# NSW Legislative Council Hansard

## CHILD PROTECTION (OFFENDERS REGISTRATION) AMENDMENT BILL



### Second Reading

**The Hon. HENRY TSANG** [Parliamentary Secretary] [5.00 p.m.]: 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 Carr Government established Australia's first child protection offender registration regime under the *Child Protection (Offenders Registration) Act 2000*.

The Act requires child sex offenders and other specified serious offenders against children to keep police informed of certain personal details for a period of time after their release into the community. This information is placed on the NSW Police Child Protection Register.

As at the end of May 2004, a total of 1,500 offenders had been placed on the Register. 971 of these offenders have been released into the community and those that remain in NSW are required to report to police.

The Child Protection Register has assisted in detecting breaches of parole, bail, bond and visa conditions, resulting in successful extraditions and deportations.

The offender registration scheme has now been operating for almost three years and practical experience has shown that it can be improved on in a number of respects.

One of the greatest limitations of the current scheme is that other jurisdictions do not have similar arrangements in place, which means NSW offenders can disappear from police attention when they travel outside NSW. Without them being monitored in another State, it is difficult to detect their re-entry into NSW. It is also difficult for NSW Police to be aware of offenders who enter NSW after being sentenced or released from custody in other jurisdictions.

That is why I have pursued the development of complementary State and Territory legislation through the Australasian Police Ministers Council (APMC). The model legislation developed through APMC draws heavily on the current NSW scheme, but improves on it by incorporating a number of reforms identified by operational police and elements from legislation introduced in the UK, USA, Canada and New Zealand.

Madam President, I will now outline some key features of the Bill.

**Child Protection Registration Orders**

The Bill allows for a court to order a person convicted of a non-registrable offence to register. There may be evidence admitted in the successful prosecution of some non-registrable offences that clearly demonstrates an offender poses a risk to the sexual safety or life of a child, or children generally. The Bill enables the sentencing court to make a child protection registration order, on the application of the prosecution, where it is satisfied that there is a risk the offender will engage in conduct that may constitute a registrable offence. The court cannot make such an order where it dismisses or conditionally dismisses the charge.

Offenders subject to child protection registration orders are registrable persons and are treated as Class 2 offenders for the purposes of the Act. Child protection registration orders can be appealed in the same manner as any other sentence.

**Reporting obligations from offenders from interstate**

The Bill ensures that registrable persons entering NSW from other states is aware of their obligations under NSW law. The Commissioner of Police will arrange for offenders who enter NSW from other jurisdictions, or who become corresponding registrable persons, to be advised of their reporting obligations.

**Additional information and frequency Offenders will be required to report**

Offenders will be required to report additional information in NSW. They include:

previous names they have used and when they used those names;

names and ages of any children who generally reside in the same household as them or with whom they have unsupervised contact;

details of affiliation with any club or organisation that has child membership or child participation in its activities; and

details of any tattoos or distinguishing marks that they have.

The Bill sets out when registrable persons must report to police and is consistent with arrangements under the current Act, however, offenders from other jurisdictions must report within 14 days of entering and remaining in NSW, rather than the current 28 days. This treats a change of jurisdiction in the same manner as a change of address.
NSW Police are detecting and prosecuting an increasing number of registrable persons who initially report to police but then fail to report changes to their personal information.

The Bill requires offenders to report to police each year, in the same month as their first report, irrespective of whether their personal information has changed or not. All Australian Police Forces have agreed that the introduction of annual registration requirements is an essential safeguard to the integrity of the scheme. Annual reporting exists in a number of US and Canadian jurisdictions and has recently been introduced in the UK.

**Interstate and overseas travel**

The Bill also tightens controls on offenders who attempt to move interstate inside the time they are first required to report. Offenders who live in border areas can also theoretically escape reporting in NSW by crossing the border at least every 13 days. This means NSW Police has minimal information about such offenders and it is easier for these persons to disappear from police scrutiny. The Bill now requires offenders to make a full report before leaving NSW.

The Bill also extends current travel reporting requirements. Offenders will be required to report all interstate travel of 14 or more days, rather than the current 28 days. They must also report the additional information of known addresses or locations they will be in whilst outside NSW and advise police if they are intending to leave NSW permanently. They must report inter-state travel a week before leaving NSW, or if that is impractical, 24 hours before doing so, consistent with recent amendments to the UK scheme. If they don't leave NSW, as reported, or if they change their itinerary whilst outside NSW, they must report these changes to NSW Police.

Offenders will also be required to report travel interstate for short periods at least once a month to advise police, in general terms, of these travel arrangements. These provisions are likely to apply to persons who live in border areas or persons whose work involves regular interstate travel, like long haul truck drivers. Police will share information on these offenders with the jurisdictions they regularly travel to.

NSW Police will also be required to alert the Australian Federal Police of the international travel plans of registrable persons so that they may alert international authorities of high threat offenders and better investigate overseas child sex offences.

