

Contents

1.	INTRODUCTION	3
2.	DEVELOPMENT OF THE CHILD PROTECTION REGISTER LEGISLATION IN NSW	5
2.1	Development of the Child Protection Register legislation in NSW	5
2.2	Objectives of the Child Protection Register legislation.....	6
2.3	Child Protection Register management within NSW Police.....	6
2.4	Comparable legislation in other jurisdictions	8
3.	HOW THE ACT WORKS IN PRACTICE AND ISSUES ARISING FROM ITS IMPLEMENTATION.....	9
3.1	Who is required to register?	9
3.2	What is a registrable offence?	10
	Issues arising	11
3.3	What appeal or review processes are there?.....	15
	Issues arising	15
3.4	How does a registrable person know they have to register?	16
	Issues arising	17
3.5	What are the reporting obligations of a registrable person?	18
	Information that must be provided	18
	Additional information that may be requested by police.....	19
	Issues arising	20
	How information must be provided	21
	Issues arising	22
3.6	What are the reporting periods and how are they calculated?.....	24
	Issues arising	25
3.7	What happens if a person does not register or report as required?	26
	Issues arising	26
3.8	How do police use the information held on the Register?	28
	Issues arising	29
3.9	Who has access to information on the Register?	31
3.10	Is community safety and security enhanced by the Register?.....	34
	Issues arising	34
3.11	What happens to persons convicted of registrable offences outside NSW?.....	35
	Issues arising	35
4.	CONCLUSION	36

1. Introduction

The *Child Protection (Offenders Registration) Act 2000* (the Act) establishes a Child Protection Register which requires persons convicted of certain offences against children to register with NSW Police on their release into the community. Although the Act primarily confers new functions on NSW Police, other authorities also have obligations under the Act.

The Act also provides for the NSW Ombudsman to review the implementation of the legislation. Section 25 (1) of the Act states:

For the period of 2 years from the commencement of this section, the Ombudsman is to keep under scrutiny the operation of the provisions of the Act and the regulations.

After the two year review period, the Ombudsman will report to the Minister for Police on his findings.¹ The review period began on 15 October 2001, when the provisions of the Act commenced, and our report will be produced as soon as practicable after the completion of the review period.

The Act also provides for the Minister to review the Act to 'determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.'² The Act provides that the Minister's review is to be undertaken as soon as possible after receipt of the Ombudsman's report.³ It is expected that the report of the Ombudsman's review will be used to inform the review undertaken by the Minister.

The Ombudsman's review incorporates a variety of research including:

- review of complaints and enquiries;
- analysis of data from the Child Protection Register;
- consultation with relevant community and government stakeholders;
- consultation and interviews with those responsible for the Act's implementation including NSW Police and other government authorities;
- interviews with persons on the Register; and
- analysis of similar legislation in other jurisdictions.

This discussion paper forms part of the process of consultation with community and government stakeholders. Its purpose is to set out various issues arising from the implementation of the Act to date. The issues raised in this paper have been informed by aspects of research undertaken to date.

The paper provides some background information about the development of the Act in NSW, including its aims and objectives, with a brief summary of relevant legislation in other jurisdictions. It also describes the management of the Child Protection Register by NSW Police.

¹Section 25 (3) Child Protection (Offenders Registration) Act.

²Section 26 (1) Child Protection (Offenders Registration) Act.

³Section 26 (2) Child Protection (Offenders Registration) Act.

The main section of the paper provides detailed information about the various provisions of the Act and their practical operation. Some issues have been identified as a result of a preliminary review of the Register data. Case studies highlighting some of the issues and concerns raised, and questions for discussion or comment, are also included.

This paper invites community stakeholders to comment on relevant issues and to have their views incorporated into the Ombudsman's review of the Act.

Any submissions or correspondence relating to this review should be sent to:

Child Protection Register Review
NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000

Inquiries about this review should be directed to Ms Rosemary Kusuma on 9286 1022 or at rkusuma@ombo.nsw.gov.au

<p>Due date for submissions: Friday, 17th October 2003</p>

2. The Child Protection Register Legislation in NSW

2.1 Development of the Child Protection Register legislation

The concept of a register of persons convicted of sex offences against children first entered public debate in NSW during the Wood Royal Commission.⁴ Volume V of the Royal Commission's final report, which dealt with the paedophile reference and was released in August 1997, contained a number of recommendations to enhance child protection, particularly in relation to protecting children from sex offenders. Many of these recommendations formed the basis of the Government's *Protecting our Children* policy statement and subsequent child protection legislation package.⁵

Specifically, Recommendation 111 recommended that the government consider establishing a register of child sex offenders.⁶ This recommendation, and certain paedophile cases which received a high profile in the media at the time, provided the catalyst for the legislation.

The *Child Protection (Offenders Registration) Act 2000* was introduced into Parliament on 1 June 2000 and assented to on 27 June 2000. It was subsequently amended by the *Child Protection (Offenders Registration) Amendment Act 2001* which was passed on 6 July 2001. The Act, as amended, commenced operation on 15 October 2001.

The Act allowed for Regulations to be made and Parliament passed the *Child Protection (Offenders Registration) Regulation 2001* on 12 October 2001 which also commenced on 15 October 2001. The *Child Protection Legislation Amendment Act 2002*, passed in November 2002, amended the Act, with most of the amendments being backdated to its commencement in October 2001.

The Child Protection (Offenders Registration) Act includes provisions which relate to:

- The definition of registrable offences.
- Who is to notify registrable persons of the requirement to register and how this is done.
- The reporting obligations of registrable persons, including the information they must provide to police and how that information must be provided.
- How the reporting periods are calculated.
- The role of the Administrative Decisions Tribunal in exempting persons from lifetime reporting.
- The creation of offences relating to breaches of reporting obligations.

The Regulations provide specific directions about the operation of the Act.

The specific provisions of the Act and NSW Police policy and procedure, as they relate to the various issues raised, are discussed in more detail in Section 3 of this paper.

⁴ *Royal Commission into the NSW Police Service, Final Report, Volume V: The Paedophile Inquiry*, Hon Justice JRT Wood, August 1997.

⁵ *Protecting our Children*, policy statement released by the Carr Government in 1999.

⁶ Recommendation 111 of the Wood Royal Commission Final Report Volume V was:

Consideration be given to the introduction of a system for the compulsory registration with the Police Service of all convicted child sexual offenders, to be accompanied by requirements for:

- *the notification of changes of name and address; and for*
- *verification of the register;*

following consultation with the Police Service, ODPP, Corrective Services, the Privacy Committee and other interested parties.

2.2 Objectives of the Child Protection Register legislation

When the Act was first introduced to Parliament, the accompanying Explanatory Note stated that the main object of the Bill was:

...to require persons who have been found guilty of certain offences against children keep the Commissioner of Police informed as to where they live and work and as to what motor vehicles they drive.⁷

In his second reading speech, the (then) Minister for Police, The Hon Paul Whelan MP, expanded on this by stating that the aims of the Bill were also to:

- increase and improve the accuracy of child sex offender intelligence held by police;
- assist in the investigation and prosecution of child sex offences committed by recidivist offenders;
- provide a deterrent to re-offending;
- assist in the monitoring and management of child sex offenders in the community;
- provide child abuse victims and their families with an increased sense of security; and
- enable child murder and kidnapping offences to be considered for the purposes of employment screening and prohibiting child related employment.⁸

2.3 Child Protection Register management within NSW Police

NSW Police use a variety of policy and procedure documents to direct and inform their management of the Act. Some of these provide explanation of NSW Police responsibilities under the Act, and guidance for its implementation. Other policies and procedures provide direction to officers about aspects of the operation of the Child Protection Register which are not covered by the Act.

Local Area Commands (LACs) are responsible for the registration of individuals and the receipt of updated information. Although this can be done at any police station, only certain officers have authorisation to access and amend information held on the Register. The primary responsibility lies with the Crime Manager in each LAC who can designate other officers to undertake Child Protection Register duties. The Crime Manager can allocate a case manager to each registered person. It is also the responsibility of LACs to monitor registered persons within their Command and to take action in relation to those persons in breach of their reporting obligations.

Operational police charging a person with a registrable offence have specific responsibilities. These include attaching certain forms to the brief of evidence, so the court can determine if a person is required to register following the finalisation of the matter, and the completion of a threat assessment.⁹

⁷ Explanatory Note on the Child Protection (Offenders Registration) Bill 2000.

⁸ Hansard, Legislative Assembly, 1 June 2000, The Hon Paul Whelan, MLA, Minister for Police, Second Reading speech, Child Protection (Offenders Registration) Bill, p.6475.

⁹ The process for completing threat assessments is discussed in more detail in Section 3.8 of this paper.

Certain centralised aspects of the Register's operation are managed by the Child Protection Registry which is part of the Child Protection Squad under the direction of the State Crime Command. The Child Protection Registry is responsible for the day-to-day management, monitoring and maintenance of the Child Protection Register. This includes:

- development of policy and guidelines;
- calculation of reporting periods;
- coordination of intelligence;
- provision of assistance, advice and ongoing training to operational police;
- advising LACs of registrable persons in their Command;
- identifying persons who have failed to register within statutory timeframes; and
- management of cases transferring to or from interstate.

