



New South Wales

# Child Protection (Offenders Registration) Amendment Bill 2007

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Child Protection (Offenders Registration) Act 2000* (**the Principal Act**), the *Crimes (Forensic Procedures) Act 2000* and the *Freedom of Information Act 1989*, for the following purposes:

- (a) to provide that the offence of sexual assault by forced self-manipulation committed against a child is a registrable offence under the Principal Act,
  - (b) to make further provision with respect to classification as a registrable person or a corresponding registrable person under the Principal Act,
  - (c) to provide for further circumstances in which a child protection registration order may be made under the Principal Act,
  - (d) to extend the reporting obligations of persons under the Principal Act,
  - (e) to provide for the suspension of such reporting obligations when a person is also subject to an interim or extended supervision order under the *Crimes (Serious Sex Offenders) Act 2006*,
  - (f) to increase the maximum penalties for failing to comply with reporting obligations and for providing false or misleading information when reporting,
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- (g) to authorise the conduct of certain forensic procedures on registrable persons,
- (h) to require a registrable person to seek the approval of the Commissioner of Police before making an application to change his or her name under the *Births, Deaths and Marriages Registration Act 1995* or a similar Act of another State or a Territory,
- (i) to make it offence for a person to disclose information about a registrable person in certain circumstances,
- (j) to exempt certain documents relating to persons under the Principal Act from the operation of the *Freedom of Information Act 1989*,
- (k) to provide for a further review of the Principal Act.

The Bill also makes other minor and consequential amendments, including to other Acts.

## 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.

**Clause 3** is a formal provision that gives effect to the amendments to the *Child Protection (Offenders Registration) Act 2000* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Crimes (Forensic Procedures) Act 2000* set out in Schedule 2.

**Clause 5** is a formal provision that gives effect to the amendment to the *Freedom of Information Act 1989* set out in Schedule 3.

**Clause 6** is a formal provision that gives effect to the amendments to the Acts set out in Schedule 4.

**Clause 7** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

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

### **Registrable persons**

Under the Principal Act, persons who are found guilty of, and sentenced, in respect of certain offences relating to children are required to report relevant personal information to police and to keep that information up to date. Those persons are referred to as registrable persons under the Principal Act.

The offences that give rise to reporting obligations under the Principal Act are generally categorised into Class 1 offences and Class 2 offences. Class 1 offences are the most serious offences. A longer reporting period applies to persons found guilty

of a Class 1 offence than to persons found guilty of Class 2 offences. **Schedule 1 [2]** makes an offence against section 80A of the *Crimes Act 1900* (Sexual assault by forced self-manipulation), where the offence is committed against a child, a Class 1 offence.

At present, a person is also not required to report under the Principal Act if the person is found guilty of a single Class 2 offence, as long as the person's sentence for the offence does not include a term of imprisonment or other supervision. **Schedule 1 [4]** removes this exclusion, with the result that a person found guilty of a single Class 2 offence may be required to comply with the reporting requirements under the Principal Act.

### **Corresponding registrable persons**

Currently, the Principal Act also requires corresponding registrable persons to comply with the reporting requirements under the Principal Act. Corresponding registrable persons are persons subject to reporting requirements in other jurisdictions that are longer than those provided for by the Principal Act. At present, the class of persons who fall within the definition of corresponding registrable person is prescribed by the regulations. **Schedule 1 [7]** removes the need for the class of persons who are considered to be corresponding registrable persons to be prescribed by the regulations. However, the regulations will be able to exclude any class of persons from falling within the definition.

As a result of the amendment to the definition, and the amendment in **Schedule 1 [24]**, any person who is subject to reporting requirements under a corresponding Act, or who is subject to reporting requirements under any other foreign law in respect of a Class 1 or Class 2 offence, and who would be required to continue to comply with those reporting requirements if he or she were still in that jurisdiction, will be required to comply with the reporting requirements under the Principal Act. This will include persons who are subject to reporting requirements in other jurisdictions that pre-date the commencement of the Principal Act.