**Identifying Offenders**

The Bill allows police to photograph the offender and parts of the offender's body. This power is consistent with certain US, Canadian and UK offender registration legislation. The advantages of this are the onus to provide photos is removed from the offender, the photos will be of higher quality, digital photos will be able to be directly scanned onto the Register, and photos will be able to be taken of tattoos and other distinguishing marks by which an offender might be identified.

**New reporting periods**

The Bill remakes provisions of the current Act and provides new reporting periods for registrable persons, which Australian Police Forces believe are simpler to apply and more appropriately address the recidivist risk of offenders.

A person found guilty of a single Class 2 offence will continue to report for 8 years. A person found guilty of a single Class 1 offence must report for 15 years (previously 10 years). A person who has been found guilty of two Class 2 offences, or multiple class 2 offences all committed before the person was first required to report under the Act, must report for 15 years (previously 12 years). A person who has been required to report under the Act for a single Class 1 offence and who subsequently commits another registrable offence must report for the remainder of his or her life (previously 15 years or life, depending on the class of the subsequent offence). A person who has been required to report under the Act for a Class 2 offence and who subsequently commits a Class 1 offence or another Class 2 offence (having been found guilty of three or more Class 2 offences) must report for the remainder of his or her life (previously 12 years or 15 years, depending on the class of the subsequent offence).

**Mutual recognition**

The Bill provides for the recognition of, and reporting obligations of, offenders subject to reporting requirements in other jurisdictions who come to New South Wales.

**Concluding remarks**

Madam President, this Bill has been developed in consultation with all other jurisdictions so that NSW can participate in the national child protection offender registration scheme that it has championed.

Madam President, I am very pleased to say that New South Wales has led the way in the establishment of the National Child Sex Offender Register and I look forward to Parliaments across the nation establishing the model scheme.

I commend the Bill to the House.

**The Hon. DAVID CLARKE** [5.01 p.m.]: The Opposition does not oppose the Child Protection (Offenders Registration) Amendment Bill. Under existing State legislation certain personal details of sex offenders against children and other specified serious offenders against children are registered on the New South Wales Child Protection Register. These details are maintained for a period of time after the release of such offenders. However, currently there is no uniform registration arrangement between the States, as a consequence of which offenders cannot be monitored as they move from State to State. This bill seeks to redress and rectify this position. The purpose of the bill is to provide a national reporting scheme and also to allow police to photograph these offenders and any distinguishing features they may have. Specifically, the major objective of the bill is to amend the Child Protection (Offenders Registration) Act 2000 in connection with a national reporting scheme as follows:

(a) to make provision for the recognition of, and reporting obligations of, offenders subject to reporting requirements in other jurisdictions who come to New South Wales,

(b) to specify certain offences in the lists of offences relating to children for which a person who is found guilty of such an offence (a **registrable person**) is required to report relevant personal information to police in accordance with the Principal Act and to make other changes to those lists,

(c) to extend the operation of reporting requirements to other offenders by child protection registration orders, where there is a risk to the lives or sexual safety of one or more children, or children generally,

(d) to extend the kind of information that must be reported by registrable persons subject to reporting requirements and to enable certain changes in information to be reported other than in person.

Additionally, there is a requirement that the New South Wales Commissioner of Police inform the Commissioner of the Australia Federal Police of a registrable person's intentions in relation to travel out of Australia. The arrangements contained in this bill will certainly be in the best interests of our community. There can be nothing more debased and evil than those who sexually prey on children. This is evil in its most destructive, darkest and most virulent form. There is no greater duty of any government than to protect and safeguard the most innocent and vulnerable in society: our children. We need to stamp out sexual predators offending against children.

We need to keep a careful and ever-vigilant eye on those who have already sexually offended against children. Those who have sexually offended against children must be monitored for as long as it is considered reasonably necessary so as to ensure that they do not reoffend—a situation that, unfortunately, very often arises with such offenders. This bill will reinforce, strengthen and improve the current position. It is a modest step in the right direction in the campaign against sexual predators of our children.

**Reverend the Hon. Dr GORDON MOYES** [5.04 p.m.]: The object of the Child Protection (Offenders Registration) Amendment Bill is to introduce amendments to the Child Protection (Offenders Registration) Act 2000 in order to strengthen and consolidate the current child protection offender registration regime. New South Wales was the first State in Australia to introduce such a scheme, taking some inspiration from similar arrangements put in place in the United States of America, Canada and the United Kingdom. The Christian Democratic Party supports in general the thrust of this bill.

The Child Protection (Offenders Registration) Act 2000 established a register of offenders that records the details of persons who have been in government custody for having committed registrable offences. Registrable offences are class 1 or class 2 offences and are defined by the Act. Examples of a class 1 offence are murder of a child and sexual intercourse with a child. An example of a class 2 offence is one that involves an act of indecency with, or against, a child, which carries a penalty of 12 months imprisonment. One of the biggest downfalls to the success of the New South Wales regime has been the absence of interstate arrangements on the registration of offenders against children. For example, New South Wales offenders can disappear from police attention when they travel outside New South Wales. With the large number of cases being brought to the attention of the public in recent days we know how mobile some of these offenders have been.