The Child Protection Register is not a separate database but an interface of the COPS (Computerised Operational Policing System) information management system. The information provided by registered persons is recorded on COPS in the same way as all other information held by NSW Police. However, access to the full range of Register information is restricted. Only officers who have specific levels of authorisation can access all the information about a particular registered person or find all the registered persons in a particular location. There is no public access to the information on the Register.

There are four levels of authorised access to the information held on the Register:

1. The Child Protection Registry can enquire, add and modify all 'CPR cases'.¹⁰ The Registry can also access the Registry worklog, and download and print reports and lists of registered persons.
2. Crime Managers and members of the Crime Management Unit and, on average, about six senior nominated officers in each LAC can enquire, add and modify all CPR cases in their LAC.
3. An assisting officer, or case manager, can access and modify only the particular CPR case of a registered person allocated to them.
4. All police officers, when conducting a person, vehicle or location enquiry on COPS, can see if the entity is associated with a CPR case and the details of the assessed level of threat.

¹⁰ All the information relating to a registrable person held on the Register is referred to as a 'CPR case' in NSW Police procedures and guidelines.

2.4 Comparable legislation in other jurisdictions

In Australia, NSW is the only state to have passed legislation establishing a register of child sex offenders. Victoria is considering introducing similar legislation.¹¹ A registration scheme for Queensland has also been suggested¹² although no legislation to establish a register has been proposed at this stage.¹³ However, a limited reporting scheme has been available in Queensland since 1989 which enables a court to impose specific reporting obligations on convicted offenders in certain situations of risk.¹⁴ Western Australia is also in the developmental stages of similar legislation.

The development of the National Child Sex Offender System has been part of the Commonwealth Government's CrimTrac initiative since 1998. This was not intended to be a national register on the NSW model, but rather an integrated database to assist police from all jurisdictions track and check sex offenders.

Nationally, the Australasian Police Ministers' Council established a working group in 2002 to discuss the introduction of consistent legislation across all jurisdictions, in light of Victoria's and Western Australia's moves in this direction. In early July 2003, the Council announced that the Police Ministers from all states had agreed to develop legislation to establish a register in each state, based on the NSW Act which would be in place within a year.¹⁵ CrimTrac has the responsibility for implementing the National Child Protection Register System.

The NSW legislation is substantially modelled on the United Kingdom's Sex Offenders Act.¹⁶ Under this legislation, introduced in 1997, certain sex offenders must notify police of certain details about themselves. This was followed in 1998 by legislation that allows police to seek an order for a person with a previous conviction for a sex offence requiring them to register with police and prohibiting certain actions or behaviours.¹⁷

The United States of America was the first country to establish sex offender registers.¹⁸ In 1994 Federal legislation was passed which required all states to have sex offender registers,¹⁹ followed in 1996 by legislation requiring all states to enact community notification provisions.²⁰

In Canada, Ontario was the first province to pass sex offender registration legislation in 2001²¹ with some other provinces currently debating similar laws. The Federal Canadian government introduced a Bill to provide for a national sex offender registration scheme in December 2002, but this has not yet passed into law.²²

In New Zealand, a Private Member's *Sex Offenders Registry Bill* was introduced into Parliament in early 2003 but is yet to be debated.

¹¹ This was in response to recommendations in a report by the Parliamentary Crime Protection Committee in 1995 entitled *Combatting Child Sexual Assault – An Integrated Model*.

¹² Queensland Crime Commission's report *Project Axis: Child Sexual Abuse in Queensland: Responses to the Problem*, 2000.

¹³ In 1997, a private member's bill, the *Criminal Law (Sex Offenders Reporting) Bill*, was introduced but failed to capture public attention or generate the expected public response and ultimately lapsed.

¹⁴ Through a provision of the *Criminal Law Amendment Act 1999 (Qld)*. The provisions were enhanced by the *Sexual Offences (Protection of Children) Amendment Act 2003*.

¹⁵ 'No escape for paedophiles: APMC adopts NSW Child Sex Offender Register', media release by John Watkins, MP, Minister for Police (NSW), 2 July 2003; 'National Tracking of Child Sex Offenders' media release by Senator Chris Ellison, Minister for Justice and Customs (Federal) 2 July 2003.

¹⁶ *Sex Offenders Act 1997* (U.K.).

¹⁷ Sex Offender Orders under the *Crime and Disorder Act 1998* (U.K.).

¹⁸ The first sex offender registers were in California in 1944, then Arizona in 1944 and Florida in 1957.

¹⁹ *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act 1994*.

²⁰ *Megan's Law 1996*.

²¹ *Christopher's Law (Sex Offender Registry) 2000* (Ontario, Canada).

²² Bill C-23, the Sex Offender Information Registration Act (Canada) was introduced to Parliament in December 2002.

3. How the act works in practice and issues arising from its implementation

3.1 Who is required to register?

Any person convicted of a 'registrable offence', subject to a minimum sentencing threshold, is required to register.²³ The minimum sentencing threshold is not met if:

- a person is found guilty but has no conviction recorded;²⁴
- a sentence for a single class 2 offence [see explanation in section 3.2] does not include a term of imprisonment or a community order requiring strict supervision;
- a conviction has been quashed or set aside; or
- a child is convicted of a single offence involving an act of indecency or possession or publication of child pornography.²⁵

Persons convicted on or after the date the legislation commenced, or serving a sentence for a registrable offence (either in custody or supervised in the community) at the date of commencement are registrable. Those serving a sentence at the commencement of the Act are referred to as 'Existing Controlled Persons'.

Snapshot of persons on the Child Protection Register

As at 31 May 2003, 806 people have registered with NSW Police, with 721 recorded as currently registered. The registration of 31 persons has been suspended as they are in custody and 36 are absent from NSW (with 7 of these overdue to return from the date advised to police.)

A further 28 have been notified of their obligation to register but have yet to do so. Of these, 10 are still within the 28 day period to comply while 18 are overdue to register. Another 44 persons have been identified as registrable but are yet to be notified.

There are a further 353 persons in custody who will be required to register once their custodial sentences are completed.

²³ Section 3(1) Child Protection (Offenders Registration) Act.

²⁴ Under section 10 of the *Crimes (Sentencing Procedure) Act 1999* or section 33 (1) (a) of the *Children (Criminal Proceedings) Act 1987*.

²⁵ Under section 578B or 578C (2A) of the *Crimes Act 1900*.

3.2 What is a registrable offence?

The Act classifies 'registrable offences' into either 'Class 1' or 'Class 2'.²⁶ An offence is a 'registrable offence' only where the victim was a child, defined as a person under the age of 18 years.

Class 1 offences are defined to include:

- The offence of murder, where the person murdered is a child;
- An offence that involves sexual intercourse with a child;
- An offence against section 66EA of the *Crimes Act 1900* (offences relating to persistent sexual abuse of a child);
- An offence of attempting, or of conspiracy or incitement, to commit any of these offences; or
- An offence which has as an element an intention to commit any of the offences referred to above.

Class 2 offences are defined to include:

- An offence that involves an act of indecency against or in respect of a child, if punishable by imprisonment for 12 months or more;
- An offence under sections 86 or 90A of the *Crimes Act 1900* (kidnapping offences), where the offence is committed against a child, except where the person found guilty of the offence is or has been a parent or carer of the child;
- An offence under sections 80D or 80E of the *Crimes Act 1900* (offences relating to sexual servitude) where the offence is committed against a child;
- An offence under sections 91D-91G of the *Crimes Act 1900* (offences relating to child prostitution) other than an offence committed by a child prostitute;
- An offence under sections 578B or 578C (2A) of the *Crimes Act 1900* (offences relating to child pornography);
- An offence of attempting, or of conspiracy or incitement, to commit any of these offences; or
- An offence which has as an element an intention to commit any of the offences referred to above.

Any equivalent offence committed outside NSW is also a registrable offence. Anyone convicted of such an offence in any other jurisdiction is deemed a registrable person.

Juveniles convicted of a registrable offence and persons found not guilty of a registrable offence by reason of mental illness (forensic patients) are also subject to the Act. So too are persons with an intellectual disability or mental illness, including those with a reduced capacity to understand or comply with their obligations. There are, however, additional provisions relating to young people and persons with special needs in respect of notification and registration. Reduced reporting periods apply for young people.

²⁶ Section 3 Child Protection (Offenders Registration) Act.

Issues arising

The definition of a 'registrable offence' is the key to this legislation as significant consequences arise from a conviction for a registrable offence. All the obligations flow directly from a conviction for a registrable offence. There is no provision for discretion or review to exclude persons caught by the legislation.

There was debate in Parliament about whether certain offences should be registrable. Other questions about the relevance of certain offences being registrable have been identified by preliminary analysis of the Register data and by information provided by NSW Police. Generally these concerns arise in the context of a person being required to register following a conviction for an offence which, although registrable, is not a child sex offence.

