PROOF

BIRTHS, DEATHS AND MARRIAGES REGISTRATION AMENDMENT (CHANGE OF NAME) BILL 2012

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Bill introduced on motion by Mr Greg Smith.

Agreement in Principle

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [3.26 p.m.]: I move:

That this bill be now agreed to in principle.

The Government is pleased to introduce the Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2012. The bill will strengthen change-of-name restrictions in relation to inmates, parolees, remandees, forensic patients, and serious sex offenders. Those people will be required to obtain the approval of their supervisory authority prior to applying to the Registrar of Births, Deaths and Marriages to change their name. The proposed restrictions will prevent improper name changes by offenders, facilitate the effective supervision of offenders in custody and in the community, and will protect the interests of victims of crime.

This proposal is consistent with the recommendations of the "Best Practice Change of Name" paper that I presented at the meeting of the Standing Council on Law and Justice in November last year. At that meeting, the standing council agreed to consider implementing the recommendations of that paper. New South Wales is leading the way in implementing the recommendations of the best practice paper and will continue to encourage other jurisdictions to follow its lead. The bill deems inmates, parolees, remandees, serious sex offenders, forensic patients, and others under equivalent supervision in the community to be restricted persons.

The bill provides that restricted persons must not make a change-of-name application to the registrar without having first obtained the written approval of their supervising authority. A failure to do so will be a criminal offence. The supervising authority in respect of forensic patients is the Mental Health Review Tribunal. The supervising authority in respect of all other restricted persons is the Commissioner of Corrective Services. The bill requires supervising authorities to notify the Registrar of Births, Deaths and Marriages of all restricted persons. That ensures that if a restricted person fails to obtain the approval of their supervisory authority, the registrar will know to refuse that application.

As inmates, parolees, and remandees are strictly monitored groups, it is appropriate that the Commissioner of Corrective Services should be required to approve an application for a change of name before it is made to the Registrar of Births, Deaths and Marriages. No such approval is currently required and such offenders are free to change their name without the knowledge or consent of Corrective Services. Therefore, Corrective Services could be attempting to monitor an offender in the community without even knowing their real name, or an application could be made by an offender for an improper purpose, such as to further an unlawful activity. This bill addresses those issues. Furthermore, there have been several high-profile cases in which people convicted of serious offences have attempted to change their

name in a manner that is offensive to the victims of their crime. For example, in Victoria notorious paedophile Brian Jones attempted to change his name to "Shaun Paddick" while on parole. This was interpreted as an insult to his victims, whose hair he shaved when he abused them. Following this, the Victorian Corrections Act was amended to provide that parolees must obtain the approval of the Adult Parole Board prior to applying to the Victorian Registrar to change their name.

Under the Births, Deaths, and Marriages Registration Act, the registrar may refuse to register an application for a change of name if he determines that the proposed name is "obscene or offensive". However, the registrar may not be aware that a change of name application could be inappropriate without being aware of the full criminal history of the applicant, which the applicant may fail to disclose. In contrast, the applicant's supervising authority will be fully aware of the history and circumstance of their criminal offences. This body is in the best position to initially assess whether an application for a change of name would be offensive to victims of the crime or the community.

The proposed restrictions also apply to serious sex offenders subject to extended supervision orders. The Supreme Court may make such an order to monitor an offender in the community only if it is satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious sex offence if he or she is not kept under supervision. The terms of an extended supervision order can include strict controls, such as requiring the subject of the order to reside at a particular address, not to engage in specified types of conduct and to submit to electronic monitoring. As serious sex offenders are strictly monitored, they should also be required to obtain the approval of the Commissioner of Corrective Services prior to changing their name. This proposal is consistent with the approach currently adopted in New South Wales in respect of registrable persons under the Child Protection (Offenders Registration) Act. The change of name restrictions in this bill are in addition to the restrictions under that Act.

Similar concerns arise in relation to forensic patients. A forensic patient is a person who has been found unfit to be tried or been found not guilty by reason of mental illness. Forensic patients may be detained in a variety of places, including correctional centres and mental health facilities, or they may be released into the community subject to strict conditions. Forensic patients are subject to a high degree of supervision and control by their supervising authority, the Mental Health Review Tribunal, as they may be a danger to themselves and the community. Therefore, it is appropriate that the approval of the tribunal should be required before a forensic patient can apply to change his or her name. Correctional patients, periodic detainees and others under supervision orders in the community, such as intensive correction orders or home detention orders, are also covered by the proposed restrictions.

