



Child Protection (Offenders Registration) Amendment (Suspended Sentences) Bill 2007

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Extract from NSW Legislative Council Hansard and Papers Wednesday 27
June 2007.

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [5.59 p.m.], on behalf of the
Hon. Eric Roozendaal: I move:
That this bill be now read a second time.

I am pleased to introduce the Child Protection (Offenders Registration) Amendment (Suspended Sentences) Bill 2007. The bill amends the Child Protection (Offenders Registration) Act 2000 to ensure that a person who is subject to a sentence of imprisonment for a single class 2 offence is not excluded from reporting requirements under that Act merely because the person's sentence has been suspended and they are not subject to supervision. The Government has prepared this bill as a matter of urgency as the children of New South Wales deserve the best possible protection from people who have been convicted of child sex offences or other serious offences committed against children.

Since October 2001 we have had a system in place in this State which requires people who have been convicted of sex offences and other serious offences against children to report their personal details to the New South Wales Police Force for a fixed number of years while they are living in the community. I strongly support this system, which is legislatively underpinned by the Child Protection (Offenders Registration) Act 2000. Registrable offences are listed in two separate categories under the Act. Class 1 includes the most serious offences, such as child murder and sexual intercourse with a child. I seek leave to have the remainder of my speech incorporated in *Hansard*.

Leave granted.

Class 2 includes other offences such as acts of indecency against a child and possession of child pornography.

Persons who have been convicted of a registrable offence or offences and meet a minimum sentencing threshold are required to report to police and are defined as registrable persons under the Act.

The information registrable persons provide means that police are told where these persons live, where they work, and what car they drive.

Registrable persons are also required to let police know about any children they reside with or have unsupervised contact with and affiliation with any clubs or organisations that have child membership.

They are also required to inform police in advance of their intended interstate or international travel arrangements.

This information increases and improves the accuracy of child sex offender intelligence held by police. It also assists in the investigation and prosecution of child sex offences committed by recidivist offenders as well as in the police management and monitoring of child sex offenders in the community.

The data held on the NSW Child Protection Register is also uploaded to the Australian National Child Offenders Register.

This database, which is managed by CrimTrac, is used to assist police from other jurisdictions in monitoring child sex offenders.

This national database also allows NSW police to receive alerts from the Australian Federal Police about registered persons travelling overseas who have not reported this information to police.

It was recently brought to my attention that a legal technicality identified in the case of *Khanna v. Commissioner of Police NSW* has resulted in 26 people being removed from the Child Protection Register.

This followed from a decision delivered by Mr Justice Brereton in the Supreme Court of New South Wales to the effect that while the applicant had been convicted of a single Class 2 offence, he was not a registrable person as he had been subject to a suspended sentence without any supervision.

This case has set a terrible precedent and it is essential that the Act be changed to close this unintended loophole.

Currently section 3A(2)(b) of the Act provides that persons who have been convicted of a single Class 2 offence are only registrable persons if the sentence imposed on them included:

- (i) a term of imprisonment, including a term of imprisonment the subject of a periodic detention order, or an equivalent order under the laws of a foreign jurisdiction, or
- (ii) a requirement that the person be under the supervision of a supervising body or any other person or body.

His Honour Justice Brereton held that the wholly suspended sentence that had been imposed on the applicant was not a 'term of imprisonment' for the purposes of the Act.

I am advised that since this decision was delivered, the NSW Police Force identified 26 other persons in the same circumstances.

Acting on the advice of counsel retained by the Crown Solicitor's Office, the NSW Police Force wrote to each of these people in May 2007 advising them they could be removed from the Register if they wished.

The Counsel's Memorandum of Advice referred to the amendment included in the bill which I am introducing today.

The Advice noted that, assuming the amendment is passed and has retrospective effect, the Commissioner of Police should write a further letter to those persons informing them that they are once again required to report to police under the Act.

I am advised that the 26 persons have been convicted for crimes including possession of child pornography, acts of indecency and indecent assault upon children.

These are crimes that Parliament saw as sufficiently serious to include as Class 2 registrable offences under the Act.

Furthermore, it was Parliament's original intention that persons who committed such crimes would be required to report to police on at least an annual basis and have their personal details recorded on the Child Protection Register.

The fact that they have received a suspended sentence is not necessarily an indication their actions were at the lowest level of seriousness, as other factors

involving the offenders' personal circumstances are taken into account on sentencing.

Persons who receive a suspended sentence are technically sentenced to imprisonment; however that penalty is suspended in whole or part.

Misconduct during the term of the suspended sentence can lead to its revocation and incarceration of the convicted person.

I will now outline the provisions of the bill.

Schedule 1 [1] amends the definition of an existing controlled person to include a person who immediately before October 2001 was serving a term of imprisonment the subject of a sentence supervision order.

This provision will capture any persons who were subject to a sentence supervision order immediately prior to the commencement of the *Child Protection (Offenders Registration) Act 2000* in October 2001.

Schedule 1 [2] defines a sentence supervision order as an order under section 12 of the *Crimes (Sentencing Procedure) Act 1999*.

Schedule 1 [3] amends the definition of a registrable person to include a person whose sentence is the subject of a sentence supervision order.

This provision means a person is a registrable person even if the sentence that was imposed on the person consisted solely of a term of imprisonment the subject of a sentence suspension order.

Schedule 1 [6] clarifies that the bill extends to any person who has been sentenced in respect of a registrable offence at any time before the commencement of this bill.

The provision allows that as soon as practicable after its commencement, the Commissioner of Police will give relevant persons written notice of their reporting obligations and the consequences that may arise if the person fails to comply with those obligations.

This provision is essential so that the 26 persons who have been removed from the Child Protection Register do not take advantage of the court decision to escape the appropriate scrutiny and monitoring by the NSW Police Force that their presence on the Register mandates.

The judgment in *Khanna v. Commissioner of Police NSW* is an unintended consequence of the drafting of the *Child Protection (Offenders Registration) Act 2000*, which can be simply remedied by the Act being amended to make clear that 'imprisonment' includes a suspended sentence.

I commend this bill to the House.