



## Child Protection (Offenders Prohibition Orders) Bill.

### Second Reading

**Mr JOHN WATKINS** (Ryde—Minister for Police) [6.00 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Child Protection (Offenders Prohibition Orders) Bill. The bill realises a key commitment in the Carr Government's 2003 child protection policy—Child Sexual Abuse: Labor's Plan to Protect Children. Preparation of the bill has been a collaborative effort between the Attorney General and Police portfolios, and will be jointly administered by the Minister for Police and the Attorney General. The bill will enable police to apply to the Local Court to prohibit a registrable person under the Child Protection (Offenders Registration) Act 2000, from engaging in specific behaviour when, on the balance of probabilities, there is a reasonable cause to believe that the person poses a risk to the sexual safety or the life of a child, or to children generally.

The Carr Government has a proud child protection record, unequalled by any government in the history of this country. In fact, child protection initiatives by this Government, in particular the establishment of the New South Wales Child Protection Register, have been a model for jurisdictions Australia-wide. The Government has pursued its child protection agenda with the support of the people of New South Wales, and the creation of child protection prohibition orders by this bill will offer further protection to our State's children. In recognising the recidivist nature of paedophile offending, the Carr Government has already introduced significant legislation which imposes certain restrictions on child sex offenders after their release into the community.

This bill recognises the special risk that child sex offenders and other violent offenders against children may still pose after they are released back into the community. Child protection prohibition orders are intended as a means of managing offenders of the highest risk to children. By prohibiting high-risk offenders from specified conduct previously shown to be a precursor to offending, a child protection prohibition order will help prevent further serious offences before they are committed. If police have reason to believe, based on their intelligence about a registrable person and their knowledge of that person's previous offending behaviour, that the person may be engaging in conduct that is likely to pose a risk to a child or children generally, they will be able to apply to the Local Court for a order prohibiting that person from specific kinds of behaviour.

For example, a registrable person may be seen at a local swimming pool teaching a seven-year-old child to swim. On the face of it, there may be nothing wrong with such behaviour. But if on a prior occasion this kind of conduct by that person led to a sexual assault against a child of a similar age and of the same sex, it would be appropriate for police to consider whether they should apply for a prohibition order against this person. Another example would be that of a registrable person who may regularly deliver produce to a school canteen. Again on the face of it, there may be nothing wrong with this. But if that person has a history of offending against children that they have gained access to when making these sorts of deliveries, then an order may be necessary to prevent that person gaining access to children in this way. In determining whether to apply for orders, police will need to conduct risk assessments of the person concerned to establish whether the person's current conduct, in conjunction with his or her previous convictions, is likely to pose a risk to children. This has the function of putting the offender's behaviour, which might otherwise appear normal, into a relevant context.

I will now outline the key provisions of the bill. The bill will create child protection prohibition orders [CPPOs] to prohibit registrable persons within the meaning of the Child Protection (Offenders Registration) Act 2000 from engaging in specified conduct when, on the balance of probabilities, there is reasonable cause to believe that the person poses a risk to the sexual safety or life of a child. Registrable persons are those whom a court has found guilty and sentenced in respect of certain serious offences against a child, including the murder of a child, offences involving sexual intercourse with a child, the persistent sexual abuse of a child and certain kidnapping and indecency offences. As at the end of May 2004 a total of 1,500 offenders had been placed on the register; of these, 971 registered persons are currently in the community and 56 are absent from New South Wales. The bill will allow police to apply to the Local Court for a child protection prohibition order against a registrable person.

Clause 5 of the bill provides that the court will be able to make such an order if it is satisfied that there is reasonable cause to believe, having regard to the nature and pattern of conduct of the person, that the person poses a risk to the lives or sexual safety of one or more children, or to children generally. This will be a civil test, relying on the balance of probabilities that the person poses such a risk. The court will also need to be satisfied that the making of the order will reduce the risk posed by the registrable person to a child, or to children generally. A child protection prohibition order may prohibit conduct such as contact with specified persons or kinds of persons, being in specified locations or kinds of locations, engaging in specified behaviour, and being in specified employment or employment of a specified kind.

The bill allows for an order to be made against an adult registrable person for a period of up to five years, and against a young registrable person for up to two years. Contravention of an order will be a criminal offence and carry a maximum penalty of 100 penalty units or imprisonment for two years, or both. Clause 7 also provides for interim child protection prohibition orders if it appears to the Local Court that there is a need to prevent an immediate risk to the lives or sexual safety of one or more children, or to children generally. An interim order may be made by the Local Court in the registrable person's absence and whether or not the registrable person has been given notice of the proceedings. If an interim prohibition order is made by the Local Court, the court must issue a court attendance notice requiring the registrable person to attend the court for a further hearing of the matter as soon as practicable after the interim order is made. In determining whether to apply for an order or an interim order against a registrable person, NSW Police will need to assess the risk of that person's conduct in the context of their past offending behaviour or established modus operandi.

