



New South Wales

# Child Protection (Offenders Registration) Amendment (Statutory Review) Bill 2014

## Explanatory note

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

## Overview of Bill

The object of this Bill is to make various amendments to the *Child Protection (Offenders Registration) Act 2000* as a result of a statutory review under section 26 of that Act. The proposed changes include the following:

- (a) including objects in that Act,
- (b) expanding the classes of registrable offences to include manslaughter of a child, wounding or grievous bodily harm of a child under 10 years of age and abduction of a child,
- (c) increasing the time in which child protection registration orders can be made,
- (d) specifying matters that a court must take into account before making such an order,
- (e) requiring the Commissioner of Police to be notified when a registrable person who is a forensic patient is given regular unsupervised leave from detention,
- (f) updating the relevant personal information that must be reported by a registrable person,
- (g) clarifying the types of contact with children that a registrable person must report,
- (h) standardising the period in which reports must be made,
- (i) extending reporting obligations if a registrable person fails to comply with the obligations,
- (j) increasing the penalty and providing a defence in respect of offences relating to attempting to change a registrable person's name without the approval of the Commissioner of Police,
- (k) updating the list of scheduled agencies to account for changes to the government sector,
- (l) collating provisions that deal exclusively with corresponding registrable persons,

- (m) making other minor statute law revision amendments,
- (n) including savings and transitional provisions consequential on the proposed amendments.

## 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 the date of assent to the proposed Act.

## **Schedule 1      Amendment of Child Protection (Offenders Registration) Act 2000 No 42**

**Schedule 1 [1]** inserts a number of objects into the *Child Protection (Offenders Registration) Act 2000* (the *Principal Act*).

**Schedule 1 [3]–[5], [7] and [8]** include a number of offences in the definition of *Class 2 offence*. Most of these are merely transferred for convenience from the regulations (which currently prescribe a number of Class 2 offences). However, several new offences have been added including the offence of manslaughter (except as a result of a motor vehicle accident) where the victim is a child, an offence of wounding or causing grievous bodily harm with intent where the victim is a child under 10 years of age and the person committing the offence is not a child and an offence of child abduction where the person committing the offence has never had parental responsibility for the abducted child. **Schedule 1 [18]** permits child protection registration orders to be made in respect of the 3 new Class 2 offences even if a person was found guilty of the offence before the offence became a Class 2 offence (unless the person was a child at that time). **Schedule 1 [2]** renumbers provisions within the definition as a consequence of the amendments made to it. **Schedule 1 [6]** omits a reference to a repealed provision.

**Schedule 1 [10] and [11]** update a number of provisions to add a reference to orders under section 24 (1) (b) of the *Mental Health (Forensic Provisions) Act 1990* where there are references to similar orders under that Act. Orders under that paragraph are made with respect to the custody of a person by a court when nominating a limiting term under section 23 of that Act. **Schedule 1 [11]** also updates a definition of *relevant personal information* and includes definitions (*interstate Registrar, NSW Registrar* and *supervised sentence*) that have been moved for convenience to section 3 of the *Principal Act* from other provisions of that Act. **Schedule 1 [20] and [21]** make consequential amendments.

**Schedule 1 [12]–[15]** remove references to repealed provisions, insert references to replacement provisions and include a note to explain that, because of savings and transitional provisions, offences under those repealed provisions still have to be taken into account.

**Schedule 1 [17]** increases, from 21 days to 60 days, the time in which child protection registration orders can be made after the conclusion of criminal proceedings.

Before a court can make child protection registration orders in respect of a person it is required to determine whether a person poses a risk to the lives or sexual safety of one or more children, or children generally. **Schedule 1 [19]** sets out matters that a court is to take into account when making that determination.

**Schedule 1 [22] and [23]** require a supervising authority (in this case the Secretary of the Ministry of Health) to give written notice to the Commissioner of Police as soon as practicable before or after a registrable person is permitted to be absent, on a regular and unsupervised basis from the place at which the person is detained, because of an order under section 49 of the *Mental Health (Forensic Provisions) Act 1990*. Such an order does not mean that the person ceases to be in government custody, therefore no notice is required to be given to the registrable person under section 6 (2) of the *Principal Act*.

The Principal Act requires a registrable person to make periodic and other reports to the Commissioner of Police. The regulations under the Principal Act may make provisions as to what constitutes absence on a regular and unsupervised basis.

**Schedule 1 [25]** requires a registrable person to report as relevant personal information details of any motor vehicle hired by the person.

**Schedule 1 [26]** clarifies that a requirement to report details of any telecommunications service includes a requirement to report the phone numbers that relate to that service.

**Schedule 1 [27]** clarifies the types of contact with children that must be reported by a registrable person as relevant personal information. These are contact in the course of supervising or caring for a child, visiting or staying at a household where a child is present, exchanging contact details with a child or attempting to befriend a child. A court that is sentencing a person for a registrable offence (or a court that is imposing a child protection registration order on the person) may modify the person's reporting obligations in respect of contacts occurring before the person is 18 years of age if the person is under 18 years of age and the court is of the view that the modification is appropriate taking into account the person's educational and other needs. The court that made the modification, the Local Court or the Children's Court, may at a later date and on the application of the Commissioner of Police, make further modifications to the person's reporting obligations to require the information to be reported. **Schedule 1 [24], [28] and [32]** make consequential amendments.

**Schedule 1 [31] and [33]** reduce to 7 days the period in which a registrable person must report a change in the person's relevant personal information.

**Schedule 1 [34]** requires a registrable person who has left the State to report the person's return to the State within 7 days after entering and remaining in the State for 14 days. A registrable person who has reported that the person intends to leave the State must report any change to that intention within 7 days.

**Schedule 1 [36]** provides for a registrable person's reporting obligations to be extended to account for periods during which the person fails to make an initial or annual report. The period to be added commences one month after the relevant report was due to be made and continues until a report is made.

**Schedule 1 [38]** collects all provisions that deal only with corresponding registrable persons into one Division for convenience. **Schedule 1 [9], [16], [29], [30], [35] and [37]** make consequential amendments.

**Schedule 1 [40]** provides that a person is not guilty of the offence of applying to change the name of a registrable person without first obtaining the written approval of the Commissioner of Police if the person has a reasonable excuse. **Schedule 1 [41]** increases from \$550 to 5 years imprisonment or \$55,000 (or both) the penalty for that offence. **Schedule 1 [46]** provides that the offence is not to be automatically tried summarily (Schedule 2 provides for when the offence is to be tried summarily).

**Schedule 1 [42] and [43]** remove an unnecessary definition (*change of name application*).

**Schedule 1 [39]** is consequential on the amendments made by Schedule 1 [11], [42] and [43].

**Schedule 1 [44] and [45]** remove an unnecessary definition (*child protection prohibition order*).

**Schedule 1 [47]** updates the list of scheduled agencies to take account of changes made to the government sector. Scheduled agencies are permitted to collect, use and disclose personal information about registrable persons despite other privacy legislation.

**Schedule 1 [48]** includes a number of savings and transitional provisions that are consequent on the other amendments made by the proposed Act.

## **Schedule 2      Amendment of Criminal Procedure Act 1986 No 209**

Schedule 2 amends the *Criminal Procedure Act 1986* to provide that an offence under section 19E of the *Child Protection (Offenders Registration) Act 2000* may be dealt with summarily unless the prosecutor elects to have the offence dealt with on indictment.