



Tabled, by leave,

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Jenelle
for Clerk of the Parliaments

17 / 9 / 24

CHILD PROTECTION (OFFENDERS REGISTRATION) AMENDMENT BILL 2024

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The *Child Protection (Offenders Registration) Act 2000* (the Act) provides the legislative framework concerning the NSW Child Protection Register, which is administered by the Commissioner of Police and the NSW Police Force.

The Act provides a registration and reporting scheme for persons convicted of sexual and other serious offences against children. The Act is a significant component of NSW's response to reducing risks associated with convicted child sex offenders and protecting children. The Register provides a deterrent to re-offending, supports the prevention of offences against children by repeat offenders, and assists in the investigation and prosecution of recidivist offenders. The Register supports these aims by requiring registrable persons to report details to the NSWPF. This supports NSWPF to monitor registrable persons (such as through home inspections) and investigate breaches and any offences committed against children. Similar schemes exist in all other States and Territories in Australia and many other countries such as the United States, the United Kingdom and New Zealand.

The Bill includes a range of reforms primarily intended to strengthen the legislative regime by addressing the following items:

- a) Strengthen protections for children against serious harms that may be posed by registrable persons in the community based on advice from NSW Police about matters that should be reported by registrable persons to police within specified timeframes.
- b) Clarify key reporting requirements and bolster the ability of the NSWPF to ensure registrable persons comply with their obligations that are imposed by the Act.
- c) Improve clarity and accuracy in the application of registration requirements in light of comments concerning the complexity and potential for error in administering the Act in the Law Enforcement and Conduct Commission (LECC) *Operation Tusk* Final Report in 2019.
- d) Ensuring all relevant sexual offences are included within the scope of the registration scheme, including offences that have been introduced at NSW or Commonwealth level since the last time the Act was amended.

Objectives: What is the policy's objective couched in terms of the public interest?

A recent Australian study by Bartels et al. (2021) explored Australian public opinion concerning sex offender registration. A general finding of this research included an indication of general support for use of sex offender registers, particular in respect of

persons convicted of sex offences against children¹. While public perceptions become more nuanced in regard to the particular design and operation of such registers, this general finding is indicative of general public interest in the maintenance of an effective and fit-for purpose legislative regime provided for in the Child Protection (Offenders Registration) Act 2000 (CPOR Act).

The Bill intends to strengthen the Act, which helps the NSW Police Force manage risk associated with convicted child sex offenders living in the community. The public interest outcomes intended by reforms included in the Bill include enhanced community safety due to:

- a) registrable persons being accurately informed of their obligations and required to begin reporting as soon as possible after being sentenced for a registrable offence,
- b) more timely reports to police of personal information by registrable persons that is reflective of police knowledge concerning risks to children by registered persons,
- c) enhanced inspections powers for NSW police to investigate potential non-compliance,
- d) more efficient and transparent notification of reporting requirements for corresponding registrable persons by NSW Police.

The proposals in the Bill will also ensure procedural fairness and transparency for registered persons subject to the requirements of the Act. The reforms also aim to reduce errors in the administration scheme, which can otherwise lead to serious offenders being unmonitored in the community, or conversely, being wrongly convicted for breaches of reporting obligations. Errors of this kind are detrimental to the public's confidence in the effectiveness of the registration scheme.

Options: What alternative policies and mechanisms were considered in advance of the bill?

In 2021, the LECC made comments in the *Operation Tusk Supplementary Report* emphasising a view that errors would likely continue to be made in the administration of the registration scheme unless the law is changed. In light of this review, not progressing legislative reform is not considered a viable option.

However, the particular form of the amendments proposed in this Bill followed a review by the NSW Police Force that considered the most appropriate reforms that could ensure that the Act remains fit for purpose. This also involved consideration of views provided by NSW and Commonwealth Government stakeholders, as well as legal and child protection stakeholders during targeted consultation.