Other government agencies may hold vital information which would be relevant to the risk posed by a registrable person. For this reason, clause 16 allows the Commissioner of Police to direct other government agencies to provide information relevant to the assessment of the registrable person's risk to the lives or sexual safety of children when determining whether to apply for, or when applying for, an order or interim order. This provision is similar to the existing powers of the Commission for Children and Young People to compel other government agencies to provide information relating to the safety of children under section 14A of the Commission for Children and Young People Act 1998. Government agencies will not be required to give information that is subject to legal or other professional privilege. Clause 14 provides that proceedings for applications for child protection prohibition orders must be heard in the absence of the public, unless the court specifically permits persons other than the parties to the proceedings, or their legal representatives, to be present.

The bill provides for a range of important safeguards to be considered by a court when determining whether to make a child protection prohibition order. Clause 5 (3) provides a comprehensive set of factors that a court is to consider when determining whether to make a prohibition order against a registrable person, including the seriousness of each offence with respect to which the person is a registrable person; the period of time since those offences were committed; the age of the person when those offences were committed; the age of each victim of the offences when they were committed; the difference in age between the person and each such victim; the person's present age; the seriousness of the person's total criminal record; the effect of the order sought on the person in comparison with the level of the risk that a further offence may be committed by the person; to the extent that they relate to the conduct sought to be prohibited, the circumstances of the person, including the person's accommodation, employment needs and integration into the community; and any other matter the court thinks fit.

Clause 9 requires the court to ensure that all reasonable steps are taken to explain to the registrable person their obligations under the order and the consequences which may follow if they fail to comply with the order. Further safeguards are provided in relation to orders against juveniles, requiring the court to be satisfied that all other reasonably appropriate means of managing a young registrable person's behaviour have been considered before the order was sought. The court must also consider the educational needs of a young registrable person in determining whether to make an order.

The bill also limits the power of the Commissioner of Police to delegate responsibility for the function of applying for an order against a young registrable person to the member of NSW Police who has responsibility for child protection matters, or the person performing that role in his or her absence. This is currently Superintendent Kim McKay, the Commander of the Child Protection and Sex Crimes Squad. A registrable person subject to a prohibition order has a right of appeal under Local Court legislation. In such appeals relevant legislation usually operates to stay the operation of an order until the appeal is heard. Clause 15 of the bill provides that in any appeal made in relation to a child protection prohibition order, the order will remain in force until the outcome of the appeal is determined, unless otherwise ordered by the court.

The bill also provides for the Local Court to make a prohibition order by consent if the applicant—that is, the police—and the registrable person consent to the making of an order. In such cases, it will not be necessary to conduct a hearing before making an order, unless the Local Court is of the opinion that it would be in the interests of justice to do so. In forming this opinion, the court may consider factors such as whether the registrable person has sought legal advice, whether they suffer from any impaired intellectual functioning, are the subject of a guardianship order, are illiterate or are not fluent in English. Clause 18 of the bill makes it an offence, without the consent of the Local Court, to publish information that identifies a person as someone against whom an order has been sought or made. It is also an offence, in relation to an order, to publish the name of any victim or person identified as a person at risk because of the conduct proposed to be prohibited. The bill provides for a maximum penalty of 100 penalty units, \$11,000, or imprisonment for two years, or both, for an offence under this section.

This section does not apply to publication of information to the registrable persons themselves, members of NSW Police or other law enforcement agencies or persons involved in the administration of the order. Nor does it apply for the purpose of investigating an alleged breach of an order or to persons involved in proceedings for an alleged breach of an order. The bill also does not apply this section to information disclosed to any member of staff of a government agency involved in the assessment and management of a registrable person. This will enable effective interaction between this legislation and the Government's child protection watch teams. I will comment further on this relationship.

There may be occasions when it will be appropriate to release certain information in relation to an order to people other

than those directly involved in the court proceedings. For example, if an order was made against a person who had a history of offending against preschool-age children, to prevent that person from being in the vicinity of particular preschools it may be appropriate to inform the preschool manager about the person who has been prohibited from the school and other details about the nature of the order. The bill, therefore, makes provision for the court to specify any other person or class of person in the order who may be told details of the order and the identities of registrable persons and victims to whom the order may relate. For example, if a registrable person poses a specific threat to a particular child, it may be considered necessary by the court to inform that child's school principal to help protect that child when he or she is under the care of the school.

This bill will play an important role in the operation of child protection watch teams. The Government has recently announced a trial of multi-agency child protection watch teams to examine risks posed by serious, high-threat sex and violent offenders against children. Child protection watch teams will play a significant role in the case management of these high-risk offenders once they have served their time and are released back into the community. Child protection prohibition orders will offer greater protection to our State's children by banning child sex offenders from certain high-risk behaviours. If they breach an order, they will face another two years in prison. This bill marks yet another milestone in child protection legislation not only for New South Wales, but for Australia. I commend the bill to the House.

---

[Your feedback](#) [Legal notice](#)

Refer updates to Hansard Office on 02 9230 2233 or use the feedback link above.