Without these offenders being monitored in other States, it will be difficult to detect their re-entry into New South Wales. Consequently, the Minister for Police has pursued the development of complementary State and Territory legislation through the Australasian Police Ministers Council, and for that we commend the Minister. The bill proposes to strengthen the regime to dispose of such loopholes and, amongst other things, introduce other measures to increase the accountability of offenders to New South Wales police. As the Hon. David Clarke said, we need to be vigilant against offenders and we need to be carers for all children in the community.

I commend the objectives of this bill. The Christian Democratic Party believes that measures to tighten and strengthen the current arrangements for dealing with offenders against children should be adopted wholeheartedly. However, I have concerns about some of the provisions in this bill and I will mention them in due course. I will first address some of the most salient aspects of the bill, and I indicate that we will propose some amendments in Committee. The bill introduces

additional Commonwealth offences relating to sexual intercourse with children overseas, and also in relation to children generally. The offences were covered previously in a general sense, but they are now specified. The spelling out provisions of such importance is necessary for the sake of transparency and clarity. The inclusion of these offences expands the type of activity that can be captured in the net of this legislation.

The bill allows also for regulations to be made to include offences of a foreign jurisdiction that do not have a New South Wales equivalent. For example, we are very conscious of paedophiles who holiday frequently in countries such as Thailand and Cambodia and who have been involved in the child sex trade. A very important objective of the bill is to make provision for persons who have committed registrable offences outside the jurisdiction of New South Wales. The measures in the bill that will extend the reach of the legislation are most commendable. For example, the definition of "foreign jurisdiction" has been expanded to include jurisdictions outside Australia—not just New South Wales—so that countries such as Thailand and Cambodia are covered.

The definition of the term "government custody" is expanded also to include custody under a law of a foreign jurisdiction. A new category of registrable person is provided for, that of a "corresponding registrable person", that is a person from another jurisdiction who is not subject to obligations in New South Wales. In some instances certain people will not be considered as registrable—that is in the case of a person who has been sentenced in respect of a single class 2 offence.

When it comes to paedophilia or child abuse, I strongly oppose what can be seen as "exemptions" to what constitutes a registrable person as prescribed by proposed section 3A, particularly section 3A (2) (b) and (c). One of those provisions says, in effect, that where a person has committed a single class 2 offence that does not attract a sentence of imprisonment, the person should not be considered a "registrable person". A class 2 offence includes, but is definitely not limited to, such things as making a film for sexual gratification purposes of a child against the child's will. I believe that an offence of which a person is found guilty only once, is likely to have long-term traumatic affects. That can be devastating for a child. A child can be scarred for life by "just one offence".

The ramifications of "just one offence" should not be minimised. In her work "Mind and Brain", Dr A. S. Gilinsky discusses how children are at a stage of development where they are extremely sensitive to stimuli. During the time a child is growing up, cellular memory groups are being formed and linked together with other cell groups with great rapidity. We all accept as fact that severe accidents, death and so on, can have traumatic impacts upon children later in their lives. So too can traumatic child sexual abuse. These cellular memories act as a window through which a child will eventually perceive themselves and their world for the rest of their lives.

For many years I have been responsible for caring for children who suffer from intense childhood trauma. Currently I am responsible, as guardian ad litem, for 3,614 children, most of whom have suffered great trauma in their life. My staff inform me that only one severe traumatic incident can have long-term consequences. Consequently, future growth and development, especially in the emotional realm, may be greatly retarded through exposure to traumatic events, indecent acts, or an event such as children being filmed against their will for sexual gratification.

Some will find the events too traumatic and, if adequate help is not found, may try to end their lives. They may suffer from a whole range of mental and psychological illnesses. Some children will suffer long-term distortion of social norms. Dolf Zillman and Jennings Bryant showed that children exposed to indecent acts suffer serious adverse effects on their beliefs about sexuality, on attitudes towards members of the opposite sex, and on their own self-efficacy. Many of the women have come to me as a counsellor have problems within their marriages that date back to traumatic experiences in their early childhood. Stephen Kavanagh, in his publication titled "Protecting children in Cyberspace", has stated:

Children often imitate what they've experienced, seen, read and heard. Studies suggest that exposure to indecent acts/material can prompt children to act out against younger, smaller and more vulnerable children. Experts in the field of childhood sexual abuse report that premature sexual activity in children always suggests two possible stimulants: experience and exposure. This means that the sexually deviant child may have been molested or simply exposed to indecent material.