One of the objectives of the Act is to enable murder and kidnapping offences to be considered for the purposes of employment screening and prohibiting child related employment. The basis for the Government's decision to include these offences within the 'registrable offences' definition, is that in many cases, children are abducted or murdered in connection with attempted or actual sexual offences. In his second reading speech for the Bill, the Minister for Police said:

Some child murders have an underlying sexual motivation, but there may not be conviction for a sexual offence. There is no more dangerous or despicable sex offender than one that murders his victim.²⁷

However, preliminary analysis of the data from the Register shows that there are a number of persons on the Register following convictions for registrable offences, where there was no apparent sexual element to the offence.

Some of these specific offences and situations are discussed in more detail below.

Women who have killed their children as a result of post-natal depression

Concerns were raised during Parliamentary debate whether it was appropriate for women who had killed their children as a result of post-natal depression and were detained as forensic patients, to be registrable.²⁸ The Parliamentary Secretary referred this issue to the Ombudsman for consideration as part of his review.²⁹

A preliminary analysis of the Child Protection Register reveals three women who were forensic patients as a result of a murder charge. They were all found not guilty as a result of mental illness. However, not all the murder charges for these women resulted from them killing their children in the post-natal period.

²⁷ Hansard, Legislative Assembly, 1 June 2000, The Hon Paul Whelan, MLA, Minister for Police, second reading speech, Child Protection (Offenders Registration) Bill, p. 6475.

²⁸ Hansard, Legislative Council, 4 July 2001, The Hon Ian Cohen, MLC, second reading speech, Child Protection (Offenders Registration) Amendment Bill.

²⁹ Hansard, Legislative Council, 4 July 2001, The Hon Ian MacDonald, MLC, Parliamentary Secretary, second reading speech, Child Protection (Offenders Registration) Amendment Bill, p. 16221.

Case study

A woman, Ms P, experienced post-natal depression following the birth of her second child in 1996. Her condition worsened into an acute and florid psychosis during one episode of which she killed her baby. The police charged the woman with murder. A judge found her not guilty by reason of mental illness in 1997 and ordered that she be detained, as a forensic patient, 'in strict custody until released by the due process of law'. She underwent psychiatric treatment while in hospital and was conditionally released in 1999, no longer psychotic but suffering depression and grief. She continued with counselling. Following a hearing by the Mental Health Review Tribunal, Ms P was unconditionally released in April 2002, terminating her status as a forensic patient.

Ms P is required to be on the Child Protection Register for 10 years, as she was still a forensic patient, although conditionally released, at the commencement of the legislation in October 2001.

Other murder offences

A preliminary analysis of the Register indicates that some murders of children and young people are not committed in connection with the actual or attempted commission of a sex offence. Murder is the primary registrable offence for about 45 registrable persons, but only in about one third of these cases was the murder committed during commission of, or to conceal, a sexual offence. In just under half cases the victim was either a family member or living in close proximity to the offender and there was no sexual motive.³⁰

Case study

A 15 year old attended a party where he met D, a 16 year old youth. The youths and a young woman left the party and entered nearby bushland where they allegedly smoked marijuana together. D went to his father's shed and obtained a .22 calibre rifle and ammunition. He then shot the 15 year old seven times at close range and returned the firearm to the shed. D was convicted of murder and sentenced to 15 years imprisonment, and will be required to register on the Child Protection Register on his release from custody.

Kidnapping offences

Preliminary analysis shows that there are 32 people with convictions for kidnapping offences on the Register. Seventeen of these were also convicted of other (sexual) registrable offences. In 15 cases, the kidnapping offence was the only registrable offence. There was no sexual element in at least 10 of these cases where the commission of property and/or drug offences appears to be the motivation for the kidnapping.³¹

³⁰ Data and analysis provide by the Child Protection Registry.

³¹ Data and analysis provide by the Child Protection Registry.

Case study

A 32 year old man, Mr M, with a history of driving, theft and assault convictions but no sex offences, is required to be on the Child Protection Register for 8 years. This results from a conviction in 2000 for 'detain for advantage without causing injury to victim', arising from an incident where he stole a car from a woman which had her two children in the back. He had one month of his parole left to serve when the legislation commenced in October 2001, and so was included on the Register as an Existing Controlled Person.

Young people convicted of offences arising from underage consensual sex

Concerns were also raised during Parliamentary debate about whether the Act would (or should) apply to young persons convicted of offences relating to underage consensual sex.³² The Parliamentary Secretary referred this issue to the Ombudsman for consideration as part of his review.³³

Case study

J, a 17 year old male, had a consensual sexual relationship with L, a 14 year old girl. L's father found out about the relationship and physically assaulted J. After reporting the assault, J was charged with sexual intercourse with a child aged 10-16 years pursuant to section 66C of the *Crimes Act*. J's solicitor requested the matter be finalised under section 33(1)(a) of the *Children (Criminal Proceedings) Act*, to be under the minimum sentencing threshold. The Magistrate declined and adjourned the matter to enable J to participate in the Sex Offender Program. The outcome, and whether J is required to register, is unknown at this stage.

Preliminary analysis of the Register data has not yet identified any young persons on the Register as a result of a conviction arising from a consensual underage sexual relationship, where both parties were of a similar age. One person is on the Register as the result of consensual sexual relationship with a 14 year old girl when he was 19 years of age, arising from a conviction in another state.³⁴ A more detailed examination of the circumstances of particular offences is required to be certain that young people in consenting sexual relationships are not captured by the operation of the Act.

QUESTIONS FOR CONSIDERATION

Registrable offences

1. We invite your submissions on the operation of the provisions of the Act in relation to registrable offences.
 - Please provide details of the circumstances of any particular case(s) you are aware of.

³² Hansard, Legislative Council, 4 July 2001, The Hon Ian Cohen, MLC, second reading speech, Child Protection (Offenders Registration) Amendment Bill.

³³ Hansard, Legislative Council, 4 July 2001, The Hon Ian MacDonald, MLC, Parliamentary Secretary, second reading speech, Child Protection (Offenders Registration) Amendment Bill p. 16221.

³⁴ Information provided by the Child Protection Registry.

The application of the Act to children and persons with a special need³⁵

Young people

The question of whether young people should be subject to the Register requirements was discussed at the time the legislation was being developed, and was the subject of debate in Parliament.³⁶ The special circumstances of young people have been recognised by the inclusion of special provisions for them, including reduced reporting periods and a higher sentencing threshold.³⁷ There are also additional provisions in respect of notification and registration of persons with special needs, which includes young people. These additional provisions are discussed further in sections 3.4 and 3.5 below.

Persons with an intellectual disability or mental illness

At the Act's pre-implementation stage, certain groups expressed concern that persons with an intellectual disability or mental illness that impaired their capacity to understand or comply with their reporting obligations would be disadvantaged by the provisions of the Act. Concerns that people with disabilities might be breached at a greater rate due to inadvertent failures to comply, prompted amendments to the notification provisions.³⁸ Consequently the Regulation also included additional requirements in relation to the giving of notices to registrable persons who are children or who have special needs. The additional provisions in respect of notification and registration of persons with special needs are discussed further in sections 3.4 and 3.5 below.

Forensic patients

The Act applies to forensic patients. These are persons found to have committed registrable offences and who are detained under orders pursuant to the *Mental Health (Criminal Procedure) Act 1990*. The Act was amended to define such orders as 'sentences' for the purposes of the Act, to ensure that its provisions apply to forensic patients.³⁹

In addition to the provisions recognising the special needs of forensic patients and other persons with special needs, the Regulation also includes some specific provisions for the notification of forensic patients. The additional provisions are discussed further in sections 3.4 and 3.5 below.

QUESTIONS FOR CONSIDERATION

The application of the Act to certain groups with special needs

2. We invite your submissions on the operation of the provisions of the Act in relation to young people, persons with an intellectual disability or a mental illness and/or forensic patients.
 - Please provide details of any particular case(s) you are aware of which support your view.

³⁵ Clause 12 of the Regulation makes provision for 'persons who are children or who have special needs' for registration purposes. Clause 3 provides that a person has a **special need** if:

- (a) the person has impaired intellectual functioning, that is, the person has:
 - (i) total or partial loss of the person's mental functions, or
 - (ii) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction, or
 - (iii) a disorder, illness or disease that affects the person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour, or
- (b) the person is subject to a guardianship order (within the meaning of the *Guardianship Act 1987*), or
- (c) the person is illiterate, or is not literate in the English language, or
- (d) the person is visually impaired to the extent that the person is unable to read a written notice, or
- (e) the person is subject to some other condition that may prevent the person from being able to understand a written notice.

³⁶ See, for example, Hansard, Legislative Council, 4 July 2001, second reading speech, *Child Protection (Offenders Registration) Amendment Bill*.

³⁷ A child convicted of a single offence involving an act of indecency or possession or publication of child pornography is below the sentencing threshold, but an adult convicted of a similar offence is not.

³⁸ Contained in the *Child Protection (Offenders Registration) Amendment Act* passed in July 2001.

³⁹ Amendments to section 3 (1) of *Child Protection (Offenders Registration) Act*, contained in *Child Protection (Offenders Registration) Amendment Act 2001*.

