



Full Day Hansard Transcript (Legislative Council, 10 September 2014, Proof)

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Extract from NSW Legislative Council Hansard and Papers Wednesday, 10 September 2014 (Proof).

CHILD PROTECTION (OFFENDERS REGISTRATION) AMENDMENT (STATUTORY REVIEW) BILL 2014

Second Reading

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra)
[9.42 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 Child Protection (Offenders Registration) Amendment (Statutory Review) Bill 2014 implements the findings of the statutory review of the Child Protection (Offenders Registration) Act 2000.

The amendments contained in this bill will improve the operation of the Act, and will strengthen monitoring of child sex offenders living in the community.

The Act provides the framework for the registration and reporting requirements of certain offenders who have committed sexual and other serious offences against children. These offenders are known as registrable persons.

The Act aims to protect children from serious physical and psychological harm caused by physical and sexual assault through the monitoring of these registrable persons in the community.

Section 26 of the Act requires the Minister for Police and Emergency Services to review the Act to determine whether its policy objectives remain valid and whether its terms remain valid for securing these objectives.

A discussion paper was circulated to relevant stakeholders in 2013, who were invited to make submissions that could assist with the statutory review of the Act.

Submissions were received from across Government, as well as non-government agencies, such as the Homicide Victims Support Group, Law Society of NSW, Legal Aid New South Wales and Shopfront Youth Legal Centre.

I wish to thank all of them for their contributions.

The review found the policy objectives of the Act remain valid and that its terms remain appropriate for securing those objectives.

Child protection registration offences are listed in two classes. Class 1 offences are the most serious and include child murder and sexual intercourse with a child, while class 2 offences include child prostitution and child abuse material offences.

Registrable persons are required to report particular personal details to police while they are living in the community. This includes their name, date of birth, where they live, what car they drive and details of any children who generally reside in the same household with them.

Their details are recorded on the New South Wales Child Protection Register, a database held by the NSW Police Force.

Depending on the severity of their offences, the time frame for reporting can vary from four to five years for young offenders to life for adult repeat offenders.

Now to the details of the bill. The Child Protection (Offenders Registration) Amendment (Statutory Review) Bill 2014 will amend the Act with the following provisions.

The new objects of the Act are to:

- (a) protect children from serious harm (including physical and psychological harm caused by physical or sexual assault), and
- (b) ensure the early detection of offences by recidivist child sex offenders, and
- (c) monitor persons who are registrable persons, and
- (d) ensure that registrable persons comply with this Act.

The definition of class 2 registrable offence is being expanded to include:

- manslaughter of a child, except as a result of a motor vehicle accident
- wounding or causing grievous bodily harm with intent to a child under 10 years of age (when the offender is not a child) and
- child abduction (when the person committing the offence has never had parental responsibility for the child).

Inclusion of these offences will ensure that offenders who continue to pose significant risks to children are not omitted from ongoing monitoring.

Under section 3E of the Act, the time frame in which applications may be made by police for a child protection registration order will be extended from 21 to 60 days.

Section 3E of the Act enables a registration order to be made after the conclusion of criminal proceedings for an offence which is not registrable.

This is on application by the police and can only be made if the court is satisfied that the person poses a risk to the life or sexual safety of a child.

Police will now have sufficient time for the application for a registration order to be made, should it be warranted.

The bill amends section 3F to allow for the retrospective application of the new offences. It provides that police may apply for a registration order for a person who was sentenced in the past for the additional class 2 registrable offences, unless they were a child at the time.

This will strengthen current arrangements, where police may only apply for a registration order for someone who was sentenced for a class 2 offence before 2001.

Police will assess the current behaviour of such persons in conjunction with the previous offences.

The court will determine if those offenders who have committed these offences in the past pose a current risk to children; and may then order they comply with reporting obligations.

The bill provides that section 3H of the Act will be amended to include the following criteria for the court to take into account when determining whether to make a registration order:

- the seriousness of each registrable offence committed by the person,
- the age of the person at the time each of those offences was committed,
- the age of each victim of each of those offences at the time that the offence was committed,
- the seriousness of any other offences committed by the person,
- the impact on the person if the order being sought is made, compared with the likelihood that the person may commit a registrable offence, and
- any other matter the court considers to be relevant.

The bill proposes a number of changes related to forensic patients. In general terms, forensic patients have either been found not guilty by reason of mental illness of committing a crime, or found to be unfit to stand trial.

Under section 3 the definitions of sentence will be clarified in relation to the Mental Health (Forensic Provisions) Act 1990. Currently the term "sentence" only refers to an order of detention under sections 27 or 39.

The Act will be amended to provide that an order under section 24 of the Mental Health (Forensic Provisions) Act, which causes a person to be kept in custody for a specified term, is included in the term "sentence". Consequently these people will fall within the definition of a registrable person under the Child Protection (Offenders Registration) Act.

Turning to section 6, the review accepted submissions that legislative reform should clarify when notifications should be made and when reporting obligations should commence for forensic patients.

Section 6 of the Act provides that when a registrable person ceases to be in custody or under supervision, the supervising authority must give written notice of that fact to the Commissioner of Police. The person must also be given written notice of their reporting obligations and the consequences of failing to comply.

During the course of their treatment, a forensic patient can be granted many different types of leave.