Key policy items where multiple possible policy approaches were considered during the review included:

- 1. How the legislative regime identifies and notifies registrable persons of reporting obligations.**

¹ Bartels, L., Gelb, K., Spiranovic, C., Warner, K., Roberts, L. and Davis, J. (2021), 'What does the public think about sex offender registers? Findings from a national Australian study', *Psychiatry, psychology, and law*, vol. 28, no. 4, pp. 560–575.

The Bill proposes that sentencing courts make “registrable persons orders” at the same time a person is being sentenced for a court. Other options considered included retaining existing settings in the Act where a notification function is proposed to be conducted by the court, or other administrative bodies involved in the scheme’s administration, or more clearly providing that notification should be conducted by the NSW Police Force.

2. How the proposed *registrable person order* framework applies to persons who commit registrable offences as children.

Under proposed sub section 3C(1)(b) of the Bill, when a person under the age of 18 is sentenced for a registrable offence, a ‘registrable person order’ will only be required if the court imposes a sentence other than a non-conviction order, a registrable person order is requested by the prosecution, and the court is satisfied the order is necessary because the person poses a risk to the lives or sexual safety of one or more children or of children generally. Another option considered was to maintain a setting similar to the current approach in the Act that involved the requirement for all registrable offenders to become registrable persons when sentenced, unless an exemption applied, including a range of exemptions that are available to child offenders. Other options could include exploring removing registration requirements for child offenders altogether.

3. How to clarify reporting obligations for ‘corresponding registrable persons’ when they enter NSW.

The Bill proposes that corresponding registrable persons who enter NSW and stay or intend to stay in NSW for 14 days or more be given a notice by the Commissioner of Police informing of their reporting obligations, including a reporting period in NSW. The Bill also proposes that all entrants to NSW report certain information to the Commissioner of Police within 5 days of their arrival in NSW and before they leave NSW, unless they have given a full personal information report to police in the previous 12 months. Other options considered in the Bill was to retain existing settings, that require corresponding persons to report relevant personal information to the Commissioner within 7 days after becoming a corresponding registrable person.

4. How to update residence inspection powers for police to ensure they are fit-for-purpose within the Act.

The Bill proposes that that inspections can happen up to two times a year in respect of each residential premises identified, or required to be identified, by a registrable person in a personal information report. Proposed section 16D(2) of the Bill provides that further inspections can be authorised by a senior police officer of the rank of superintendent or above if they have a reasonable suspicion that an offence has been committed under the Act that has not previously been dealt with. Other options for the proposed inspection powers could be to retain these as per the current Act, which provides for one annual inspection of a person’s reported residential premises, or remove the frequency of inspection restriction altogether.

Analysis: What were the pros/cons and benefits/costs of each option considered?

Of the key issues identified above, discussion of why the preferred option has been progressed is set out below.

1. How the legislative regime identifies and notifies registrable persons of reporting obligations.

The approach proposed in the Bill, where the sentencing court be required to issue registrable persons orders at the time of sentencing for a registrable offence is preferred as the following benefits are expected:

- a) Better quality registration decisions will be achieved by utilising the expertise of judicial officers to actively apply the Act, based on any advice and submissions of the prosecution and defence counsel.
- b) Determinations will be made in circumstances where all relevant information is already available, including details of the registrable offence and any relevant offence history. As result, registration decisions will be more efficient and accurate.
- c) Registered persons will be advised immediately of reporting obligations at the time of sentencing. This will reduce delays and increase the probability of reporting obligations being understood from the outset. Additionally, it will remove the need for the NSWPF to relocate registrable persons after sentencing and provide notice of their reporting obligations.
- d) The possibility of any subsequent doubt that a person is registered will be removed by the sentencing court issuing a 'registrable person order'.

It is acknowledged that progressing this option will have resourcing impacts on sentencing courts. However, this cost is outweighed by the overall benefits which would be derived from strengthening the registration scheme and ensuring that the legislative objectives of the Act are achieved.

This option is also preferred to other options that rely on court administrative staff, NSW Police or other administrative staff to apply legislative requirements. Such an approach is broadly consistent with arrangements in the current Act has also demonstrated a tendency to lead to errors in the administration of the registration scheme unless it is accompanied by significant policy amendments to reduce other complexities within the act (such as the calculation of reporting periods), which were highlighted during Operation Tuskett and the NSWPF review of the Act. It is also considered to be in the public interest for the resources of the NSWPF Child Protection Registry to be focused on monitoring the compliance of registered persons whilst they are in the community, as this will better ensure the protection of children from risks of serious harm.