We as legislators have a responsibility to protect the children in our State to the best of our ability. This is one area where I feel we should slightly stiffen the provisions of the bill. The bill provides that persons subject to "child protection registration orders"—those not involving a class 1 or class 2 offences—may need to comply with the reporting obligations of the Act. The court may only make the order if satisfied that the person poses a risk to the lives or sexual safety of one or more children, or of children generally. The importance of the inclusion of persons under such orders is of crucial significance to say the least.
There is in the bill a provision that says that section 3D, dealing with "child protection registration orders", ought to be reviewed. I do not believe that this should be the case, given the tenor of this significant provision. Reporting obligations for registrable persons are also delineated in a clear manner, taking into account the obligations for those who have committed "registrable offences" in other jurisdictions. The bill also requires that registrable persons report their relevant information to the Commissioner of Police each year. Ongoing reporting obligations are a necessary initiative in order that registrable persons be accountable to the police. It is also important to let the Commissioner of Police know when these people move back into New South Wales.

Also, and importantly, the list of relevant information in the Act has been expanded by the bill to include more information that may incidentally deal with children or put children at risk. Accountability is also ensured by a number of other requirements, including the proposed mandatory requirements that a registrable person report changes to relevant personal information and that any intended absence from New South Wales be reported to the Commissioner of Police.

Privacy concerns potentially held by registrable offenders are addressed. Apart from these, the registrable person may

request the Commissioner of Police to provide a copy of all the reportable information that is held in the register in relation to the person. That should satisfy privacy issues. The bill provides that a police officer receiving a report from a registrable person may cause to be taken, by a person authorized by the police officer, the fingerprints of the registrable person. This can occur if the police officer is not reasonably satisfied as to the identity of the registrable person after the officer has examined all of the material relating to identity given to the officer by the registrable person or on behalf of the registrable person.

As New South Wales Police keep a database on fingerprints, there does not seem to be any strong argument against allowing fingerprints to be taken in this context, especially when only "reasonable force" may be used to compel someone to give their fingerprints. Better information relating to the identification of offenders is always needed in order to more effectively facilitate the identification of offenders. At a later date I will make comments about the provisions concerning photographing identifiable marks. The bill, quite modestly, suggest that no photographs may be taken of the genital areas, the anus or the breasts of a person for any identifiable marks. I inform the Minister that these days there is a special concern by those desiring to be tattooed to be tattooed in places that are not normally photographed because of modesty. The fact is that people now are more likely to have tattoos in places excluded by this legislation than on any other parts of the body.

The bill provides that special arrangements be made for reports where a registrable person resides more than 100 kilometres from a police station at which a report may be made. This is a practical and important provision. Registrable persons may apply to the Administrative Decisions Tribunal for an order suspending the person's reporting obligations. This can be done only when a person does not pose a risk to the safety of children and the community. This is a commendable initiative, as the Administrative Decisions Tribunal, though heavily burdened, is in a sound position to make an assessment on this issue. The Commission for Children and Young People is also to be a party to any proceedings brought to discharge reporting obligations. Importantly, any order made in favour of a registrable offender ceases to have effect if, for example, a person is found guilty of a registrable offence.

Lastly, it is of importance to note that the term "Register of Offenders" is done away with and is replaced with the term "Child Protection Register". Renaming this register is a symbolic representation and stark declaration of the intention behind the bill. In Committee I will move four amendments that I believe will further enhance the bill. We congratulate the Government and the Minister on introducing the bill and I commend it to the House.

**Ms LEE RHIANNON** [5.19 p.m.]: The Greens support the bill. We recognise the need for a national register to stop child sex offenders moving between jurisdictions to avoid detection. In the current climate this initiative has obvious resonance. We are appalled, like everyone else in the community, with what Operation Auxin is uncovering. The Greens support the development of sensible, effective measures to determine, prosecute, and rehabilitate offenders. We must make every effort to keep our children safe from sexual abuse. However, on examining the bill in detail we are left wondering whether we are broadening an existing scheme without first evaluating whether the child protection register has achieved results.

We believe that the horror of these crimes against children creates an enormous obligation on us to make sure we get our responses and preventative measures right. We are also concerned about provisions in the bill that set a worrying precedent for our criminal justice system. Any reform to a system as complex and sensitive as the police and the justice systems should be built on solid empirical evidence as to its usefulness. When the Child Protection (Offenders Registration) Bill was first introduced in 2000 the Greens asked the Government what evidence there was about the effectiveness of the scheme. The Government failed to respond. In 2004, after the child protection register has been operating for three years, we are provided with only a slim evaluation from the Minister for Police. In his second reading speech he said:

The child protection register has assisted in detecting breaches of parole, bail, bond and visa conditions, resulting in successful extraditions and deportations.

We still really do not know whether the register, which obviously is resource intensive, is meeting the key aims of the principal Act, which are to increase and improve the accuracy of child sex offender intelligence, and assist in the investigation and prosecution of child sex offences committed by recidivist offenders. The principal Act required the Ombudsman to review its implementation for the two-year period after the scheme commenced, a period that ended in mid October last year. Although the Ombudsman has released a discussion paper, for which submissions closed more than one year ago, we are still awaiting his report. The Minister is required by legislation to review the principal Act. The legislation asks that he first consider the Ombudsman's report, which, as I said, has not yet been delivered. It may well be some time coming.

