

Child Protection (Offenders Registration) Amendment Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to amend the *Child Protection (Offenders Registration) Act 2000* (the **Principal Act**) 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,
- (e) to provide for annual reports of relevant personal information to be made by registrable persons,
- (f) to require the Commissioner of Police to inform the Commissioner of the Australian Federal Police of a registrable person's intentions in relation to travel out of Australia,
- (g) to provide for interpreters to be made available when reports are being made and to provide for fingerprints and photographs to be taken when reports are made,
- (h) to make additional provision with respect to giving notice of reporting obligations and to enable police officers to detain persons for the purpose of giving notice of reporting obligations,
- (i) to enable special arrangements to be made for reports where a registrable person resides more than 100 kilometres from a police station at which a report may be made,
- (j) to extend certain obligations to participants in the witness protection program who reside outside New South Wales,
- (k) to enable the application of modified reporting procedures for registrable persons who are participants in the witness protection program to offenders protected under witness protection laws in other jurisdictions and to make other provision with respect to such persons,
- (l) to lengthen some reporting periods that currently apply in respect of registrable persons,
- (m) to remove the power of the Administrative Decisions Tribunal to suspend life-time reporting obligations pending determination of an application for suspension and to make other amendments relating to such orders in respect of corresponding legislation in other jurisdictions,
- (n) to bar prosecutions of registrable persons who breach travel notification requirements but who are found guilty in another jurisdiction of failing to report their presence in that jurisdiction,
- (o) to rename the Register established under the Principal Act the Child Protection Register and to provide for its form and content in a way that

will support the creation of equivalent registers on a national basis,
(p) to confer an express right for a registrable person to be provided with a copy of certain information held in relation to the person on the Child Protection Register,
(q) to remove the limitation period for taking proceedings for offences under the Principal Act,
(r) to enable a government agency to disclose information about registrable persons to the Commissioner of Police or a supervising authority,
(s) to insert supplementary regulation-making powers,
(t) to make other minor and consequential amendments and to enact savings and transitional provisions.

The proposed Act also makes consequential amendments to other Acts.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to other Acts set out in Schedule 2.

Schedule 1 Amendment of Child Protection (Offenders Registration) Act 2000

Registrable persons

Schedule 1 [3] expressly provides for the Class 1 offences for which a person becomes a registrable person to include additional specified Commonwealth offences relating to sexual intercourse with children overseas. Previously they were covered by general words. It also enables regulations to be made to include additional offences of a foreign jurisdiction that do not have a New South Wales equivalent.

Schedule 1 [4] expressly provides for the Class 2 offences for which a person becomes a registrable person to include specified Commonwealth offences relating to children. Previously they were covered by general words. It also enables regulations to be made to include additional offences of a foreign jurisdiction that do not have a New South Wales equivalent.

Schedule 1 [5] omits matter that is dealt with in the new definition of **registrable person**.

Schedule 1 [6] recognises as existing licensees persons subject to licences granted under the laws of a foreign jurisdiction.

Schedule 1 [10] defines a **registrable offence** to include a Class 1 offence, a Class 2 offence and an offence that results in the making of a child protection registration order.

Schedule 1 [11] makes an amendment consequential on the insertion of proposed section 3A.

Schedule 1 [14] defines the circumstances when a registrable person has a **special need**. It also makes it clear that an offence involving only indecent exposure is not taken to be an act of indecency for the purposes of what is a registrable offence. The amendment also sets out the requirements for doing things "in person".

Schedule 1 [15] inserts proposed Part 2 (sections 3A–3E). Proposed section 3A defines **registrable person** for the purposes of the Principal Act. The definition reflects the current definition, except that it includes corresponding registrable persons ie persons from other jurisdictions who are still subject to reporting obligations in the other jurisdiction concerned but are not subject to obligations in New South Wales. It also differs from the current definition by excluding

children who have committed a single offence under section 21G (1) of the *Summary Offences Act 1988* and also by excluding persons receiving protection under foreign witness protection laws specified by the regulations. The exclusions relating to persons who committed offences as children are also extended in other ways.

Proposed section 3B provides that a person ceases to be a registrable person when the finding of guilt for the only offence that makes the person a registrable person is quashed or set aside by a court, or a sentence imposed is reduced or altered so that the person would not originally have been a registrable person or, in the case of a person subject to a child protection registration order, the order is quashed on appeal.

Proposed section 3C defines ***corresponding registrable person***.