### **Child protection registration orders**

At present, the Principal Act provides that a court may order a person found guilty of an offence to comply with the reporting requirements of the Principal Act, even if the offence is not a Class 1 or Class 2 offence. This order is referred to as a ***child protection registration order***. A child protection registration order may be made only if the court is satisfied that the person poses a risk to the lives or sexual safety of one or more children, or of children generally.

**Schedule 1 [11]** provides for additional types of child protection registration orders. It also removes the current requirement for a review of provisions relating to child protection registration orders (which is now redundant).

Proposed new section 3E provides that a child protection registration order may be made by a Local Court after the conclusion of criminal proceedings in respect of the relevant offence (at present, orders can only be made concurrently with sentencing).

An application for such an order by must be made by the Commissioner of Police within 21 days after the person is sentenced.

Proposed section 3F provides that a child protection registration order may be made by a Local Court in relation to a person found guilty of an offence in a foreign jurisdiction and in relation to a person who has been sentenced for a Class 1 offence committed before 15 October 2001. An application for such an order may be made by the Commissioner of Police at any time.

Proposed section 3G provides that a child protection registration order may be made by a court that grants bail to a person in respect of a Class 1 offence or a Class 2 offence under section 10 (3) (b), 14 (b) (ii) or 17 (2) of the *Mental Health (Criminal Procedure) Act 1990*. Those sections relate to the procedure for dealing with an alleged offender in respect of whom a question of unfitness to be tried has been raised.

In all cases, a child protection registration order may be made only if the court is satisfied that the person poses a risk to the lives or sexual safety of one or more children, or of children generally (this concept is explained in proposed section 3H).

**Schedule 1 [1], [5], [6] and [8]–[10]** make consequential amendments.

**Schedule 1 [12]** provides for the notices that are to be given by a court when making an order under proposed sections 3E, 3F or 3G. **Schedule 1 [32] and [33]** make consequential amendments.

### Reporting obligations

**Schedule 1 [13]** provides for additional relevant personal information that must be reported by a registrable person. This includes telephone numbers, internet activity details and any other information prescribed by the regulations.

Currently, a registrable person must provide information about the children residing at a registrable person's address and any children with whom the person has regular unsupervised contact. At present, this information is required to be reported when the relevant child is residing with the person, or when such contact occurs, for at least 14 days in any period of 12 months. **Schedule 1 [14]** reduces that 14-day time period to 3 days. In addition, **Schedule 1 [16]** provides that a change in such information is to be reported within 3 days after the change occurs. **Schedule 1 [17]** makes a consequential amendment.

**Schedule 1 [15]** provides that the period within which an initial report of a registrable person's relevant personal information must be made is 7 days (instead of 14 or 28 days) in certain circumstances.

**Schedule 1 [18]** makes it compulsory for a registrable person who holds a current passport to present that passport for identification purposes when reporting under the Principal Act. **Schedule 1 [19]–[22]** make consequential amendments.

**Schedule 1 [25]** provides for the suspension of reporting obligations under the Principal Act during the period (if any) in which a registrable person is subject to any interim or extended supervision order under the *Crimes (Serious Sex Offenders) Act 2006*.

**Schedule 1 [26] and [27]** increase the penalties for failing to comply with reporting obligations under the Principal Act and for furnishing false or misleading information in purported compliance with reporting obligations, respectively. Such offences will now carry a maximum penalty of 500 penalty units or imprisonment for 5 years, or both, if dealt with on indictment. (A lower penalty will apply under amendments to the *Criminal Procedure Act 1986* if the offence is dealt with summarily).

**Schedule 1 [29]** makes a consequential amendment in relation to proceedings for offences under the Principal Act.

### **Change of name by registrable person**

**Schedule 1 [28]** requires a registrable person to seek the approval of the Commissioner of Police before making an application to change his or her name under the *Births, Deaths and Marriages Registration Act 1995* or a similar law of another State or a Territory. The proposed amendments are closely modelled on proposed amendments to the *Sex Offenders Registration Act 2004* of Victoria.

The Commissioner of Police will be able to approve a change of name only if satisfied that the change of name is necessary or reasonable. The Commissioner must not give approval where the change is reasonably likely to be regarded as offensive by a victim of crime or an appreciable sector of the community, or reasonably likely to frustrate the administration of justice in respect of the registrable person.