The Greens are concerned that we are moving to expand the operation of the child protection register before we have good empirical evidence about its effectiveness. In some situations, the obligation upon offenders is being toughened substantially. The bill proposes, for example, to increase some reporting period from 15 years to life, a significant leap that will put extra demands on police and others. The gesture is reassuring to the public—all of us want to see these offenders brought to justice—but we must be sure it is the best use of our resources. If funding and resources are limited we must ensure that we adopt initiatives that have been proven to be most effective in preventing sexual crimes against children.

It is understandable that child sexual abuse provokes strong emotional responses. The Greens are concerned that fear and emotion may drive people to settle for measures that have an uncertain effectiveness and may not be the best way to prevent child sexual assault. The Greens are concerned also that people, understandably shocked by what police have uncovered recently, will be lulled into a false sense of security by news of this expanded register. It is easy for people to mistakenly believe that the register includes all sexual or violent offenders against children, when the reality is that it lists only those who have managed the very difficult task in New South Wales of being caught and convicted.

The sad truth is that the majority of offenders will never end up on the register. The Greens will support this important bill, but in doing so we call for a careful and rational examination of just what is the most effective package of measures to reduce child sexual assault. We must know how effective the child protection register has been so that we can judge whether it should be expanded or whether we should focus our attention more on funding other strategies, such as community education and information, personal safety and protective behaviour programs for children, training professionals to identify abuse, services for victims, treatment services for sex offenders, and intensive supervision of the most serious sex offenders.

It is necessary to weigh up where resources should best be directed. For example, studies show that treatment programs for some child sex offenders, particularly cognitive behavioural approaches, can be effective in changing behaviour. But in New South Wales we know there is a shortage of treatment programs, and unacceptably long waiting lists to access them.

Our second major concern with the bill is the provision allowing a court to order that a person who has been found guilty of a non-registrable offence be placed on the register. This proposal creates a serious precedent. It enables the court to order the registration of someone convicted of an offence that is not the type of offence that normally requires a person to be on a register. The court can do so if satisfied that the person poses a risk to the lives or sexual safety of a child or children. The Legislation Review Committee noted:

As drafted the proposal does not require there be any connection between the offence committed and the assessment of the risk a person poses to children.

This means that even without committing a relevant offence, people can be forced to comply with the onerous reporting requirements under this scheme for eight years. The Greens believe that if this proposal is to proceed, the legislation should, at the very least, create a clearer and more logical nexus between the offence committed and the risk that a person may commit a registrable offence. The Legislation Review Committee observed:
Subjecting a person to the reporting requirements of a registrable person deprives that person of rights and liberties enjoyed by the general population. It is not usual to deprive a person of rights and liberties in a liberal democracy on the basis of an assessment of risk, of harm that an individual may perpetrate rather than as punishment for a crime.

Although the court may, presumably, require appropriate evidence before it makes its decision to impose an order, the frightening precedent is created here that people who may commit a crime can be required to take part in a scheme that places major restrictions on their liberty. We understand the desire to protect children from potential offenders, and we agree that a national register is an important strategy, but we caution against taking that desire too far. The Government-dominated Legislation Review Committee concluded:

Considering the aims of the bill and the need for the court to be satisfied that there is a risk that a person will engage in conduct that may constitute a class 1 or class 2 offence against children, the Committee does not consider this proposed provision constitutes an undue trespass on individual rights and liberties.

The Greens are troubled by this conclusion because of the precedent it creates for our criminal justice system. The legislation provides no guidance on what constitutes a risk. It will be left up to the prosecution and evidence from psychiatrists and psychologists to guide the court in making its determination. Dr Stephen Smallbone, a senior lecturer at Griffith University in Brisbane and Director of the Griffith Adolescent Forensic Assessment and Treatment Centre, who has worked for many years with child sex offenders, recently agreed on Radio National's *Law Report* that the psychology around sex offenders is still an imperfect science. He said:

It is a very difficult phenomenon to study.

Wen talking about Queensland's Dangerous Prisoners (Sexual Offenders) Act, which provides for the indefinite detention of sexual offenders after the completion of a sentence, he expressed concern about the legislation in these terms:

It does not rely very heavily on the capacity of psychiatrists in particular and also psychologists to make predictions about the risk of future sexual offending behaviour.

Dr Smallbone said:

Unfortunately, we are not very good at doing that.

He talked about a false positive problem whereby we are inclined to over predict recidivism, particularly with sexual offending. The result of this new provision will be that the door is left open for people to be subject to a demanding and stigmatising reporting scheme for eight years on a mistaken prediction that they might commit an offence against children. We have no solid empirical evidence that the child protection registration order scheme will be effective in protecting our children. It will lead to people being deprived of their civil liberties and rights on the basis of crimes they have not committed but might commit in the future. Courts must make a decision about possible future offences against children on the basis of the imperfect and imprecise science of risk assessment, with all the associated dangers of false positives as explained by Dr Smallbone.