To ensure that the various notices only apply in appropriate circumstances, the Act will be amended to:

- require the Ministry of Health to notify the Commissioner of Police under section 6 on each occasion that a forensic patient is subject to an order that allows the person to be absent from a mental health facility, correctional centre or other place on a regular and unsupervised basis, and
- clarify that notice to the person of their reporting obligations is not required to be given in those circumstances.

These changes will mean police will know when registrable persons, who are also forensic patients, are in the community unsupervised. However, the person will not be subject to formal reporting requirements until released into the community.

Provisions have been included for regulations to determine what constitutes absences on a regular and unsupervised basis, as well as the manner and form of written notice regarding such leave.

Moving on to section 9, the review considered the definition of "contact" based on submissions and recommendations of the Victorian Law Reform Commission's Sex Offenders Registration: Final Report.

The bill amends section 9 of the Act to clarify contact with a child that must be reported includes both the modes and circumstances in which the contact occurs. However it will exclude any "one off" contact the offender may have with a child, such as when the registrable person is on public transport.

As a result the definition of "regular unsupervised contact" at section 9 (2) (c) of the Act is repealed.

The bill will also amend section 9 to clarify the personal information that a registrable person must provide to police. Currently this information includes such matters as details on vehicles the person generally drives and their phone number.

The review accepted these requirements could be strengthened so that a registrable person could not attempt to avoid their obligations.

This information will now also include:

- the full details of any hire car used by the person for short periods, and
- the details of any mobile phone or landline numbers used, or intended to be used, by the person not just their own number.

Additional personal information will be included under a new section 9 (1A) to clarify the circumstances involving contact with a child by the registrable person.

A registrable person must report contact with a child if that person is:

- supervising or caring for the child, or
- visiting or staying at a household where the child is present, or
- exchanging contact details with the child, (including providing the person's contact details to the child) or
- attempting to befriend the child.

A further amendment gives the courts discretion to modify reporting requirements to address the needs of a young offender, where the court is satisfied there is not increased risk to children.

This amendment to section 9 provides that:

- the sentencing court, or
- a court imposing a registration order, or
- a Local or Children's Court on application by the police may take into consideration the circumstances of a young registrable person. The court may then modify contact reporting obligations to assist with the educational or other needs of that young person.

These young offenders need not provide all information regarding contact with peers in, for example, a classroom. This will specifically assist young registrable persons to remain at school without having to report all classmates' details.

If a young registrable person later changes schools or leaves school, the police can apply to the court to modify the reporting requirements.

The review accepted that a young registrable person should be given a chance to get an education without obligations that are overly onerous. This is balanced with protecting the children with whom they have more than incidental contact.

I will now speak to corresponding registrable persons or those registrable persons from other jurisdiction. A number of provisions relating to corresponding registrable persons are currently woven throughout the Act and these will be placed into a single division.

This will simplify the Act's administration and ensure the full suite of requirements is clearly identifiable.

Division 3 of the Act includes a number of sections where the current time frames for reporting vary depending on the situation. The varying timeframes were raised by stakeholders in the review as complex.

To address this, the bill will amend Division 3 of the Act to provide that a registrable person must report any changes to their relevant personal information to police within seven days of that change occurring.

Some time frames remain as currently provided in the Act including sections 11 (1) (a), 11A (3) and 11F:

- the provision of names of children in the registrable person's household must be reported within 24 hours
- the intention to travel outside New South Wales for more than 14 days where circumstances arise making it impracticable to make the report seven days before the person leaves, must be reported within 24 hours prior; and
- the intention to change the place where the registrable person generally resides must be reported within 14 days.

Section 15 of the Act will be amended to address concerns that registrable persons may currently be able to breach their reporting requirements by failing to make either an initial or annual report, without serious repercussions.

New subsections will provide for extensions to the reporting periods, now to be known as "countable periods".

This is consistent with current provisions which suspend reporting obligations when a registrable person is in custody. Currently the length of the reporting period is extended by the time during which the reporting obligations are suspended.

Police will be required to inform registrable persons of the consequences of failing to comply with their reporting obligations, in terms of the potential extension of those reporting obligations, at the time of the initial and annual reports.

The bill amends section 19E to increase the maximum penalties for unauthorised changes of name by a registrable person—without reasonable excuse—to five years imprisonment or \$55,000, or both.

This will provide consistency with penalties which apply elsewhere in the Act for failing to comply with reporting obligations or furnishing false or misleading information without reasonable excuse.

Section 19BA facilitates the multi-agency monitoring and risk management of high risk registrable persons who have been referred to an interagency Child Protection Watch Team for case management.

These agencies are allowed to collect and use personal information about a registrable person, and disclose that information to other scheduled agencies if authorised by a senior officer of the agencies concerned.

Schedule 1 is being amended to include current titles of, or the specific appropriate part of, the relevant departments.

Schedule 2 provides for savings, transitional and other provisions.

In the main, these amendments comprise matters of a machinery nature to provide consistency with other Acts.

Those clauses which relate to reporting obligations, in particular clause 5; will mean that current registrable persons will need to comply with the new amendments regardless of when their reporting obligations first commenced.

This bill is the result of effective consultation and thorough review. It takes into consideration the national approaches to offender registration and is consistent with or superior to, that of other jurisdictions.

This bill strikes the balance between maximising compliance with obligations under the Act and ensuring sophisticated and effective monitoring.

I commend the bill to the House.