2. How the proposed *registrable person order* framework applies to persons who commit registrable offences as children.

The Act currently contains provisions that are designed to mitigate negative effects of registration on children. However, these provisions only allow juvenile offenders to be exempted from registration and reporting in very limited circumstances. Moreover, the exemptions do not necessarily enable a considered assessment of future risk to be undertaken in some circumstances. While expansion of existing exemptions was considered, this would still require costs to administer from courts and prosecution during sentencing hearings.

Under the model proposed in the Bill, a registration order for a person who commits a registrable offence would only be required if it is requested by the prosecution and the sentencing court is also satisfied the child poses a risk to the lives or sexual safety children. This model is considered as striking the right balance between ensuring that registration requirements can be applied in respect of child offenders who pose serious ongoing risk to children (for example those who commit serious offences, or are recidivist

offenders), without requiring significant justice system costs in applying exemptions for other child offenders who may present no risk of future offending against children.

It is acknowledged that progressing this option is likely to have a resourcing impact on sentencing courts and prosecution agencies when considering whether to apply registration requirements. However, this cost has been weighed closely against the benefits which will be derived from mitigating the impacts of registering children who are not considered to represent a risk to children.

5. How to clarify reporting obligations for 'corresponding registrable persons' when they enter NSW.

During Operation Tuskett, and the NSWPF review of the Act, it was identified that there are ambiguities in relation to when corresponding registrable persons are required to first report after arriving in NSW. For example, it appears to be possible under the current Act for registrable persons from interstate to enter NSW without notifying the NSWPF for up to 14 days without breaching reporting obligations. It is not considered appropriate for these current arrangements to continue, because they create too long a window of opportunity for offending to occur and reduce the visibility of the NSWPF over potential risks of harm to children.

Consequently, to ensure risks posed by 'corresponding registrable persons' entering NSW are appropriately managed, it is proposed that all visitors to NSW who are registrable persons in another jurisdiction should have to report critical information concerning their presence in NSW as soon as possible after entry. Thereafter, a full report will only be required of corresponding registrable persons who are staying in NSW for more than 14 days.

It is intended that this approach will facilitate immediate contact with police for all entrants to NSW who are corresponding registrable persons within 5 days of arrival to NSW and before they leave. In this contact, a streamlined set of focused reports would be required. This will provide police with critical information of contact details and expected contact with children during the stay. It is intended that a more streamlined, focused report will increase the information available to police about short-term visitors without imposing an unreasonable resource burden on the person or the NSWPF. The NSWPF will also have an opportunity to contact the previous jurisdiction of the person as part of any risk assessment activities that are undertaken.

Once a person has stayed in NSW for 14 days or more, the person would be required to complete a full report. At this point, the NSWPF will be required to determine the reporting period which will apply to the person while they are in NSW. If the person has been a corresponding person in more than one jurisdiction, it is proposed the longest reporting obligations imposed by the laws of those jurisdictions will apply in NSW.

The proposed approach in the Bill is considered to ensure increased clarity of arrangements for corresponding registrable persons, as well as ensuring appropriate information is reported in a more timely manner in respects of entrants to NSW who are subject to reporting requirements in other jurisdictions.

4. Ensure Police inspection powers are appropriately calibrated to ensure compliance with Act.

Under the existing Act, aside from the first year of registration, police can only conduct one annual inspection of registered person's residential premises during a 12-month period. It is considered that this is not appropriate to maintain, because registrable persons can become aware their residential premises cannot be inspected for the next 12

months after an inspection has occurred. This creates a risk of non-compliance with reporting requirements, which can remain undetected until the next annual inspection.

