veracity of the information provided. This is particularly the case for computer usage and online communications.

The amendments at schedule 2 seek to address this.

Schedule 2 [1] to the bill proposes to introduce a new division 7A ... into the Act to allow one or more police officers to without prior notice enter and inspect any residential premises of a registrable person for the purposes of verifying any relevant personal information required to be reported by the registrable person under section 9 of the Act.

The power of entry and inspection under division 7A may be exercised in respect of any particular residential premises of a registrable person:

- Once in the 28-day period following the making of an initial report by the registrable person under division 2 of part 3 of the Child Protection (Offenders Registration) Act.
- The power may also be exercised once again in the first year following the making of the initial report and then once each year after that until the relevant reporting period of the registrable person expires.

The power can only be exercised while the registrable person's reporting period remains active.

Division 7A (4) also provides that a registrable person must allow police to enter and inspect any of his or her residential premises and to cooperate with police with respect to that entry and inspection.

The term "co-operate" will include, for example, any reasonable request made by a police officer that will enable them to determine the veracity of information provided at initial registration.

This cooperation may well include providing log-in details and passwords to allow checks on computer usage.

In most cases, computer inspections will probably be conducted on the spot. However, there may be situations where they need to be removed for further examination—for example, if there appears to be highly protected or encrypted material on the computer.

These requirements will be part of the registrable persons reporting obligations.

If a registrable person refuses to cooperate with police in checking their computer or similar device, then he or she may be charged for the offence of failing to comply with reporting obligations under the Child Protection (Offenders Registration) Act.

The entry and inspection amendments will have privacy implications for registrable persons.

However, it is considered that the public interest in allowing such an increase in police powers so that they may determine the veracity of the information that a registrable person provides, as part of their reporting obligations, and thereby enhancing the safety of children outweighs these privacy issues.

The bill has, however, sought to minimise the impact that the new arrangements will have on any non-registrable individuals who may be sharing accommodation with the registrable person such as a boarding house, a home or an apartment.

Section 16C (6) of the bill provides that the power to enter and inspect is not exercisable in respect of any part of the residential premises that is occupied exclusively by a non-registrable person unless there are reasonable grounds to suspect that the part of the premises is being used by the registrable person.

For example, if during an inspection the inspecting officer notices the registrable offender's property in a room it is claimed is the exclusive possession of another resident, or such a room contains the premises' only television, then the grounds for reasonable suspicion will be enlivened.

It should be noted that privacy concerns will be mitigated to an extent by limiting the time frames in which the power may be exercised and providing that the entry and inspection can only take place during the period that the person is subject to the reporting obligations under the Child Protection (Offenders Registration) Act.

The entry and inspection power is also limited to the premises that the registrable person has nominated as the address where they generally reside under their reporting obligations. It is also only a power to inspect. However, any suspicions that arise during the inspection about the veracity of information reported by the registrable person may form the basis of an application for a search warrant for the premises under the *Law Enforcement (Powers and Responsibilities) Act 2002*.

The amendments contained in this bill enhance the existing measures that deal with registrable persons living in our community and underscore this Government's commitment to introduce mechanisms that will further safeguard children from harm.

I commend the bill to the House.