3.3 What appeal or review processes are there?

The sole appeal provision in the Act applies to registrable persons with a lifetime reporting period, who have maintained their reporting obligations for 15 years. After this period they can apply to the Administrative Decisions Tribunal (ADT) for suspension of further reporting obligations. The ADT can make an order if it considers that the person does not pose a risk to the safety of children and must take into account a range of factors. These are the:

- seriousness of the offences as a result of which the person is a registrable person;
- period of time since those offences were committed;
- age of the registrable person, the age of the victims of those offences and the difference in age between the registrable person and the victims of those offences, as at the time those offences were committed;
- registrable person's present age;
- registrable person's total criminal record; and
- any other matter the Tribunal considers appropriate.⁴⁰

The Commission for Children and Young People is to be a party to any proceedings and may make submissions in opposition to, or in support of, an order.

A party to ADT proceedings may appeal to the Supreme Court, on a question of law, from any decision of the ADT.

There are no other provisions for any other exercise of discretion, either judicial or administrative, in respect of determining the requirement to register or the reporting period.

Issues arising

The absence of appeal provisions in the Act seems a deliberate decision to simplify the process and avoid the delays and costs likely to arise if it were open to all potential registrable persons to appeal against their obligations. However the lack of more extensive review or appeal provisions in the Act has been raised as an issue by a number of stakeholders.

QUESTIONS FOR CONSIDERATION

Review or appeal provisions

3. We invite your submissions on the operation of the Act in respect of review and appeal provisions.

⁴⁰ Section 16 (4) Child Protection (Offenders Registration) Act.

3.4 How does a registrable person know they have to register?

A registrable person must be given written notice of their reporting obligations and the consequences of failing to comply with those obligations as soon as practicable after being sentenced.⁴¹ Although the Act requires that the sentencing court do this, the Regulations provide for ‘supervising authorities’ to exercise this function in certain cases. NSW Police can also notify a person of their reporting obligations, if this has not been done by another authority.

Supervising authorities are agencies that supervise offenders after sentencing and are defined in the Regulation.⁴² They are:

- Department of Corrective Services, for offenders in custody or serving a sentence supervised by the Probation and Parole Service;
- Department of Juvenile Justice, for young offenders in detention or serving a community-based sentence;
- Pre-Trial Diversion of Offenders Program, for participants in that program; and
- Department of Health, for forensic patients.

There are also additional provisions in the Regulations for the notification of forensic patients and registrable persons who are children or who have special needs.⁴³ Once a forensic patient becomes capable of understanding a statutory notice, they are to be issued with an additional written notice.⁴⁴

The notifying body must also ‘take such measures as are reasonably practicable’ to assist a registrable person who is a child or a person who has a special need, and is incapable of understanding a statutory notice.⁴⁵ The Regulations outline some of those measures, while making it clear that possible measures should not be limited to the options provided, which include:

- an oral, video or audio recording;
- a simplified written version of the notice;
- use of an interpreter or another person to explain the notice; and
- having the assistance of a support person.⁴⁶

Where a child or a person with a disability is incapable of understanding their registration obligations, notification may be given to that person’s nominee, or parent, guardian or carer.⁴⁷

⁴¹ Child Protection (Offenders Registration) Act section 4(1).

⁴² Child Protection (Offenders Registration) Regulation clause 6.

⁴³ Child Protection (Offenders Registration) Regulation, clauses 9 and 12.

⁴⁴ Child Protection (Offenders Registration) Regulation, clause 9.

⁴⁵ Child Protection (Offenders Registration) Regulation, clause 12 (1) and (2).

⁴⁶ Child Protection (Offenders Registration) Regulation, clause 12 (3).

⁴⁷ Child Protection (Offenders Registration) Regulation, clause 18.

Issues arising

The means by which registrable persons would be informed of their registration obligations was the subject of considerable discussion and concern in the development stages of the legislation. As the Bill was being passed by Parliament, the Intellectual Disability Rights Service (IDRS) raised concerns that the ability of registrable persons with limited cognitive and communication abilities to understand and meet their obligations meant that they may have been unfairly affected. The IDRS was concerned that the provisions to protect such people were inadequate. In response to lobbying from IDRS and the Law Society, amendments were proposed to the Act which enhanced the notification provisions.⁴⁸ These were contained in the Child Protection (Offenders Registration) Amendment Act. Consequently, the Regulation to the Act also included the additional provisions outlined above for notification of persons with special needs.

Despite the concerns raised, or perhaps due to the enhanced notification provisions, the review has not received to date any reports of problems arising from the notification of persons with special needs.

The majority of registrable persons are notified by supervising authorities either at commencement of sentence (generally, those sentenced to community-based sentences) or on release from custody. However, some registrable persons receive their notification directly after sentencing by court staff. This is generally in circumstances where the person has been sentenced to a community-based sentence without supervision. NSW Police generally only notify registrable persons of their obligations when they become aware that a person has not been notified. Outstanding notifications are monitored by the Child Protection Registry. Where it is not possible to arrange notification by a relevant supervising authority, the Registry will advise the LAC where the registrable person resides to contact them to carry out the notification process.

Written notification is done by way of an multi-page form known as 'Form 3'. This includes a section for acknowledgement that notification has occurred, which the registrable person is to sign. The form also provides information about what the registrable person must do to register with police, the various reporting obligations and the consequences for non-compliance.

QUESTIONS FOR CONSIDERATION**Notification**

4. We invite your submissions on the operation of the Act in relation to the notification provisions, in particular your comments on, or information about, the way the notification provisions have been applied in practice.
 - Specifically can you comment on how the notification process has been managed by:
 - Department of Corrective Services
 - Probation and Parole Service
 - Courts
 - Pre-Trial Diversion of Offenders Program
 - Department of Health
 - Police

⁴⁸ Hansard, Legislative Council, 4 July 2001, The Hon Ian Cohen, MLC, second reading speech, Child Protection (Offenders Registration) Amendment Bill.

QUESTIONS FOR CONSIDERATION (Continued)

5. Can you provide any comments on, or information about, the use of the special provisions for notifying a forensic patient, a young person or a person with special needs?
 - Please provide details of the circumstances of the particular case(s).
6. Are you aware of any instances where a person was provided with inaccurate information when they were notified of their obligations under the Act?
 - Please provide details of the circumstances of the particular case(s).
7. Are you aware of any instances where a person was not notified of their registration obligations in accordance with the provisions of the Act?
 - Please provide details of the circumstances of the particular case(s).

3.5 What are the reporting obligations of a registrable person?

There are a number of provisions in the Act setting out the details of the information registrable persons must provide to police, the timeframes for doing so and the manner in which it must be given. The Regulation includes clauses relating to proof of identity and the forms of acknowledgement for the information provided.

The Act also sets out how to calculate the length of time for which reporting obligations continue.

Information that must be provided

The Act requires that registrable persons tell police certain 'relevant personal information'.⁴⁹

Relevant personal information is defined in the Act as details of:

- All names they are, or have been, known by.
- Date of birth.
- Their principal address and any address at which they generally reside. If the person does not have a regular place of residence, then they must provide police with details of the localities where they can be found.
- If employed, the nature of their employment, the name of their employer and the address of each of the premises at which they are generally employed or the localities in which they are generally employed.
- The make, model, colour and registration number of any motor vehicle owned by, or generally driven by, the person.
- The details of their registrable offence(s), including at which court(s) and on what date(s) they were found guilty.

A person is taken to 'generally' reside or be employed at a particular place, or drive a vehicle, if they do so for more than 14 days (not necessarily consecutively) in any 12 month period.⁵⁰

The Act does not require that the registrable person provide any evidence to verify the information they give to police.

⁴⁹ Section a(1) Child Protection (Offenders Registration) Act.

⁵⁰ Section a(2)(a) Child Protection (Offenders Registration) Act.

Registrable persons are required to give police a passport sized photograph of themselves, and to provide proof of their identity. This is done using the '100 points' system needed to open a bank account. Alternatively, a registrable person can ask the registering police officer to confirm their identity by taking their fingerprints. If fingerprints are taken to establish identity, they can be used for this purpose only and must be destroyed immediately, after the process is completed. A police officer can also waive the need for a person to provide proof if they are satisfied as to the person's identity.⁵¹ A parent, carer or nominee providing information to police on behalf of a registrable person who is incapable of understanding their reporting obligations or the consequences of failing to comply with them, must also provide proof of identity.⁵² Support persons are not required to do so.

A registered person must also notify the police of any absences from NSW regardless of the length of absence if they are going overseas, and of more than 28 days if they remain within Australia. They must provide police with details of where they intend to travel and when they intend to return.⁵³

Additional information that may be requested by police

The Standard Operating Procedures (SOPs) direct the registering officer to try to obtain further information in addition to that required by the Act.⁵⁴ This is referred to as 'Stage Two Registration'. The procedures advise police officers that this information must only be obtained after the formal registration process has been completed and they have given the registrable person a warning that the law does not require that further questions be answered.⁵⁵ NSW Police advise that any additional information obtained from Stage Two Registration is to assist with the ongoing monitoring of an registrable person. For this purpose police are directed to request details of:

- Any children, relatives or friends under the age of 18 years with whom they have contact, or who reside in or frequent their residence.
- Current use of alcohol or drugs (prescribed or illegal).
- Membership of a church, sporting association or other club where children are present.
- Details of their current marital/relationship status.
- Any current treatment or therapy.
- Other specific details about their employment or residential arrangements.

