



# Legislative Assembly

## Child Protection Legislation

### Amendment Bill Hansard

#### Extract

12/11/2002

#### Second Reading

**Mr CRITTENDEN** (Wyong—Parliamentary Secretary), on behalf of Mr Carr [11.37 p.m.]: I move:

That this bill be now read a second time.

The Carr Government has a proud record of protecting children, a record unequalled by any Government in the history of Australia. In 1998 the Government introduced four key child protection Acts: the Children and Young Persons (Care and Protection) Act; the Commission for Children and Young People Act; the Child Protection (Prohibited Employment) Act; and the Crimes Legislation Amendment (Child Sexual Offences) Act, which inserted section 11G of the Summary Offences Act. This bill makes amendments to the schemes established under the last three of those Acts, as well as to the Child Protection (Offenders Registration) Act. The four Acts amended by this bill are all based on the fundamental principle that the protection of children from abuse must be the paramount consideration.

All of these Acts link to provide a holistic scheme for better managing persons who pose a risk to child safety. Part 7 of the Commission for Children and Young People Act operates to require all preferred applicants for paid child-related employment to be screened to determine their suitability to work with children. In its first two years of operation, just under half a million preferred applicants for employment have been screened in New South Wales and over 14,500 organisations have registered to screen their employees.

During this time 472 people have been subjected to risk assessments, and 169 of these have subsequently been rejected for child-related employment. The Child Protection (Prohibited Employment) Act makes it an offence for persons found guilty of serious sex offences to work in child-related employment, whether or not a formal conviction is recorded against them. The Crimes Legislation Amendment (Child Sexual Offences) Act inserted section 11G of the Summary Offences Act to make it an offence for convicted child sex offenders to loiter near schools or other places frequented by children. Since 1999, 23 charges have been laid under section 11G, with the average sentence being 12 months imprisonment and the maximum sentence being two years imprisonment.

The Child Protection (Offenders Registration) Act, which has been in operation since October 2001, requires certain offenders against children to keep police informed of their name, address, employment, motor vehicle and travel details for a period of time after their release into the community. This information is held on the Child Protection Register under the auspices of NSW Police. As at 5 November, 636 offenders have registered with police, an initial compliance rate of over 95 per cent. The register has been successfully used in a number of investigations. In one matter a 12-year-old girl who was the victim of an attempted abduction reported that her alleged assailant was wearing overalls and carrying a construction hat. This information was matched against the register, which showed a person had registered as a construction worker. This information was important because that person was subsequently identified and charged.

I will now address the substantive provisions of the bill. The bill ensures effect is given to the Government's original intent that all convictions for offences that attract the operation of the four Acts can be considered for the purposes of those Acts, irrespective of the sentence and the age of the conviction. Section 579 of the Crimes Act provides that a person who entered into a recognizance for any offence, and who did not breach that recognizance or receive a conviction for an offence punishable by imprisonment within 15 years of that recognizance, cannot have their conviction considered for any purpose. Recognizances have now been replaced with good behaviour bonds. Section 579 operates in addition to the spent conviction provisions of the Criminal Records Act, which prevent sexual and other offences from becoming spent.

This means some old convictions for extremely serious offences against children cannot be considered for employment screening or prohibited employment purposes. It may also prevent some old convictions from being considered in determining reporting periods under the Child Protection (Offenders Registration) Act, although this has not been a problem to date. This runs contrary to the intention of all of the Acts. Accordingly, schedules 1 [3], 2 [2], 3 [7] and 4 [2] amend the four Acts to exclude the operation of section 579 of the Crimes Act. The Government has obtained Crown Solicitor's advice that the Acts, other than the Commission for Children and Young People Act, do not apply to offenders who are convicted of an offence where it is proven beyond reasonable doubt that they intended to sexually assault a child or commit any of the other offences that attract the operation of the Acts. For example, a person who commits the offence of assault with intent to have homosexual intercourse with a child under 10 under section 78I of the Crimes Act is not required to register with police or prevented from working with children or loitering near places frequented by children.