Proposed section 3D enables child protection registration orders to be made to provide that a court may order a person found guilty of an offence (not being a Class 1 or Class 2 offence) to comply with the reporting obligations of the Principal Act if the court is satisfied that the person poses a risk to the lives or sexual safety of one or more children, or of children generally. The order may only be made on the application of the prosecution and may only be made concurrently with a sentence imposed in relation to an offence.

Proposed section 3E provides for the Minister to review proposed section 3D as soon as possible after the expiration of 2 years after the commencement of the proposed section.

Notice of reporting obligations

Schedule 1 [17] makes it clear that written notice of reporting obligations under the Principal Act is only required to be given by a supervising authority to a registrable person if the registrable person commences a supervised sentence for a registrable offence.

Schedule 1 [18] makes it clear that the supervising authority for a registrable person who ceases to be in custody or subject to supervision by the supervising authority must give notice of that fact to the Commissioner of Police, regardless of whether the custody or supervision was in respect of a registrable offence or otherwise.

Schedule 1 [19] makes it clear that the obligation to give a notice of reporting obligations does not apply in respect of a person who is in government custody for less than 14 days.

Schedule 1 [20] makes it clear that the supervising authority for a registrable person who ceases to be in government custody must give notice of the person's reporting obligations whether the custody was in respect of a registrable offence or otherwise.

Schedule 1 [21] inserts proposed sections 7A–7C. Proposed section 7A requires the Commissioner of Police to notify a registrable person who enters New South Wales of the person's reporting obligations, and of the consequences of failing to comply with them, if the person has not been previously notified and also to give notice to a person in New South Wales who becomes a corresponding registrable person.

Proposed section 7B requires the Commissioner of Police to notify a registrable person as soon as practicable after a change to the person's reporting obligations since the person was last notified of the period in New South Wales.

Proposed section 7C confers on a police officer power to detain a person if it is reasonably necessary to do so to determine whether or not the person is a registrable person or has been notified of the person's reporting obligations, or to enable a person to be given notice of the person's reporting obligations. The proposed section requires that any detention not be longer than is reasonably necessary to fulfil the purpose of the detention and imposes other obligations on

police officers.

Reporting obligations

Schedule 1 [22] omits the provisions of the Principal Act relating to the obligations of registrable persons to report information to the Commissioner of Police and inserts instead proposed sections 9–12I. The proposed sections re-enact the existing provisions with additional matters.

Proposed section 9 contains a list of relevant personal information that is to be reported by a registrable person to the Commissioner of Police. In addition to the information currently required to be reported, a registrable person must also report the periods during which the person has been known by any other name, the names and ages of any children who generally reside in the same household as the registrable person or with whom the person has unsupervised contact, details of affiliation with any club or organisation that has child membership or child participation in activities, details of tattoos or other distinguishing marks, whether the person has been found guilty in a foreign jurisdiction of a registrable offence, details of any other government custody since sentence or release and of any regular travel outside New South Wales. A registrable person will no longer be required to give information about the registrable offences.

Proposed section 9A sets out the circumstances and times within which the initial report of relevant personal information must be made by a registrable person. The periods are the same as the current periods except that the period for a person who enters New South Wales to report is reduced to 14 days from 28 days. The proposed section also provides for reports by corresponding

registrable persons and for a report to be made before leaving New South Wales. Proposed section 9B sets out the circumstances and times within which a registrable person whose reporting period has expired but who becomes subject to new reporting obligations must report the person's relevant personal information to the Commissioner of Police. It also provides for corresponding registrable persons and obligations on an order suspending reporting obligations ceasing to have effect.

Proposed section 9C imposes an obligation on a person who is required to report to a corresponding registrar in a foreign jurisdiction to contact a person nominated by the Commissioner of Police for information about any applicable New South Wales reporting obligations. It also prevents a person from being guilty of an offence of failing to comply with reporting obligations in certain specified circumstances.

Proposed section 10 provides for a new obligation for registrable persons to report relevant personal information annually to the Commissioner of Police.

Proposed section 11 re-enacts the current provision for reporting changes in relevant personal information but also clarifies when certain information will be taken to have changed. The proposed section also places additional obligations to report changes within 14 days of returning to New South Wales.

Proposed section 11A expands the current requirements to report to the Commissioner of Police when leaving New South Wales. A report must be made if a registrable person intends to leave for 14 or more consecutive days. Details are to be provided of places and dates of travel and residence, as well as details of proposed return or otherwise.

Proposed section 11B imposes a new requirement on a registrable person who decides to extend a stay outside New South Wales in Australia beyond 13 days, or to change details reported under proposed section 11A, to report the details to the Commissioner of Police.

Proposed section 11C re-enacts the existing requirement on a registrable person to report the person's return to New South Wales within 14 days after entering and remaining in New South Wales.