⁵¹ Child Protection (Offenders Registration) Regulation clause 14.

⁵² Child Protection (Offenders Registration) Regulation clause 15. The Regulation does not empower police to take fingerprints to establish the identity of parents, carers or nominees.

⁵³ Section 11 (1), (2), (4) Child Protection (Offenders Registration) Act.

⁵⁴ *Standard Operating Procedures: Child Protection (Offenders Registration) Act 2000*, NSW Police Service, first published August 2001, amended October 2002, section 4 (8).

⁵⁵ The warning that Police are to give before requesting further information as part of 'Stage Two Registration', at paragraph 4.8 (A) of the SOPs, is: "The registration process has now been completed and you have met your reporting obligations under the *Child Protection (Offenders Registration) Act*. However, before you go, there are some additional questions I would like to ask you. The law does not require that you answer these questions."

Issues arising

Relevant personal information required and additional information requested

Some concerns have been raised that the information required by the Act is insufficient for police to adequately undertake their child protection role. It has been suggested that the information provided voluntarily at Stage Two Registration should be made mandatory and given a legislative basis. A number of parties have expressed concern that police cannot require registered persons to provide details of the persons they live with, especially children, or places where they may associate with children, and see this as crucial to protecting the community.

Some privacy and rights groups and registrable persons have expressed concerns about the appropriateness of police attempting to obtain additional non-legislated information through the Stage Two Registration process. The review has been presented with no evidence to date of police trying to obtain this information without giving the proper warnings that registrable persons are not obliged to provide it.

Proof of identity and photographs

Prior to the drafting of the Regulations, there was some discussion about the methods for proving identity. A number of parties strongly put the view that the 100 points system would be too onerous on certain disadvantaged persons such as homeless persons, persons recently released from gaol and some Aboriginal persons. For persons unable to provide sufficient proof of identity, the Regulation allows police to take fingerprints or waive the requirement to prove identity if the person is already known to them. These measures were introduced to ensure that persons with few personal documents would still be able to complete the registration process.

Concerns were also raised about the possibility of police forcibly taking photos of persons coming in to register.⁵⁶ The Act and Regulation do not provide for police to take photos of registrable persons; rather they are to provide their own photos. The SOPs advise police that if the registrable person turns up to register without a passport sized photograph, then the registering officer may offer to take their photograph.⁵⁷ There have been some reports of problems with this. In some circumstances police assist the registrable person by taking their photo at the station, although this does not appear to be uniformly occurring. We have received information that on some occasions registrable persons without a photograph have been unable to complete the registration process until they return at another time with a photo.⁵⁸

⁵⁶ Implementation Committee meetings of 7 March 2001 and 11 April 2001.

⁵⁷ SOPs Paragraph 4.4 (b). This paragraph also advises police that this must only occur with the informed consent of the registrable person.

⁵⁸ Information obtained from surveys of Crime Managers and interviews with registrable persons.

QUESTIONS FOR CONSIDERATION

Reporting obligations

Provision of personal information

8. We invite your submissions on the operation of the Act in relation to the provision of personal information to the police.
 - Are you aware of any circumstances where a person has had any difficulties providing the relevant personal information required by the Act?
 - Are you aware of any circumstances where police have requested additional information but have not provided a warning of the type required by police procedures?
 - Are you aware of any circumstances where police have taken action in response to receiving additional information?
 - Please provide details of the circumstances of the particular case(s).
9. We invite your submissions on the proof of identity requirements.
 - Are you aware of any incidents where a person has had difficulties providing sufficient identification or a photograph?
 - Are you aware of any incidents or problems relating to parents, carers or nominees having to establish proof of identity?
 - Please provide details of the circumstances of the particular case(s).

How information must be provided

Timeframes for reporting

The Act sets down various timeframes for registrable persons to give their personal details to police.⁵⁹ These are:

- For initial registration, within 28 days of commencing a community sentence order or being released from custody.⁶⁰
- Where there are any changes to these details, within 14 days of the change occurring.
- Following an absence from NSW, advice of the person's return to NSW, within 14 days of the date of return.⁶¹

The timeframes for reporting are similar to those in the United Kingdom (prior to the recent amendments to that legislation) and in other overseas jurisdictions. Once a person has provided their personal information at the initial registration, there is no requirement for them to contact the police again during their reporting period if their details have not changed, or to reconfirm those details at any point.

⁵⁹ Section 10 and 11 Child Protection (Offenders Registration) Act

⁶⁰ The only exception to this is that 'Existing Controlled Persons' had 90 days to register after the commencement of the legislation (section 10 (1) Child Protection (Offenders Registration) Act).

⁶¹ Registrable persons do not have to notify Police of their absence from or return to NSW if they did not leave Australia and were absent for less than 28 days (section 10 (3) Child Protection (Offenders Registration) Act).

Manner in which information is to be provided

All personal details, including updates of any information, must be provided to police in person at a police station in the locality in which the person resides.⁶² An amendment which commenced in February 2003, also allows relevant information to be provided at 'some other place' approved by the Commissioner of Police.⁶³

The Act also provides that registered persons are entitled to report information in a private part of a police station where no members of the public are present. To facilitate this, Form 3 (notification of obligation to register) advises registrable persons to contact their local Crime Manager to make an appointment to register.

Police must give the person written acknowledgement of the information provided.

Other persons providing assistance with registration and reporting obligations

The Act allows a parent, carer, guardian or other nominated person to report on behalf of children or persons with a disability which makes it impracticable for them to do so themselves.⁶⁴ The registrable person is to attend the police station as well, where possible. The Act does not impose any legal obligations or responsibilities on a person assisting with registration. A registrable person can also have a support person with them while they report.

Issues arising

Timeframes for reporting

Amendments to the United Kingdom legislation in June 2001 reduced the period for initial registration from 14 to three days. The Government announced it would 'tighten up' certain aspects of the legislation in advance of a scheduled review, in response to the public outcry after the murder of Sarah Payne.⁶⁵ A consultation paper prepared as part of that review proposed that the period for notifying police of changes to details be reduced from 14 days to eight days, following concerns expressed by a number of groups that a 14 day period was too long.⁶⁶ There was clear consensus among consultation groups convened as part of this review that there should be a requirement for periodic re-registration.

There is no requirement for persons who leave NSW for periods shorter than 28 days to advise police of their movements, even if their absences are frequent and regular. It has been suggested that it may be appropriate for persons who visit other states on a regular basis, even if for periods of less than 28 days at a time, to be required to advise police of their movements.⁶⁷ This may apply to people who travel regularly to other states for work, or who spend more than 28 days in another state in any 12 month period. This would be consistent with other information that registered persons are required to report.

⁶² All the provisions about the manner in which information is to be provided are in section 12 Child Protection (Offenders Registration) Act.

⁶³ *Child Protection Amendment Act 2002* Schedule 1 Item 4 amending section 12 (1) Child Protection (Offenders Registration) Act.

⁶⁴ Section 12 (5) Child Protection (Offenders Registration) Act.

⁶⁵ Deputy Home Secretary, Paul Boateng, 'Ministers tighten law on sex offenders', *BBC News online*, 14 November 2000. Sarah Payne was kidnapped, assaulted and murdered in July 2000 by a convicted sex offender who was on the UK Sex Offenders Register.

⁶⁶ *Consultation Paper on the Review of Part 1 of the Sex Offenders Act 1997*, Home Office, UK, July 2001.

⁶⁷ Raised at a meeting with Probation and Parole Officers at Mt Druitt on 16 April 2003.

Manner in which information is to be provided

Some persons have told the review that they find the requirement to attend a police station in person every time some information changes unnecessarily onerous.⁶⁸ This is particularly the case for persons who are working out of the area in which they are registered and where the information to be updated is minor (such as details of an additional vehicle). It has been suggested that some information could be updated by telephone or in writing where the identity and other details of the person can be verified.⁶⁹ In some other jurisdictions, details can be updated by registered mail.

The SOPs direct that all enquiries from registrable persons should be forwarded to the Crime Manager, and that anyone can make an appointment on behalf of a registrable person.⁷⁰ Although it is preferable for a person to register or update information at their closest police station, the SOPs advise that they should not be refused if they attend another station. Similarly they should not be refused if they attend a police station to update information without an appointment. If the Crime Manager or delegate with authority to access the register on-line is not available, then a copy of the form used to record changes to personal details (Form 4) can be printed from the intranet and completed manually by any other officer. However, this would require the registrable person to inform an officer other than the Crime Manager of their registrable status.

Some people have told us that these procedures have caused some difficulties.⁷¹ There have been reports of persons having trouble tracking down a Crime Manager to make an appointment with them, and of difficulties in establishing which police station they should report to. Certain registrable persons have reported contacting two or three police stations before ascertaining which is the appropriate one.

Case study

A registered person attended the counter at an outer metropolitan police station to advise of a change of register details. He informed the counter officer that he wanted to change his address, and the officer wrote the details down. His parole officer later queried whether he had updated his details. The offender explained he had and although he had the name of the person who had taken his details he did not have a signed Form 4 confirming this. His parole officer was concerned about the procedure and checked with the Crime Manager. He discovered that the new address details were not recorded on the Register. It appeared that the counter officer had not understood the purpose for which the information was being provided and was not aware of the process for recording changes to Register details.