The Greens therefore believe that society should approach this proposal with caution. When the predictions are correct, children will be protected—which is most desirable—but when the predictions are wrong, a serious injustice may be perpetrated upon individuals. That will not help to provide greater protection for children, and it will not help society. As I

said, the Greens will support the bill, but there are matters that must be given very careful consideration.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [5.30 p.m.]: The present publicity surrounding Operation Auxin and international police efforts to catch people who download child pornography brings discussion of the bill, the Child Protection (Offenders Registration) Bill, into sharp focus. The Carr Government set up Australia's first child protection offender registration scheme in 2000 by way of a bill it introduced in response to recommendation 111 of the Wood royal commission. A registration scheme was introduced in the United Kingdom in 1997, and all American States and Canadian provinces have similar schemes. There is also a similar register in New Zealand, which is important, given the ease of travel between Australia and New Zealand. At the end of May 2004, 1,500 offenders names were on the New South Wales register.

For such a scheme to be effective in Australia, obviously it is important that a national approach is adopted, because offenders tend to move interstate and overseas. They often change their names and appearance, which adds to the difficulties associated with the register. The Australian Police Ministers Council has been discussing the formulation of complementary State and Territory legislation and has developed a model bill which incorporates reforms that police, who have been working with the legislation enacted in 2000, have suggested will improve the operation of the scheme. The categories of offences that constitute a registrable offence under the Act are divided into two classes. Class 1 includes child murder and offences involving sexual intercourse with a child. Class 2 applies to indecency offences against children that carry a maximum penalty of imprisonment for 12 months or more.

The major changes effected by this bill are to enable a court to order that a person who has been convicted of a non-registrable offence be registered if the court is satisfied that the person poses a risk in that he or she may commit a registrable offence; require more information to be supplied by offenders, including names and ages of children who live with them, clubs they belong to with child membership, and details of any distinguishing marks, such as tattoos or scars; enable police to replace the passport photograph requirement with one allowing them to photograph any part of the offender's body, except genitals, buttocks or breasts; increase reporting periods for first offences for class 1 from 10 years to 15 years; require offenders to register annually with the police in the same calendar month, whether their circumstances have changed or not; require offenders to register at least once in New South Wales before leaving New South Wales; and impose more stringent reporting of interstate and international travel arrangements.

It should be noted also that a person who is found guilty of two or more class 2 offences will be required to report for 15 years, whereas currently people in that category report for 12 years, and that a person who reoffends after having been convicted of a class 1 offence will be required to report throughout their lifetime. I contacted Cameron Murphy of the Council for Civil Liberties to elicit his comments on this important bill. He was of the opinion that increasing reporting requirements is the wrong approach to reducing the incidence of abuse. He pointed out that most people who pose a risk have not been convicted. He said that many people who offend hundreds of times never come to the attention of police. He suggested that more money should be spent on programs to prevent abuse and identify offenders, and that assistance must be given so victims feel they are able to come forward. The fact that some people offend hundreds of times indicates the reluctance of victims to come forward, which accounts for the relatively low reporting rate.

Mr Murphy also pointed out that a number of names of people appearing on the register should not be there. He cited the example of a woman who was convicted of nude sunbathing, which was classified as indecent exposure and therefore considered to be a serious offence. Mr Murphy pointed out by reference to that example that people whose names are put on the register for offences that are not offences against children clearly have been wronged. Other people who are convicted and whose names are entered on the register may not offend again, and that also creates a difficulty. Mr Murphy cited the instance of a mother who defended her son who had been convicted of assaulting another son and whose name was placed on the register with the result that he is required to report for 15 years. On the face of it, that appears to be an unreasonable reporting requirement. Those cases clearly illustrate the need for a very sound basis to be established for placing the names of people on the register.

I am reminded of what occurred in the United Kingdom when a paediatrician was absolutely convinced that scratching close to the anus of a child caused the anus to contract, and that that was diagnostic evidence of abuse. A large number of parents had their children taken away from them when the reflex was elicited as evidence in abuse cases through expert testimony. Later it was shown that the basis for the expert testimony, which resulted in many people having their children taken from them, was not good science and that the people whose children had been taken away from them had not in any way abused their children.

Before the medical test was discredited the parents were in a no-win situation, because an expert had decided they had abused their child. As a result they suffered the most appalling stigmatisation. Their children were taken from them and considerable sequelae were suffered by the parents and the children as a result of a well-intentioned and enthusiastic medical practitioner who had erred. That caused a national scandal and was the subject of television exposés.