### **Other amendments**

**Schedule 1 [3]** provides that, for the purposes of the Principal Act, a sentence includes action taken by a court under section 10A of the *Crimes (Sentencing Procedure) Act 1999*, that is, where a court convicts an offender and disposes of the proceedings without imposing any other penalty.

**Schedule 1 [31]** makes it an offence (Maximum penalty: 100 penalty units or imprisonment for 2 years, or both) for a person to disclose information about a registrable person except in specified circumstances. **Schedule 1 [30]** makes a consequential amendment.

**Schedule 1 [34]** removes a provision requiring the Ombudsman to monitor the initial operation of the Principal Act, as this provision is now spent.

**Schedule 1 [35]** provides for a further review of the Principal Act to be undertaken after the period of 5 years from the date of assent of the proposed Act.

**Schedule 1 [36]** enables savings and transitional regulations to be made as a consequence of the proposed Act.

**Schedule 1 [37]** inserts savings and transitional provisions as a consequence of the enactment of the proposed Act. These include provisions that make it clear that:

- (a) the changes to the definition of **registrable person** made by the proposed Act apply only in relation to sentences imposed on or after the commencement of the changes (and accordingly does not affect the current registration of any person), and

- (b) the changes to the definition of *corresponding registrable person* extend to persons who have reporting obligations imposed under a foreign law before the commencement of the changes, and
- (c) the new types of child protection registration orders may be made in respect of persons found guilty of offences committed before the commencement of the relevant provisions.

## **Schedule 2      Amendment of Crimes (Forensic Procedures) Act 2000 No 59**

### **Carrying out of certain forensic procedures on registrable persons**

Currently, the Principal Act provides that registrable persons making a report to police may be subject to fingerprinting and photographing (sections 12E–12H). **Schedule 2 [5]** inserts proposed Part 7B into the *Crimes (Forensic Procedures) Act 2000* to enable certain forensic procedures to be carried out on registrable persons when making such reports. The procedures authorised are limited to the following:

- (a) the carrying out of an other-administered buccal swab (an intimate forensic procedure),
- (b) the carrying out of the following non-intimate forensic procedures:
  - (i) a self-administered buccal swab,
  - (ii) the taking of a sample of hair other than pubic hair.

A procedure may be carried out only if it appears that the registrable person's DNA profile is not already contained in the offenders index of the DNA database system under the *Crimes (Forensic Procedures) Act 2000*. The provisions of proposed Part 7B, which parallel those of Part 7 and 7A (which deal with forensic procedures carried out on serious indictable offenders and on untested former offenders, respectively) include:

- (a) a provision that authorises a non-intimate forensic procedure to be carried out on an untested registrable person with the person's consent or on the order of a senior police officer or a court,
- (b) a provision that authorises an intimate forensic procedure to be carried out on an untested registrable person with the person's consent or on the order of a court.

Forensic procedures will be required to be carried out in accordance with the requirements of Part 6 of the *Crimes (Forensic Procedures) Act 2000*.

It will be an offence (punishable by a fine of 50 penalty units or 12 months imprisonment, or both) for an untested registrable person to refuse or fail to permit the procedure to be carried out in accordance with a court order.

**Schedule 1 [23] and Schedule 2 [1]–[4] and [6]–[8]** make consequential amendments.

## **Schedule 3      Amendment of Freedom of Information Act 1989 No 5**

### **Freedom of information exemption**

**Schedule 3** amends the *Freedom of Information Act 1989* so as to exempt documents relating to offenders under the Principal Act from freedom of information requirements, unless an offender wishes to access a document containing information about himself or herself.

## **Schedule 4      Consequential amendments**

### **Local Court amendments**

**Schedule 4.1, 4.3 and 4.4** make amendments consequential on the proposed repeal of the *Local Courts Act 1982* and subsequent proposed enactment of the *Local Court Act 2007*.

### **Amendment of Criminal Procedure Act 1986**

**Schedule 4.2** amends the *Criminal Procedure Act 1986* so as to provide that indictable offences under section 17 or 18 of the Principal Act are triable summarily on the election of the prosecutor. If the offence is tried summarily the maximum penalty will be 100 penalty units or imprisonment for 2 years, or both.