



New South Wales

Child Protection (Offenders Prohibition Orders) Bill 2004

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to provide for child protection prohibition orders (prohibiting certain conduct) to be made against certain offenders who pose a risk to the lives or sexual safety of children,
- (b) to provide for the enforcement of such orders,
- (c) to enact other consequential provisions (including amendments to other legislation).

Outline of provisions

Part 1 Preliminary

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 a day or days to be appointed by proclamation.

Clause 3 defines words and expression used in the proposed Act. Among other definitions, the proposed section defines a person as posing a *risk to the lives or sexual safety of one or more children or children generally* if there is a risk that the person may commit a registrable offence against or in respect of a child or children.

Part 2 Child protection prohibition orders

Clause 4 enables the Commissioner of Police to apply to a Local Court for a child protection prohibition order (a *prohibition order*) prohibiting a registrable person from engaging in specified conduct. This includes interim child protection prohibition orders (*interim prohibition orders*). A *registrable person* is a person who is a registrable person under the *Child Protection (Offenders Registration) Act 2000* ie a person who has committed a serious offence relating to a child that is specified in that Act (such as murder or a sexual offence).

Clause 5 provides that a Local Court may make an order prohibiting a person from engaging in specified conduct (other than an interim prohibition order) if it is satisfied that the person is a registrable person, and that, on the balance of probabilities, there is reasonable cause to believe, having regard to the nature and pattern of the conduct of the person, that the person poses a risk to the lives or sexual safety of one or more children, or children generally, and the making of the order will reduce that risk. Such an order may only be granted in respect of an offender under the age of 18 years (a *young registrable person*) if the Local Court is satisfied that all other reasonably appropriate means of managing the conduct of the offender have been considered before the order was sought. The proposed section also sets out other matters to be considered by the Local Court.

Clause 6 provides that a prohibition order (other than an interim prohibition order) is to be for a term of not more than 5 years or, in the case of a young registrable person, 2 years.

Clause 7 provides for the making of interim prohibition orders against registrable persons by a Local Court. An interim prohibition order may be made in the absence of the registrable person but a further hearing must be held as soon as practicable after the interim prohibition order is made.

Clause 8 sets out examples of conduct that a prohibition order may prohibit, including associating with or other conduct 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.

Clause 9 requires a Local Court that makes a prohibition order to ensure that all reasonable steps are taken to explain to the registrable person his or her obligations and the consequences that may follow if the registrable person fails to comply with those obligations.

Clause 10 provides for the making of a prohibition order by consent if the applicant and registrable person consent to it being made. A Local Court is not required to conduct a hearing before it makes a prohibition order by consent unless it is of the opinion that it is in the interests of justice to conduct the hearing.

Clause 11 enables both the Commissioner of Police and the registrable person to apply to a Local Court for the variation or revocation of a prohibition order. It also enables the Local Court to vary or revoke a prohibition order if an application is made.

Clause 12 requires the registrar of a Local Court to cause a copy of an order that makes or varies or revokes a prohibition order that is made in the absence of the registrable person to be served on the registrable person.

Clause 13 makes it an offence for a person subject to a prohibition order, without reasonable excuse, to contravene the prohibition order. The maximum penalty will be 100 penalty units (currently \$11,000) or 2 years imprisonment, or both. The proposed section also confers on a police officer the power to arrest a person if the police officer suspects on reasonable grounds that the person has committed an offence under the proposed section.

Clause 14 provides that proceedings for an application under the proposed Part are to be heard in the absence of the public.

Clause 15 provides that an appeal against an order under the proposed Act does not operate to stay the order, unless the court to which the appeal is made so orders.

Clause 16 enables the Commissioner of Police to require government agencies to provide to the Commissioner information held by them relevant to the assessment of the risk posed by a registrable person to the lives or sexual safety of children. A government agency is not required to give information that is subject to legal or other professional privilege.

Part 3 Miscellaneous

Clause 17 provides that the Police Commissioner may not delegate the power to make an application for a prohibition order against a young registrable person to a member of NSW Police other than a person of or above the rank of inspector having responsibility for child protection matters.

Clause 18 makes it an offence to publish in relation to any proceedings relating to any order information, including information that may identify a person as a person against whom an order is sought or made, the name of any victim of a registrable offence committed by the registrable person, the name of a person who might be at risk and any matter that may identify those persons. The maximum penalty will be 100 penalty units (currently \$11,000) or 2 years imprisonment, or both. The proposed section also provides for matter to be published with the authority of the Local Court or to other specified persons.

Clause 19 enables regulations to be made for or with respect to the recognition in New South Wales of orders made by courts of other jurisdictions that are similar in nature to prohibition orders.

Clause 20 provides that proceedings for an offence under the proposed Act are to be dealt with summarily before a Local Court.

Clause 21 contains a general regulation-making power for the purposes of the proposed Act.

Clause 22 is a formal provision that gives effect to the Schedule of amendments to other Acts.

Clause 23 is a formal provision that gives effect to the Schedule of savings and transitional provisions.

Clause 24 provides for the Minister to review the proposed Act as soon as possible after the period of 5 years from the date of assent to the proposed Act.

Schedule 1 Amendment of other Acts

Schedule 1.1 amends the *Child Protection (Offenders Registration) Act 2000* to recommence or extend the reporting obligations of a registrable person under that Act for any period during which the registrable person is subject to a prohibition order or an interim prohibition order.

Schedule 1.2 amends the *Commission for Children and Young People Act 1998* to include prohibition orders in the matters included in employment screening and accordingly in the functions of the Commission for Children and Young People in relation to employment screening (including collection of data and maintaining a database). It also enables the Commissioner of Police to disclose to that Commission, and to approved employers or employer-related bodies, information relating to prohibition orders.

Schedule 1.3 amends the *Evidence (Children) Act 1997* to apply the rights of children to give evidence by means of closed-circuit television or similar technology, and to the presence of a supportive person while giving evidence, to proceedings related to applications for orders under the proposed Act.

Schedule 1.4 amends the *Local Courts Act 1982* to make it clear that Part 6 of that Act (which sets out procedures for application proceedings in Local Courts) applies to applications for orders under the proposed Act.

Schedule 2 Savings and transitional provisions

Schedule 2 enables regulations of a savings and transitional nature to be made as a consequence of the proposed Act. It also makes it clear that the proposed Act applies to or in respect of persons who were registrable persons immediately before the commencement of the proposed Act.