Those examples illustrate the need for great respect for the limits of prediction in child abuse matters. The Government should take steps to ensure that the function of the register will be proper, justified and useful. Obviously the objective of the register is indisputable because, while maximising the prevention of abuse of children, one does not want to in any way shield people who are a danger to children. However, the examples beg the questions: Is the approach adopted by the Government a sound approach? Will the names on the register have to remain on the register? Will the names of the right people be placed on the register? One wonders whether the arbitrary lengthening of a reporting procedure by a couple of years is the best way to deal with the problem of child abuse. It is of paramount importance to ensure that children are protected by implementing the best protection methodologies.
The abuse of children is a very emotive issue, and rightly so. Abuse definitely must be addressed, so it is important that people who are convicted of offences against children are monitored by the authorities to reduce the chance of their

reoffending. The procedures provided in the bill do not, however, address the causes of the problem; nor do they assist in the early identification of people who have not been convicted but continue to offend. While there have been improvements in mandatory reporting provisions related to child abuse, there still needs to be more encouragement and support given to victims of abuse to enable them to come forward. That is probably the most important preventive measure.

**The Hon. JOHN HATZISTERGOS** (Minister for Justice, and Minister Assisting the Premier on Citizenship) [5.38 p.m.], in reply: I thank honourable members for their contributions to the debate, and I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time.**

**In Committee**

**Clauses 1 to 4 agreed to.**

**Reverend the Hon. Dr GORDON MOYES** [5.41 p.m.], by leave: I move Christian Democratic Party amendments Nos 1 to 6 in globo:

No. 1 Page 8, schedule 1 [14], proposed section 3, lines 17-19. Omit all words on those lines.

No. 2 Page 9, schedule 1 [15], proposed section 3A, lines 8-36. Omit all words on those lines.

No. 3 Page 10, schedule 1 [15], proposed section 3A, lines 11-13. Omit all words on those lines.

No. 4 Page 29, schedule 1 [22], proposed section 12F, line 24. Insert ", unless it is necessary to do so to photograph the only distinguishing mark on the person's body" after "breasts".

No. 5 Page 34, schedule 1 [30], proposed section 14B, line 15. Omit "do not".

No. 6 Page 34, schedule 1 [30], proposed section 14B, lines 18-21. Omit all words on those lines. Insert instead:

(2) A person referred to in subsection (1) may apply to the Administrative Decisions Tribunal for an order reducing the reporting period that would otherwise apply to the person.

(3) On an application by a person under this section, the Administrative Decisions Tribunal may make an order applying a reduced reporting period to the person. An order under this section may not reduce a reporting period by more than half of the original period.

(4) sections 16 (4)-(10), 16A and 16B apply to applications and orders made under this section in the same way as those provisions apply to applications to, and orders made by, the Administrative Decisions Tribunal under section 16.

The bill makes it clear than an offence involving indecent exposure only is to be taken to be an act of indecency for the purposes of what is a registrable offence. My amendment will ensure that any reference to an act of indecency also involves indecent exposure, because just one act of indecent exposure may have dire effects upon a child. "Indecent exposure" has a definition. It is not a matter of, for example, accidentally discovering someone in a dressing shed or someone urinating behind a tree on the side of a road. "Indecent exposure" relates to wilful exposure of the genitals towards others for the purpose of sexual gratification. We need not try to skirt around the issue by saying that there may be accidental exposure. That it is a deliberate act is made quite clear in the Act.

The bill effectively excludes offenders who have committed a single offence. As I mentioned during the second reading debate, my amendments will bring offenders who have committed a single offence into the definition of "registrable person". That will send a clear message to potential offenders that they risk being put on the register even if they commit only one offence. From a victim's perspective, one offence may have untold adverse impacts. I accept that in a whole range of issues one incident—such as the death of a child's mother, a bad scalding accident or a traumatic experience—can have profound adverse impacts upon a child's life. One offence of a serious sexual nature against a child can have a profound effect.

The bill prohibits police photographing certain body areas—namely, the genitals, the buttocks and the breasts. Today people have distinguishing marks, such as tattoos, on those specific areas. Therefore, my amendment provides that those areas can be photographed if necessary. Finally, the bill requires that a reduced period apply for young registrable persons in relation to their reporting obligations. My amendment requires that the same reporting period is to be applied to child registrable persons and adult registrable offenders, with the proposal that child registrable persons be entitled to appeal to the Administrative Decisions Tribunal to reduce the reporting period. I commend the amendments to the Committee.

**The Hon. JOHN HATZISTERGOS** (Minister for Justice, and Minister Assisting the Premier on Citizenship) [5.44 p.m.]: The Government does not support the amendments. In general, they are all departures from the national child protection registration model being implemented by all State and Territory jurisdictions. Uniformity is highly desirable in this area. Christian Democratic Party amendment No. 1 refers to indecent exposure. The Government does not support that amendment, as that is a low-level offence and almost by definition it can involve repeat public behaviour. Offenders are

unlikely to slip under the radar of police. It is desirable that registrable offences be nationally consistent to avoid State shopping—in other words, offenders moving from one State to another to avoid registration.