Proposed section 11D imposes a new requirement on a registrable person to report to the Commissioner of Police frequent absences from New South Wales. Proposed section 11E requires the Commissioner of Police to provide to the Commissioner of the Australian Federal Police a copy of reports received relating to registrable persons' intentions in relation to travel outside Australia. Proposed section 12 re-enacts the requirement for a registrable person to report relevant personal information at a police station or other approved place but provides that some police stations may not be available for that purpose. Proposed section 12A re-enacts the requirement for a registrable person to report in person and, in relation to persons with a disability, enables an accompanying person to make the report instead. The proposed section also makes it clear that only a police officer may receive a report that must be made in person. It also enables reports (other than initial and annual reports and reports about residence and physical characteristics) to be made in other ways and to other persons. Proposed section 12B re-enacts the right of a registrable person to make a report out of hearing of members of the public and with support while also providing for police or other persons receiving reports to use an interpreter. Proposed section 12C provides for a person receiving a report to provide an acknowledgment of the report. Proposed section 12D sets out the matters that a person making a report must present as proof of identity. These requirements may be waived if the person permits his or her fingerprints to be taken or the relevant police officer is otherwise satisfied as to identity. Proposed section 12E empowers a police officer to take the fingerprints of a registrable person if the police officer is not reasonably satisfied as to the identity of the person after examining all the material provided or if there are no fingerprints of the person held by NSW Police. Proposed section 12F confers on a police officer a new power to require a registrable person to be photographed. Proposed section 12G sets out information that a police officer must give to a registrable person before exercising a power to take fingerprints or photographs. Proposed section 12H enables the Commissioner of Police to retain documents, fingerprints or photographs provided for identification when reports are given for other purposes of identification, law enforcement or child protection. It also makes it an offence to use documents, fingerprints or photographs so provided for any other purposes. The proposed section also makes it clear that fingerprints may be retained during the reporting period, despite any other law that would require their destruction. Proposed section 12I inserts a new provision enabling a registrable person who resides more than 100 kilometres from the nearest police station not to have to comply with time limits for reporting in person if an agreement about a later time is made with the Commissioner of Police and the relevant personal information is provided within time by other means.

Schedule 1 [24] extends the current modified reporting procedures for protected witnesses to registrable persons receiving protection under foreign witness protection laws. It also makes it clear that copies of documents may be provided by a protected witness and provides that information authorised by the Commissioner of Police is required to be provided.

Schedule 1 [25] reduces from 28 days to 14 days the period within which a registrable person may appeal for a review of a decision of the Commissioner of Police to make an order declaring that the person is or is not a person to whom the modified reporting requirements apply.

Schedule 1 [26] and [27] clarify when such orders take effect.

Schedule 1 [29] applies provisions relating to reporting of travel plans and

protection against prosecution to registrable persons who are subject to the witness protection program in New South Wales but generally reside outside New South Wales.

Reporting periods

Schedule 1 [30] omits the provisions of the Principal Act relating to the periods for which registrable persons are to report information to the Commissioner of Police and inserts instead proposed sections 14–14D. The proposed sections reenact the existing provisions with additional matters.

Proposed section 14 re-enacts the provision which sets out when a registrable person's reporting obligations commence ie on the later of sentencing or ceasing to be in government custody.

Proposed section 14A sets out the reporting periods for registrable persons. The new period for a person who has been found guilty of a single Class 1 offence is 15 years (previously 10 years). A registrable person in respect of a Class 1 offence who subsequently commits another registrable offence must report for life (previously 15 years or life, depending on the offence). A person who commits a Class 2 offence subsequent to one or more earlier Class 2 offences is to report for 15 years (previously 12 years). A registrable person in respect of a Class 2 offence who subsequently commits a Class 1 offence is to report for life (previously 15 years). A registrable person in respect of a Class 2 offence who subsequently commits a Class 2 offence and who has ever been found guilty of 3 or more Class 2 offences is to report for life (previously 12 years). The life time reporting obligation does not apply unless the registrable person was given notice of reporting obligations before committing the subsequent offences. The reporting period for persons who have committed a single Class 2 offence remains 8 years.

Proposed section 14B retains the halving of reporting periods for registrable persons who were children when they committed the registrable offences.

Proposed section 14C retains the current extension of reporting periods until the end of relevant parole or licence periods.

Proposed section 14D inserts a new provision requiring corresponding registrable persons to continue to report for the corresponding foreign reporting period.

Suspension and extension of reporting obligations

Schedule 1 [32] makes it clear that reporting obligations are suspended during government custody.