⁶⁸ Interviews with registered persons.

⁶⁹ This was raised by a number of the Crime Managers interviewed in December 2001 and May 2002 as part of an ongoing survey, as well as by some of the registered persons interviewed for the review.

⁷⁰ Section 4 of the SOPs deals with the registration process, and section 5 with the updating of personal information.

⁷¹ Interviews with registrable persons.

QUESTIONS FOR CONSIDERATION

Reporting obligations

Manner and timeframes for reporting

10. We invite your submissions on the operation of the Act in relation to the reporting obligations of registrable persons.
 - Can you provide any information about how the processes for the provision of personal information to police are operating?
 - Are you aware of any instances where a registrable person has had problems making arrangements for, or completing, registration or updating of information?
 - Please provide details of the circumstances of the particular case(s).
11. We invite your submissions on the provisions for protecting a registrable person's privacy during the registration process.
 - Are you aware of any incidents where the requirements to provide privacy to a person during the registration process have not been properly implemented?
 - Please provide details of the circumstances of the particular case(s).
12. Do you have any comments about the provisions that allow parents, carers or guardians to assist young people or persons with disabilities meet their registration obligations?
 - Are you aware of any instances where parents, carers or guardians have been contacted by police or supervising authorities about a registrable person's reporting obligations without the person's permission?
 - Please provide details of the circumstances of the particular case(s).
13. Do you have any comments about the provisions that allow a registrable person to have a support person with them during the registration process?
 - Are you aware of any instances where there have been any difficulties or issues about a support person attending or assisting with the registration process?
 - Please provide details of the circumstances of the particular case(s).

3.6 What are the reporting periods and how are they calculated?

The reporting period is the length of time that a registrable person is required to keep police informed of any changes to their relevant personal information. The length can vary from 8 to 15 years, with provision for lifetime reporting in some circumstances. Reduced reporting periods apply to young persons. A number of variables are taken into account in the calculation of reporting periods. These include whether offences committed are class 1 or class 2 and the number, combination and timing of offences committed. When calculating reporting periods, all previous relevant offences are taken into account, not just the offence for which the person has become registrable. Offences committed in other jurisdictions are also used for calculating reporting periods.

The various reporting periods provided for in the Act are:

- 8 years for a person convicted of a single class 2 offence.
- 10 years for a person convicted of a single class 1 offence, other than an offence against section 66EA of the *Crimes Act* (offences relating to the persistent sexual abuse of a child).
- 12 years for a person convicted of a class 2 offence who has previously or at the same time been convicted of another class 2 offence.
- 15 years for a person convicted of a class 1 offence who has been previously or at the same time been convicted of another class 1 offence or a class 2 offence, or for a person convicted of a single offence against section 66EA of the *Crimes Act*.
- Lifetime reporting for a person convicted of a class 1 offence who is subsequently convicted of another class 1 offence.
- Lifetime reporting for anyone subject to a lifetime parole licence.
- These reporting periods are halved where the registrable offence was committed when the person was under the age of 18, with a reporting period of 7½ years where a lifetime reporting period would apply to an adult.⁷²

Issues arising

The mechanism for calculating reporting periods is quite complex. The calculations are done centrally by the Child Protection Registry. In most circumstances registrable persons have told the review they did not know what their reporting periods would be until they attended a police station to register. The Form 3 notification form does not generally include the reporting period. For some, reporting periods have been amended on registration. In most cases, this was to take account of other offences not earlier identified, for example interstate convictions.

In some overseas jurisdictions, length of registration is determined by length of sentence rather than the type or number of offences.⁷³ However, this method does not necessarily guarantee any greater simplification in the calculation process.

While some registrable persons have told the review that they do not understand how their reporting period was determined, the review has no evidence to date that any reporting period was miscalculated. We understand that it is the practice of the Child Protection Registry to clarify calculations of reporting periods if requested. However, there is no process established by either the Act or police procedure to review the determination of reporting periods, if a person believes the period is wrong or has been miscalculated.

⁷² Section 14 of the Act provides the mechanisms for the calculation of reporting periods. In calculating reporting periods, the legislation draws a distinction between offences committed at the same time as the primary offence and offences committed at an earlier time or subsequently.

⁷³ For example, *Sex Offenders Act 1997* in the United Kingdom.

QUESTIONS FOR CONSIDERATION

Reporting obligations

Reporting periods

14. We invite your submissions on the operation of the Act in relation to the calculation and advice of reporting periods for registrable persons.
- Are you aware of any instances where a registrable person has:
 - been wrongly advised of their reporting period *or*
 - been unable to ascertain why they have a particular reporting period *or*
 - believed that their reporting period has been wrongly calculated?
 - Please provide details of the circumstances of the particular case(s), including the outcome of any complaint or query.

3.7 What happens if a person does not register or report as required?

It is an offence under the Act to fail to comply with reporting obligations without reasonable excuse or to provide false or misleading information. Both offences carry a maximum penalty of a fine of 100 penalty points (currently \$11,000) or two years imprisonment or both.⁷⁴

The offence of failing to comply with reporting obligations applies only to registrable persons. However, the offence of providing false or misleading information applies to anyone providing information to police in respect of a registrable person's reporting obligations.

Issues arising

One of the major concerns raised prior to the implementation of the Act by a number of parties was that people with poor understanding of their obligations or limited capacity to comply would be particularly vulnerable to being breached.⁷⁵ The Act addresses this by allowing a person to have a reasonable excuse for failing to comply with their obligations. It also directs the court to take certain issues into account when considering an alleged breach, including the person's age and any disability they may have which might affect their ability to comply. These mitigating factors apply only to the offence of failing to comply with reporting obligations and not to the offence of providing false or misleading information.⁷⁶

The Act also provides that not having been properly notified of reporting obligations is a defence in proceedings for the alleged offence of failing to comply.⁷⁷

⁷⁴ Sections 17 (1) and 18 Child Protection (Offenders Registration) Act.

⁷⁵ Such as the NSW Law Society, the Intellectual Disability Rights Service, the Hon Ian Cohen, MLC, the Hon. Dr Arthur Chesterfield-Evans, MLC.

⁷⁶ Section 17 (2) Child Protection (Offenders Registration) Act.

⁷⁷ Section 17 (3) Child Protection (Offenders Registration) Act.

Police do not charge all persons who have failed to register within 28 days or failed to provide changed details within 14 days of the change, with an offence under the Act. The Standard Operating Procedures (SOPs) direct police to take account of the mitigating factors in the Act before proceeding to issue a warrant for a breach of the Act. If a police officer determines that a registrable person has a reasonable excuse for failing to meet their reporting obligations, they are advised to make arrangements for the registrable person to attend a police station and supply the information required. The SOPs also suggest the officer should consider issuing the offender with a formal warning.⁷⁸

The SOPs provide no specific direction to police about how they should take account of issues of age and disability in determining whether to charge a person for breach offences. However, they do suggest that police contact the registered person's parole officer, where applicable, to identify any mitigating factors which may have hindered the registration process. The Child Protection Registry has advised this review that it is intended that, in the first instance, police encourage and assist registrable persons to comply with their obligations rather than proceeding directly to laying charges.

Where persons have been charged and matters have gone to court, a wide range of outcomes has resulted (see box below). Until a more detailed analysis of the data can be completed, it is not possible to establish whether 'vulnerable' persons are more exposed to being charged for failing to comply than other registrable persons.

Register data for breach offences

A preliminary analysis of the Register shows that, at 30 April 2003, there had been 40 charges for offences under the Act. Of these, 37 were in relation to failing to comply with reporting obligations, while the other three were for providing false or misleading information. The three persons charged in relation to providing false information, were also charged with failing to comply with reporting obligations.

Of the charges finalised, 21 convictions were recorded, four matters were withdrawn and two were dismissed. Outcomes for the convictions included:

- no penalty imposed but costs awarded against the person;
- fines of between \$100 and \$500;
- imprisonment of between one and six month.

The Act allows a parent, guardian, carer or other nominated person to take on reporting obligations on a registrable person's behalf. However, if registration obligations are not met, it is only the registrable person who can be charged with a breach of the Act. Any person can be charged with providing false or misleading information.

⁷⁸ SOPs section 9.

QUESTIONS FOR CONSIDERATION

Breach offences

15. We invite your submissions on the operation of the Act in relation to the breach provisions of the Act.
 - Are you aware of any instances where a registrable person has been in breach of their reporting obligations?
 - Can you comment on how police dealt with this?
 - Please provide details of the circumstances of the particular case(s), including whether the person was charged with an offence.
16. Are you aware of any instances where a registrable person has been charged with a breach offence? If so, can you comment on:
 - The particular circumstances of the matter.
 - The court outcome, particularly in relation to the circumstances of the individual offence.

3.8 How do police use the information held on the register?

In his second reading speech, the then Police Minister the Hon. Paul Whelan, MLA, made reference to how NSW Police would use the information held on the Child Protection Register. Three of the six objectives of the Act (see Section 2.2) relate to the use of information on the Register by police:

- To increase and improve the accuracy of child sex offender intelligence;
- To assist in the investigation and prosecution of child sex offences committed by recidivist offenders; and
- To assist in the monitoring and management of child sex offenders in the community.