These offenders pose a serious risk to child safety and should be covered by the legislation in the same

manner as offenders who attempt, conspire or incite the commission of relevant offences. The Crown Solicitor's advice also queries whether the definition of "relevant criminal record" in the Commission for Children and Young People Act extends to conspiracy and incitement offences, which are covered by the other three Acts. Schedules 1 [1], 1 [2], 2 [1], 3 [5] and 4 [1] amend the four Acts to ensure that they all apply similarly to relevant attempt, intent, conspiracy and incitement offences. Transitional arrangements are necessary for the Child Protection (Offenders Registration) Act as, unlike the other Acts, it does not have full retrospective operation. Schedule 1 [9] to the bill extends registration obligations to all those under correctional supervision for intent offences as at 15 October 2001, and those sentenced for offences after that date.

Necessary transitional arrangements have also been made for the Child Protection (Prohibited Employment) Act. Items [4] to [6] of schedule 1 to the bill provide additional flexibility to the offender reporting requirements under the Protection (Offenders Registration) Act. Police have asked that they be able to take information at locations other than police stations, if they are satisfied with that arrangement. Schedule 1 [7] to the bill will enable three officers responsible for the register to give certificate evidence in proceedings for failure to report to police, or for giving false information to police under the Child Protection (Offenders Registration) Act.

Certificate evidence provisions are common and the amendment will limit the circumstances in which police are required to attend court, although the defence will still be able to cross-examine relevant police if it wishes to call them. Items [3] to [6] of schedule 2 to the bill make changes to the application process for persons seeking an exemption from the Child Protection (Prohibited Employment) Act. The Commission for Children and Young People will be provided with the power to grant exemptions in those cases where it does not consider that the applicant poses a risk to the safety of children. This will streamline the application process by preventing needless delays caused by the current requirement to institute proceedings in the Industrial Relations Commission or the Administrative Appeals Tribunal when the commission, which is a party to those proceedings, does not oppose the application.

These bodies may still hear applications that have not been granted by the commission and applicants can still choose to have their matter heard before either of those two bodies. Items [1] and [2] of schedule 3 enable the commission to access the information it needs to assess whether a prohibited person continues to pose a risk to child safety. The commission already has information access powers for the purposes of relevant Industrial Relations Commission or Administrative Decisions Tribunal hearings. Schedule 3 contains a number of amendments to the employment screening provisions of the Commission for Children and Young People Act.

NSW Police has received legal advice that the complaint and employee management provisions of part 8A and part 9 of the Police Act 1990, which are unique to police, may not fall within the definition of "relevant disciplinary proceedings" under the Commission for Children and Young People Act. Schedule 3 [6] to the bill amends the Act's definition of "relevant disciplinary proceedings" to remove any doubt that the Act applies to police. This approach is supported by NSW Police and the Police Association of New South Wales. Schedule 3 [4] is a minor amendment to clarify that the holders of remunerated positions fall within the definition of employment. Whilst the courts take a broad definitional approach to employment arrangements in beneficial legislation such as the Commission for Children and Young People Act, the amendment will ensure that there can be no question that holders of certain statutory offices are employees for the purposes of the Act.

Employment screening has been phased, with screening to date having been confined to relevant criminal record and disciplinary information. The Commission for Children and Young People Act also makes provision for a relevant apprehended violence order [AVO] to be considered for screening purposes and enables the commission to collect and maintain a database of such orders. Relevant apprehended violence orders are confined to final orders made by a court under part 15A of the Crimes Act, where the application for the order is made by a police officer or other public official for the protection of a child. Whilst the Commissioner of Police is empowered to provide the Commission for Children and Young People with relevant criminal record information under section 38 of the Commission for Children and Young People Act, the Crown Solicitor has advised that the Act does not empower the Commissioner of Police to provide the commission with relevant AVO information.

Items [9] and [11] of schedule 3 to the bill enable AVO information to be provided to the commission and for this information to be used in screening, as has always been intended. There is no specified time limit in the Commission for Children and Young People Act for employment screening checks to be completed. Consequently, neither employers nor employees have any certainty that they have met their statutory obligations under the Act. Schedule 3 [8] to the bill ensures that employers will have fulfilled their obligations upon receipt of the screening result from an approved screening agency. The bill improves the operation of, and consistency between, four key child protection Acts. It will clarify and strengthen the mechanisms for checking the background of people seeking to work with children in New South Wales. This bill demonstrates the Carr Government's strong stance on child protection and its ongoing commitment to improving the safety and welfare of children. I commend the bill to the House.