Schedule 1 [33] makes it clear that the suspension of reporting obligations while a person is outside New South Wales does not apply to protected witnesses or a person required to report a change of travel plans.

Schedule 1 [34] suspends a person's reporting obligations if a suspension order is in force in a foreign jurisdiction.

Schedule 1 [35] generally re-enacts the provisions enabling the Administrative Decisions Tribunal to exempt registrable persons who would otherwise be subject to life time reporting obligations from having to report. An additional requirement that the registrar of the Tribunal notify the Commissioner of the Commission for Children and Young People of proceedings for an exemption order is included (the Commission is already entitled to be a party to such proceedings). The power of the Tribunal to suspend obligations pending a determination has been removed. It also inserts proposed section 16A which provides for an exemption order to cease to have effect if the registrable person is made subject to a child protection registration order, is found guilty of a registrable offence or becomes a corresponding registrable person subject to reporting obligations. Proposed section 16B is a new provision enabling a registrable person to apply for a further exemption order if an order ceases to

have effect.

Offences

Schedule 1 [37] inserts a requirement for a court to consider, in determining whether a person has a reasonable excuse for failing to comply with the person's reporting obligations, whether the form of notification was adequate having regard to the person's circumstances.

Schedule 1 [38] bars a registrable person who leaves New South Wales and is found guilty of failing to report his or her presence in a foreign jurisdiction from being also prosecuted for a failure to comply with a requirement to report in respect of the travel outside New South Wales.

Schedule 1 [43] inserts additional provisions relating to offences and other matters. Proposed section 21B removes the general time limit for taking proceedings for offences that would otherwise apply in respect of offences under the Principal Act.

Proposed section 21C makes it clear that the fact that a conviction for a registrable offence becomes spent does not affect the status of the offence as a registrable offence or any reporting obligations under the Principal Act.

Proposed section 21D enables a government agency to disclose information concerning a registrable person to the Commissioner of Police or a supervising authority.

Child Protection Register

Schedule 1 [39] omits the provisions of the Principal Act relating to the Register of Offenders and inserts instead proposed sections 19–19B. The proposed sections re-enact the existing provisions with additional matters.

Proposed section 19 requires the Commissioner of Police to establish a Child Protection Register and enables the Commissioner to arrange with another person or body for its establishment and maintenance. The proposed section also includes additional matters to be included in the Register, including details of offences and special needs or disabilities.

Proposed section 19A inserts a new restriction on access to personal information on the Register relating to protected witnesses by anyone other than the officer responsible for the day to day operation of the witness protection program.

Proposed section 19B enables a registrable person to request a copy of all reportable information held in the Register with respect to the person and to request that incorrect information be amended.

Schedule 1 [9] defines the Register.

Schedule 1 [41] makes an amendment consequential on the change of name of the Register.

Other amendments

Schedule 1 [1] amends the long title of the Principal Act to better reflect its provisions.

Schedule 1 [2] inserts new definitions, including terms relating to the recognition of child protection registration orders and registrable persons in other jurisdictions. **Schedule 1 [28]** makes a consequential amendment.

Schedule 1 [7] makes it clear that the meaning of *foreign jurisdiction* in the Principal Act includes jurisdictions outside Australia, as well as other jurisdictions within Australia.

Schedule 1 [8] extends the meaning of government custody in the Principal Act to include custody of the same kind under a law of a foreign jurisdiction.

Schedule 1 [13] makes it clear that the Principal Act does not extend to findings of guilt that are quashed or set aside by a court.

Schedule 1 [12], [16], [23], [31], [36] and [40] renumber Parts and Divisions of the Principal Act.

Schedule 1 [42] is an evidentiary provision enabling a certificate that a person

was required to report to a corresponding registrar to be used as evidence of the facts stated in it.

Schedule 1 [44] inserts regulation-making powers for the purposes of the Principal Act as amended by the proposed Act.

Schedule 1 [46] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [48] inserts savings and transitional provisions consequent on the enactment of the proposed Act. Among these provisions is a regulation-making power enabling the retrospective application of new reporting periods so that they fit in with complementary legislation of other jurisdictions that may commence before the proposed Act. **Schedule 1 [45] and [47]** make consequential amendments.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends the *Crimes (Local Courts Appeal and Review Act) 2001* to enable a child protection registration order made by a Local Court to be appealed against in the same way as other sentences imposed by a Local Court.

Schedule 2.2 amends the *Criminal Appeal Act 1912* to enable a child protection registration order made by the District Court or the Supreme Court to be appealed against in the same way as other sentences imposed by those Courts.