The Act contains no specific provisions for the use of the information contained in the Register, or for the monitoring of the actions and behaviour of persons on the Register, by NSW Police.

However, the SOPs recommend that where police have had no contact with a registered person for 12 months they should undertake a check to ensure that the person is complying with their reporting obligations. The SOPs advise that this check can be done in one of four ways: an electronic 'habitation check' (checking against information held by other agencies such as the RTA, Lands and Titles Office and utilities and communication carriers); a plain clothes visit to the person's primary address; an undisclosed telephone call asking to speak to the person at their home or work; or by requesting information from other case managers, (including parole officers, carers and guardians).⁷⁹

Additional guidelines developed for police by the Child Protection Registry contain procedures for monitoring 'high threat' offenders after registration.⁸⁰ The guidelines include information about completing threat assessments, developing monitoring strategies, interagency involvement, intelligence gathering and taking preventative action. The document 'provides guidance only and requires judgements by Local Area Commanders about the priorities, resources and expertise that exist within each command.'⁸¹

⁷⁹ SOPs section 4.13

⁸⁰ *The Post Registration Monitoring of Child Sex Offenders: Guidelines for Operational Police*, Child Protection Registry, Child Protection Squad, NSW Police, September 2002.

⁸¹ Introduction, p. 2.

The emphasis of the guidelines is on the monitoring of 'high threat' offenders, where there are additional concerning factors are identified.⁸² A registered person's level of risk is determined by the completion of a sexual offender or violent offender threat assessment instrument. This is done by the police officer responsible for charging a person with a registrable offence, at the time of charging. The instrument was developed by NSW Police from a number of different risk assessment tools, specifically for the purpose of assessing the risk of registered persons. The assessment is a multiple choice format about certain aspects of the registrable person's behaviour and alleged offences, the answers to which are read across a matrix to determine if a person is assessed as low, medium or high risk. The Child Protection Registry has developed guidelines to assist operational police complete the threat assessments.⁸³

Although the threat assessment is initially completed at the time of charging, it can and should be updated if new information about the person is made available to police. For example, an officer may update a threat assessment at the time of registration to take account of additional information provided by the registrable person at that time.⁸⁴

Threat assessments have not been completed for all registered persons, particularly for Existing Controlled Persons required to register for offences committed prior to the introduction of the Act. At this stage, approximately 1200 registrable persons have a completed Threat Assessment, and of these 55% are assessed as high risk, 32% as medium risk, and 17% as low risk.⁸⁵ On these figures, if the guidelines are followed, police would be actively monitoring less than half the registered persons (apart from the annual compliance check recommended by the SOPs for all registered persons).

Issues arising

Information provided to this review shows a varied approach to monitoring across Local Area Commands (LACs).⁸⁶ Some LACs take a structured and proactive strategy for monitoring offenders, while others appear to use more *ad hoc* methods. In some LACs, monitoring is undertaken in person with home visits and surveillance, while in other LACs it is more intelligence-based. While the Act does not require police to confirm the details registrable persons provide, some LACs report undertaking regular checks with other agencies (such as vehicle checks with the Roads and Traffic Authority and habitation checks with Department of Housing) to ensure the information provided is correct. Others have implemented a system of contacting all registered persons in their LAC, on a six-monthly or annual basis, to confirm that details have not changed.⁸⁷

There are particular monitoring difficulties for police in towns on the Victorian and Queensland borders and around the Australian Capital Territory. In these areas registrable persons can avoid their registration obligations by living across the border, but can still have regular and easy access to NSW.

In the developmental stages of the legislation, the issue of how police would monitor persons on the Register was one of the greatest areas of concern. A number of parties expressed fears that police may be over-zealous and excessive in their actions. The review has not to date received any complaints about unreasonable responses or harassment by police arising from monitoring or management of registered persons. Some anecdotal reports informed us of a small number of monitoring activities in the early stages of the Register's operation that might have been inappropriate or excessive, but the review was also told that these were quickly rectified.⁸⁸

⁸² The Guidelines state that they are to 'assist Local Area Commands (LACs) in monitoring HIGH THREAT serious violent or sexual offenders registered under the *Child Protection (Offenders Registration) Act 2000*.'

⁸³ *Guidelines for Completing the Child Protection Register Threat Assessment*, which is available electronically on the Police Intranet, last updated 14 January 2003.

⁸⁴ *Guidelines for Completing the Child Protection Register 'Indicators for Change' Screen*, last updated 1 August 2002, is also available electronically on the Police Intranet, to assist operational police determine if a threat assessment should be updated.

⁸⁵ Information provided by the Child Protection Registry

⁸⁶ Information obtained from Crime Managers surveyed, as well as from consultations with Probation and Parole Service officers, and from interviews with registered persons.

⁸⁷ Information from surveys conducted with Crime Managers in May 2002.

⁸⁸ Information from meetings with Probation and Parole Officers and from surveys with Crime Managers in December 2001.

In the early stages of the operation of the Register, a number of police also told the review that their greatest worries about implementing the Act related to the monitoring of registered persons.⁸⁹ Many were concerned at the lack of legislative basis for any monitoring activities. Prior to the monitoring guidelines being issued in September 2002, there appeared to be considerable confusion and uncertainty among police about what monitoring actions they could legitimately undertake without being perceived as harassing registered persons.⁹⁰

The guidelines discuss the option of forming a 'supervision network' for some offenders, specifically young people and those with a disability or with other special needs.⁹¹ Networks might incorporate staff in government departments or family members, a private guardian, carer or therapist. The guidelines suggest that these persons may assist police in monitoring registered persons and may also be a vital support base to assist them in abstaining from concerning behaviour.

The guidelines note that any supervision network arrangements must not be against the express wishes of the registrable person, and establishing contact with any potential support person who is not from a supervising authority must be with the consent of a registrable person.⁹² To date the review has not received any reports of problems arising from police attempting to establish supervision networks.

QUESTIONS FOR CONSIDERATION

Police monitoring of persons on the Register

17. We invite your submissions on your experiences of NSW Police procedures and practices for monitoring registered persons.
 - Please provide details of the circumstances of the particular case(s) you are aware of.
18. Are you aware of any instances where you believe monitoring by Police has been unreasonable or unnecessarily intrusive?
 - Please provide details of the circumstances of the particular case(s).
19. Are you aware of any instances where you believe police should have been more active in their monitoring of a registered person?
 - Please provide details of the circumstances of the particular case(s).
20. Are you aware of any instances where police have contacted agencies or individuals in order to establish supervision networks?
 - Please provide details of the circumstances of the particular case(s).
21. Are you aware of any instances where a registrable person's residence in a border region has had some impact the maintenance of their registration obligations and/or on NSW Police's monitoring activities?
 - Are you aware of instances of registrable persons leaving NSW to avoid their registration obligations?
 - Please provide details of the circumstances of the particular case(s).

⁸⁹ Surveys with Crime Managers conducted in December 2001 and May 2002.

⁹⁰ Interim Training Guidelines were developed in August 2001 but these had 'draft only' status. A final version of the Guidelines was not issued until September 2002.

⁹¹ *Monitoring Guidelines*, section 3.7 p. 7.

⁹² This is based on the NSW Police *Code of Best Practice for Information Management*; updated December 2000.

3.9 Who has access to information on the Register?

Access to the information held on the Child Protection Register about registered persons is restricted to specific officers within NSW Police. The levels of access are outlined in Section 2. Full audit trails are available for all accesses, and regular auditing of access to the Register is undertaken.

The Act is silent on how police can use the information held on the Register. The Child Protection Registry has recently developed policy and procedures to assist operational police manage information exchange with, and disclosure to, other agencies.⁹³

The same penalties apply to unauthorised access or disclosure of information held on the Register as to unauthorised access or disclosure of any other information that NSW Police hold. The Police Regulation provides that members of NSW Police must treat all information received in their official capacity as confidential and must 'on no account without proper authority divulge it to anyone'.⁹⁴ This is reinforced by the NSW Police Code of Conduct and Ethics which notes that failure to comply 'could result in either criminal charges or internal disciplinary action resulting in dismissal'.⁹⁵

Police access to Register information

Although access to Register information is limited, any operational police officer doing a person or vehicle enquiry on COPS will see a 'CPR flag' if the person is a registered person or if the vehicle is owned or used by a registered person. However, they are not able to access the full registration details of that person. Nor are they able to do a search to ascertain who is registered in their LAC. Only the Crime Manager in each LAC is authorised to do this.

Any time a COPS record with a CPR flag is accessed, the case manager allocated to the relevant registered person is advised through a daily dissemination to their work log. The officer making the access is also required to furnish an intelligence report which is made available to the case manager. It is the responsibility of the case manager to follow up with the officer who accessed the record if the purpose of the enquiry is not immediately obvious.

The Crime Manager has discretion whether to pass information to general duties police as necessary to ensure that monitoring is focused on high risk registered persons.