The Government does not support amendments Nos 2 and 3. It is correct that the bill will not register someone who is found guilty of a single category 2 offence if the person is not sent to prison. It is proposed that any conviction of a category 2 offence ought to result in registration. The specific example given by Reverend the Hon. Dr Gordon Moyes in his contribution to the second reading debate was a person who makes a child pornographic video that traumatises the child. It is highly unlikely that a person involved in such conduct could not be sent to prison. If a person goes to prison he or she would be listed on the register. Only the most minor category 2 offence would not result in a prison sentence. A single instance of such offence should not lead to registration. Again, I reiterate the points I made in relation to the need for a nationally consistent model.

The Government does not support amendment No. 4 because photography of the genital area becomes a forensic procedure under the Crimes (Forensic Procedures) Act. The Government does not support amendments Nos 5 and 6 because they treat juveniles in the same way as adults. Again, that is a departure from the national model and may lead to offenders moving to another State to lessen their registration requirements. It also complicates the national scheme. As I have indicated in relation to all the amendments, it is highly desirable that there be national uniformity in this area.

**The Hon. PETER BREEN** [5.47 p.m.]: I agree with the Minister for Justice that it is important to maintain uniformity in the New South Wales provisions so that they are consistent with the national scheme. The amendments moved by Reverend the Hon. Dr Gordon Moyes seek to impose even tighter restrictions on the type of person who could be added to the register. The Legislation Review Committee has already said that certain people will go on the register that have not been found guilty of a category 1 or category 2 offence. That is a dangerous precedent, and it is not the first case of this kind. I note that the High Court recently supported New South Wales and Queensland legislation where people have been incarcerated on the basis of an unacceptable risk that they represent to the community—not for any crime that they have committed, but a crime that they are likely to commit in the future.

**The Hon. John Hatzistergos:** That is in Queensland, not in New South Wales.

**The Hon. PETER BREEN:** The Minister said that that applies only in Queensland. He is referring to the Dangerous Prisoners (Sexual Offenders) Act, which I mentioned last night and which was the subject of a decision by the High Court in *Fardon v The Attorney General for Queensland*. However, the principles in that case are the same, as I understand it, as the principles in *Baker v The Queen*, in which the New South Wales Crimes Legislation Amendment (Existing Life Sentences) Act was upheld. The provisions of that legislation required people to be incarcerated on the basis that a different sentence was imposed on them by the legislation than the sentence imposed by the trial judge. There is a tendency for the States to introduce this type of legislation, which puts people in a particular category not on the basis of anything they have done but something the legislation or Parliament has decided they have a propensity to do. Therefore, they represent an unacceptable risk to the community. It is a dangerous path; it is the step short of thought crime. On that basis, I urge honourable members not to support the amendments because they extend the provisions of the legislation in an unacceptable way.

**Ms LEE RHIANNON** [5.49 p.m.]: The critical issue is that the amendments moved by Reverend the Hon. Dr Gordon Moyes will not give greater protection to children. His amendments introduce a "get tough and lock them up" mentality that does neither him nor his party any credit. His amendments introduce that mentality in relation to offences against children. Even when it comes to offending against children there is a graduation of offences that must be recognised. I really think that greater humanity could be shown on the part of the mover of these amendments, as this is a complex issue. If these amendments were passed it would result in a real setback.

People change and minor offenders do not need to be pulled into a net that has already been thrown wide. We must establish a clearer and more logical connection between the offence committed and the risk that a person may commit a registrable offence. The Greens believe that, because of the way in which the bill is structured, it goes a small way, but not far enough, towards doing that. If these amendments were agreed to it would be a retrograde step. Reverend the Hon. Dr Gordon Moyes is trying to outdo the Government and the Opposition on law and order issues. As I said earlier, it does him no credit. The Government is grappling with a bill in order to give it some national consistency. There are problems in the bill but it should be left as it is and not amended in this way.

**Reverend the Hon. Dr GORDON MOYES** [5.51 p.m.]: I thank honourable members for their contribution to debate on these amendments. Ms Lee Rhiannon said that I should have greater compassion for those who have been convicted of such crimes. I place on the record the fact that for many years I have been a parole and probation officer working with people who have suffered from such convictions. Not only have I have worked with them at the time of their convictions, many years later I helped them in the area of rehabilitation. I do not believe it is ever a retrograde step to ensure greater protection, in particular, for the most vulnerable people in society. I accept the Minister's concerns that we need to consult and that we need to collaborate in relation to a national policy. One or more States have improved a number of national policies. Queensland was referred to earlier as a State that can make additions to legislation that is introduced in other States. For that reason, I encourage members to support my amendments.

**Amendments negatived**.

**Schedule 1 agreed to.**

**Schedule 2 agreed to.**

**Title agreed to.**

**Bill reported from Committee without amendment and passed through remaining stages.**

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- Subjects:
  Child Abuse; Police: New South Wales; Victims Rights; Rape and Sexual Assault; Pornography
- Speakers:
  Tsang The Hon Henry; Clarke The Hon David; Moyes Reverend the Hon Dr Gordon; Rhiannon Ms Lee; Chesterfield-Evans The Hon Dr Arthur; Hatzistergos The Hon John; Breen The Hon Peter
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