It is acknowledged that there may be some circumstances in which restricted persons may apply to change their name for legitimate reasons. Offenders may also be victims of crimes and a change of name may be an attempt to escape identification by a perpetrator. Alternatively, a name change could be made for religious or cultural reasons. In some cases, a change of name can assist in the rehabilitation of an offender. Therefore, the bill provides that a supervising authority may approve a change of name application, but only if it is satisfied that the change of name is in all the circumstances necessary or reasonable. The bill also provides that a supervising authority must not approve a change of name application in certain circumstances.

These circumstances include when the proposed name would be reasonably likely to be regarded as offensive by a victim of crime or an appreciable sector of the community. For example, if an offender applied to change their name to that of one of their victims a supervising authority could not approve this. A change of name application must also not be approved if it is reasonably likely to be used to evade or hinder the supervision of the applicant, to be used to further an unlawful activity or purpose, to jeopardise the applicant's or another person's health or safety, or to adversely affect the security, discipline or good order of any facility in which the person is held or accommodated.

The bill goes even further to ensure the safety of the community by extending change of name restrictions even after an offender has completed his or her prison or parole term in certain circumstances. In most cases when offenders have completed their sentence they are as free to change their name as any other person. A change of name can assist in rehabilitation by enabling an offender to successfully re-integrate and become a law-abiding and productive member of society. However, there is a group of serious offenders for whom continuing change of name restrictions are justified. Community concerns have been raised following some cases in which high profile criminals have changed their name and have not been recognised in the community. The safety of the community must be considered paramount.

Therefore, the bill will extend change of name restrictions to any serious offender even after they finish their prison and parole term. Serious offenders are defined in the Crimes (Administration of Sentences) Act and are managed by the Serious Offenders Review Council whilst incarcerated. They include those at the high end of the offending scale, such as murderers and people sentenced to a non-parole period of at least 12 years. The sentencing court, the parole authority and the Commissioner of Corrective Services may also deem people to be serious offenders in appropriate circumstances. When offenders have completed their parole or prison sentences, they will not have a supervising authority. Therefore they may apply directly to the Registrar of Births, Deaths and Marriages to change their name.

However, under the bill the registrar will be required to obtain the approval of both the Commissioner of Corrective Services and the Commissioner of Police in deciding whether to register the change of name. The Commissioner of Corrective Services and the Commissioner of Police may only approve the application if they are satisfied that the change of name is reasonable or necessary in the circumstances. Furthermore, the bill provides that the commissioners may not approve of an application for a change of name in certain circumstances, which mirrors the applicable criteria in respect of restricted persons under the bill. This provides an important safeguard to prevent name changes by released serious offenders when there is good reason for the proposed change not to occur. The restrictions will continue for 10 years after a serious offender completes his or her sentence, unless he or she commits another offence attracting a custodial sentence, in which case the restrictions will be extended.

If serious offenders prove that they can reintegrate into society without committing further offences it is appropriate that change of name restrictions are relaxed. Evidence shows that recidivism rates drop off sharply the longer a person continues without re-offending. The bill provides that if the Mental Health Review Tribunal does not approve a change of name application by a forensic patient, the applicant will have a right to appeal that decision to a full panel of the Mental Health Review Tribunal. Similarly, the bill provides that if the either the Commissioner of Corrective Services or the Commissioner of Police does not approve a

change of name application by an offender, the applicant will have a right to seek review of that decision to the Administrative Decisions Tribunal. This ensures that there is adequate recourse for an applicant if those authorities make an incorrect decision.

Of course, decisions by the commissioners may be made on the basis of criminal intelligence or other security-sensitive information that should not be disclosed to the offender or the public. Therefore, the bill provides that security-sensitive information need not be disclosed by the commissioners when giving reasons for their decisions. Also, the Administrative Decisions Tribunal, when reviewing those decisions, is to ensure that such information is not disclosed without the approval of the commissioner who made the decision. The proposed restrictions strike an appropriate balance between facilitating effective supervision of offenders in custody and in the community, protecting the interests of victims of crime and allowing offenders to change their name for legitimate reasons where appropriate. I commend the bill to the House.

Debate adjourned on motion by Mr Paul Lynch and set down as an order of the day for a future day.