The preferred option in the Bill is to provide for an additional annual inspection, as well as further ability for police to conduct inspections in situations where breaches of reporting requirements are suspected. While this does provide for increased ability for police to enter a person's private residence, this is considered appropriate to ensure the integrity of the inspection regime in respect of a scheme designed to monitor registered persons and protect children. The ability for additional inspections to be available to police, particularly in circumstances where an offence under the Act is suspected, will ensure that there is an operationally workable option to ensure police can promptly ensure compliance with the Act.

However, it was not considered appropriate to completely remove the limits on residence inspection for any reasons as part of these reforms. While it is appropriate for police to conduct regular inspections throughout the year and additional inspections when breaches are suspected, the intention of the inspection regime is not to provide for daily, weekly or monthly inspections without cause or suspicions. The proposed approach in the Bill is considered an appropriate balance between this intention and the need to ensure police are provided appropriate powers to verify compliance.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

It is proposed that the amendments in the Bill should commence upon proclamation to enable necessary implementation work to be undertaken by the NSWPF and other government agencies, including courts.

For example, it has been identified that the following preparations will be required:

- Updating the *Child Protection (Offenders Registration) Regulation 2015* with matters required to fully implement the reforms as intended.
- Updating statutory notices for registrable persons and other communication materials for registrable persons concerning the legislative changes that affect their reporting obligations.
- Updating information systems to ensure that registration orders are captured accurately.
- Developing training materials for judicial officers.
- Developing training materials for staff from other agencies.
- Communicating new obligations for corresponding registrable persons to other jurisdictions.

It is expected this implementation work may take up to 12 months to complete and the NSWPF proposes to convene an interagency working group to assist the Government with these tasks.

Consultation: Were views of affected stakeholders sought and considered in making the policy?

Following Operation Tuskett, the NSWPF conducted a full review of the Act. The NSWPF review included close engagement with Government, stakeholders between 2021 and 2023. The engagement included an interagency working group and one-to-one meetings. In February 2023, the NSWPF consulted with Government, legal sector and child protection stakeholders concerning preliminary proposals arising from the NSWPF review. The proposals were designed to reflect both LECC's recommendations and

improve the effectiveness and efficiency of the Act in the delivery of its statutory objectives.

Following consideration of the feedback received from stakeholders in 2023, a Consultation Bill was sent to stakeholders in April 2024. The Consultation Bill was accompanied by an updated Consultation Paper that outlined changes which had been made to the preliminary proposals circulated in 2023.

Throughout the development of the reforms, the NSWPF sought feedback from the following stakeholders on

- **NSW Government agencies:** Department of Communities and Justice (including Corrective Services NSW and Courts, Tribunal and Service Delivery), Office of the Director of Public Prosecutions, NSW Ministry of Health, the Department of Education, the Cabinet Office, the the Law Enforcement Conduct Commission, Office of the Children’s Guardian, NSW Advocate for Children and Young People and the Information and Privacy Commission.
- **Heads of jurisdiction:** Supreme Court of NSW, District Court of NSW, Local Court of NSW, Children’s Court of NSW, NSW Civil and Administrative Tribunal
- **Commonwealth agencies and interstate policing agencies:** Attorney-General’s Department, National Office for Child Safety, eSafety Commissioner, Department of Foreign Affairs and Trade, Department of Social Services, Australian Federal Police and Australian Centre to Counter Child Exploitation, Commonwealth Director of Public Prosecutions, Department of Home Affairs, Domestic, Family and Sexual Violence Commission.
- **Legal stakeholders:** Legal Aid NSW, Law Society of NSW, NSW Bar Association, the Public Defenders, Aboriginal Legal Services NSW/ACT.
- **Sector stakeholders:** Bravehearts, Australia and New Zealand Association for the Treatment of Sexual Abuse, Daniel Morcombe Foundation, Association of Children’s Welfare Agencies, ChildSafe Australia, National Association for Prevention of Child Abuse and Neglect, Child Abuse Prevention Service, OurWatch, CREATE Foundation, Alannah and Madeline Foundation, Blue Knot Foundation, the Carly Ryan Foundation, UNICEF, Grace Tame Foundation.

Prior to introducing the Bill, the NSW Government considered the views of all stakeholders that were expressed during the consultation activities.