Provision of Register information to agencies outside NSW Police

The Information Disclosure Policy makes it clear that there is a strong presumption in favour of non-disclosure and that police may only disclose personal information about a registrable person for specified law enforcement and child protection purposes.⁹⁶ It distinguishes between disclosures which are required by legislation and do not need the approval of a Commander, and those where discretion must be exercised, which do require Commander approval. The policy does not authorise the release of information about specific registered persons into the public domain.

⁹³ *Registrable Persons – Child Protection Registry: Information Disclosure Policy and Procedures*, version 1.1, State Crime Command, Child Protection Squad, October 2002. The *Information Disclosure Policy and Procedures* is closely based on the existing *Code of Best Practice for Information Management*; December 2000, and information in the Mandatory Continuing Police Education Scheme training package, *Use of Electronic Information*, October 2001.

⁹⁴ Clause 46 of the *Police Regulation 2000*.

⁹⁵ *NSW Police Conduct and Ethics*, February 2002. Section 308H of the *Crimes Act 1900* creates the summary offence of 'unauthorised' access to or modification of restricted data held in a computers' for which maximum penalty is two years imprisonment. In addition, Section 62 of the *Privacy and Personal Information Protection Act 1998* provides that the corrupt disclosure and use of personal information by public sector officials is an offence which carries the maximum penalty of a fine of 100 penalty points (currently \$11,000) or two years imprisonment or both.

⁹⁶ Introduction, p.4.

The Information Disclosure Policy sets out seven principles on which any decisions about disclosure should be based:

- Presumption of non-disclosure;
- Disclosure must be justified;
- Disclosed information must be reliable and accurate;
- Disclosed information must relate to the role and function of recipient;
- Disclosed information should be proportionate to the purpose of the disclosure;
- Risk of disclosure versus risk of non-disclosure must be assessed;
- Disclosed information must be documented.

The following are some examples the policy provides of where disclosure of information is required by specific legislation or enabled by existing policy, where approval of the Commander is not required:

Removal of a Child under the *Children and Young Persons (Care and Protection) Act 1998*

Section 233 of the Children and Young Persons (Care and Protection) Act enables police, pursuant to a warrant, to remove a child in need of care from premises or from another place. Section 234 requires the reason for the removal to be given to any person on the premises or at the place who appears to be responsible for the care of the child. If the child is removed because of concerns that they are living with a person who has previously been found guilty of an offence against a child, it will be necessary to disclose this information.

Section 43 of the Act provides for the emergency removal of a child in certain circumstances without a warrant. It may also be appropriate to disclose the reasons for the removal of a child under section 43 – this may involve releasing information about a person found guilty of a registrable offence.

To assist other law enforcement agencies

Personal information about a registrable person may be disclosed to another law enforcement agencies (including agencies in other jurisdictions) for law enforcement purposes.

For example, it would be appropriate to disclose information about a registrable person to the Australian Federal Police/Customs or another state Police Force if they were suspected of being involved in child pornography importation and distribution, or residing in another jurisdiction.

To assist judicial and related legal processes

It may be necessary to disclose personal information about a registrable person for the purpose of assisting proceedings before a court, tribunal, royal commission or Special Commission of Inquiry. For example, a court may consider a person's previous criminal record in setting bail or determining a sentence.

NSW Police may also be required to disclose relevant information to comply with a subpoena in criminal, civil or family law proceedings.

In other circumstances, police can use their discretion to disclose certain information about registrable persons. Police must assess each of these situations against the seven principles set out in the policy (see above) and any disclosure must be authorised by the Commander. The following are some examples the policy provides to illustrate these situations.

To government agencies responsible for monitoring, managing or supporting registrable persons

A NSW Police employee may disclose information about a registrable person to a government agency, where the disclosure is made to assist the agency to properly fulfil its functions.

For example, it would be necessary to share information with the:

- Office of the Public Guardian, where a person under their care began to display signs of re-offending behaviour.
- Department of Housing, for the purpose of it arranging public housing for a registrable person in a suitable location (eg not next door to a school)

General warnings

Should an officer be concerned that a registrable person is engaging in behaviour that suggests they may pose an increased risk to members of the community, they may issue a general warning to alert relevant members of the community to that particular form of behaviour. A general warning should not name the registrable person or identify their place of residence or work address.

For instance, if an officer is concerned there is a particular registrable person in an area who has a known modus operandi, it is appropriate to warn members of the community about that modus operandi. For example, if a registrable person is known to slowly drive around schools in a yellow holden, police should alert nearby schools and community groups to that particular danger. Likewise, it may be appropriate to provide a COMFIT or a photograph of a registered offender where they are suspected of committing further offences.

Community access to Register information

Although various parties had expressed fears prior to the implementation of the Register that personal details about registered persons would be inappropriately used or leaked, we have not received any information to date which indicates that this has occurred. Although the question of community notification was raised during the developmental phase of the legislation, and in parliamentary debate, there was no support for the Act to include provisions that would allow public access to information held on the Register.⁹⁷

QUESTIONS FOR CONSIDERATION**Use and security of information held on the Register**

22. We invite your submissions on the operation of the provisions of the Act, and NSW Police procedural arrangements, relating to the use and security of information held on the Register.
 - Please provide details of the circumstances of any particular case(s) you are aware of that support your views.

⁹⁷ See, for example, Hansard, Legislative Assembly, 1 June 2000, second reading debate, Child Protection (Offenders Registration) Bill and Hansard, Legislative Council, 2 June 2000, second reading debate, Child Protection (Offenders Registration) Bill.

3.10 Is community safety and security enhanced by the Register?

Providing child abuse victims and their families with an increased sense of security is one of the objectives of the Act. Parliamentary debate indicates that this was intended to be achieved by police having improved knowledge of the whereabouts and activities of convicted child sex offenders, and by actively monitoring them, to reduce the risk of recidivism, and through improved intelligence to assist with the investigation of child sex crimes.

Issues arising

Gauging the impact of initiatives like the Child Protection Register on reducing recidivism or deterring re-offending is inherently difficult, particularly in the short time available to this review. However, there is some evidence that the intelligence information held on the Register has already assisted in the investigation of some sex offences against children.

Case studies

A man attempted to abduct and assault a young girl in her local neighbourhood. She was only able to give the police a general description of him, but she was able to tell police that he had a construction hard hat and was wearing overalls. Police conducted a search of the Child Protection Register for registered offenders living in the area where the assault had occurred who had reported working in the construction industry. From a list of possible persons a particular suspect was identified and located and charged. He was subsequently convicted.

A young woman was approached at a railway station by a man who then followed her home and raped her. When she reported the assault, the police were able to use the CCTV footage to identify the man as a registered person who had an offending pattern of seeking out women at railway stations to sexually assault. He had recently completed a custodial sentence for a child sexual offence, and when registering with police, had supplied a recent photograph as part of his registration obligations. The police were able to match this against the CCTV footage. This resulted in him being located, charged and convicted.

QUESTIONS

Community and victims' safety and security

23. We invite your submissions on the operation of the provisions of the Act in respect of enhancing community and victims' safety and security.
 - Please provide details of the circumstances of particular case(s) that support your view.

3.11 What happens to persons convicted of registrable offences outside NSW?

Only NSW has legislation establishing a Child Protection Register, although the Australasian Police Ministers' Council has recently announced that all other states intend to introduce similar legislation. (See Section 2.4 for details.) However, the Act has certain implications for persons relocating to NSW.

Any person convicted of a comparable registrable offence outside NSW is required to register if they enter NSW. However, there is no mechanism for notifying persons convicted of registrable offences outside NSW of their obligations to register if they enter NSW.

Issues arising

A number of operational difficulties arise from NSW having the only registration system in a country without movement controls between state borders. Not only is there no mechanism for persons convicted of registrable offences in other states to be notified of their registration obligations in NSW, there is also no system for NSW Police to be informed of persons convicted of registrable offences in other states.

One exception is persons who are on probation or parole in another state who move to NSW. In these circumstances, their probation or parole officer will transfer supervision to the Probation and Parole Service in NSW, which will advise NSW Police of the person's conviction for a registrable offence. The person will then be notified of their registration obligations.

These and related concerns should be addressed if other states were to establish registers, as recent announcements have indicated is intended.

QUESTIONS FOR CONSIDERATION

Persons convicted of registrable offences outside NSW

24. We invite your submissions on the operation of the provisions of the Act in respect of persons convicted of registrable offences outside NSW.
25. Are you aware of instances of persons convicted of registrable offences in other jurisdictions living in NSW without being aware of their registration obligations?
 - Please provide details of the circumstances of particular case(s) you are aware of.

4. Conclusion

We welcome your comments on any of the issues raised in this discussion paper, or on any other issue or aspect of the Child Protection (Offenders Registration) Act.

If you wish to respond to a particular question, please cite the question number in your response. If your comments are in response to an issue that has been raised in this paper, or any other issue that relates to the implementation of the Act, please indicate to which issue your comments refer.

If you are aware of a particular court case that may be of interest to our review, please send us the details and, where appropriate, we will obtain the relevant transcript of the hearing.

Inquires in relation to the Child Protection Register review can be directed to Ms Rosemary Kusuma on 9286 1022 or rkusuma@ombo.nsw.gov.au

<p>Due date for submissions: Friday, 17th October 2003</p>
