



New South Wales

Child Protection Legislation Amendment (Offenders Registration and Prohibition Orders) Bill 2013

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to permit the inspection by police, without notice or a warrant, of the residential premises of persons who are registrable persons under the *Child Protection (Offenders Registration) Act 2000*,
- (b) to expand the conduct that can be the subject of a child protection prohibition order under the *Child Protection (Offenders Prohibition Orders) Act 2004* (the **Principal Act**) to include, among other things, being a contractor, subcontractor, volunteer, trainee, religious or spiritual leader or a member of a religious organisation,
- (c) to increase the maximum penalty for the offence of failing to comply with a child protection prohibition order and to provide for such an offence to be dealt with on indictment if the prosecutor so elects,
- (d) to permit a contact prohibition order under the Principal Act to be made if the Commissioner of Police and the person who is to be subject to the order both consent to it being made,
- (e) to limit the persons to whom the Commissioner of Police can delegate his or her functions of applying for certain orders under the Principal Act against persons under 18 years of age.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Child Protection (Offenders Prohibition Orders) Act 2004 No 46

Schedule 1 [1] provides that child protection prohibition orders under the *Child Protection (Offenders Prohibition Orders) Act 2004* (the **Principal Act**) may prohibit a person from being a worker of a specified kind. This replaces a provision that referred to employment. The use of the term “worker” is the same as that used in the *Child Protection (Working with Children) Act 2012* and is broader in scope than “employee”. Worker includes employees, self-employed persons, contractors, subcontractors, volunteers, trainees, religious or spiritual leaders and other members of religious organisations.

Schedule 1 [2] increases the penalty for the offence of contravening a prohibition order. The maximum penalty is to increase from \$11,000 or imprisonment for 2 years (or both) to \$55,000 or imprisonment for 5 years (or both). **Schedule 1 [3]** provides that it is a defence to the offence of contravening a prohibition order if it is established that the person charged with the offence had not received a copy of the order and was otherwise unaware of the person’s obligations under the order. **Schedule 1 [6] and [7]** provide (in conjunction with **Schedule 3**) that this offence may be dealt with summarily unless the prosecutor elects to have the offence dealt with on indictment.

Schedule 1 [4] permits a contact prohibition order to be made under the Principal Act if the Commissioner of Police and the person who is to be subject to the order both consent to it being made. Currently a contact prohibition order can only be made if the Local Court is satisfied that there are sufficient grounds for making the order.

Schedule 1 [5] prohibits the Commissioner of Police from delegating certain functions unless the delegation is made to a police officer, or to police officers of a class, prescribed by the regulations. The relevant functions are making an application for (or an application for a variation or revocation of) a prohibition order or contact prohibition order against a person who is registrable under the *Child Protection (Offenders Registration) Act 2000* (a **registrable person**) and who is under 18 years of age.

Schedule 1 [9] permits regulations to be made containing savings or transitional provisions consequent on the enactment of the Principal Act or any Act that amends the Principal Act. **Schedule 1 [12]** inserts savings and transitional provisions consequent on the enactment of the proposed Act. **Schedule 1 [8], [10] and [11]** insert a number of headings into Schedule 2 (Savings and transitional provisions) to the Principal Act.

Schedule 2 Amendment of Child Protection (Offenders Registration) Act 2000 No 42

Schedule 2 [1] gives police officers the power to enter and inspect residential premises at which a registrable person generally resides for the purposes of verifying personal information reported by the registrable person. Entry and inspection may be made without prior notice or a warrant. The power may be exercised in respect of any particular residential premises of a registrable person once in the 28-day period following the making of an initial report by the registrable person under Division 2 of Part 3 of the *Child Protection (Offenders Registration) Act 2000* (the **Principal Act**). The power may also be exercised once again in the first year following the making of the initial report and then once each year after that until the relevant reporting period of the registrable person expires. A registrable person is required to allow a police officer to enter and inspect any residential premises of the registrable person and is required to co-operate with the police officer with respect to that entry and inspection. These requirements are part of a registrable person’s reporting obligations. Section 17 of the Principal Act contains an offence with a maximum penalty of \$55,000 or imprisonment for 5 years (or both) if a registrable person fails to comply with the person’s reporting obligations. The power to enter and inspect is not exercisable in respect of any

part of residential premises that is occupied exclusively by a person other than the registrable person unless the police officer exercising the power has reasonable grounds for suspecting that the part of the premises is used by the registrable person.

Schedule 2 [2] permits regulations to be made containing savings or transitional provisions consequent on the enactment of the Principal Act or any Act that amends that Act. **Schedule 2 [3]** inserts a savings and transitional provision.

Schedule 3 Amendment of Criminal Procedure Act 1986 No 209

Schedule 3 amends the *Criminal Procedure Act 1986* to provide (in conjunction with the amendments in **Schedule 1 [6] and [7]**) that an offence under section 13 of the *Child Protection (Offenders Prohibition Orders) Act 2004* may be dealt with summarily unless the prosecutor elects to have the offence dealt with on indictment.



New South Wales

Child Protection Legislation Amendment (Offenders Registration and Prohibition Orders) Bill 2013

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New South Wales

Child Protection Legislation Amendment (Offenders Registration and Prohibition Orders) Bill 2013

No. , 2013

A Bill for

An Act to amend the *Child Protection (Offenders Prohibition Orders) Act 2004* with respect to orders under that Act; to amend the *Child Protection (Offenders Registration) Act 2000* with respect to inspections by police officers of the residential premises of registrable persons; and for other purposes.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Child Protection Legislation Amendment (Offenders Registration and Prohibition Orders) Act 2013*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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| Schedule 1 | Amendment of Child Protection (Offenders Prohibition Orders) Act 2004 No 46 | 1 |
| | | 2 |
| [1] Section 8 Conduct that may be subject of orders | | 3 |
| | Omit section 8 (1) (d). Insert instead: | 4 |
| | (d) being a worker (within the meaning of the <i>Child Protection (Working with Children) Act 2012</i>) of a specified kind. | 5 6 |
| [2] Section 13 Contravention of orders | | 7 |
| | Omit “100 penalty units or imprisonment for 2 years” from section 13 (1). | 8 |
| | Insert instead “500 penalty units or imprisonment for 5 years”. | 9 |
| [3] Section 13 (1A) | | 10 |
| | Insert after section 13 (1): | 11 |
| | (1A) It is a defence to proceedings for an offence under this section if it is established by or on behalf of the person charged with the offence that, at the time the offence is alleged to have occurred, the person had not received a copy of the prohibition order and was otherwise unaware of the person’s obligations under the order. | 12 13 14 15 16 |
| [4] Section 16C Local Court may make contact prohibition order | | 17 |
| | Omit section 16C (1). Insert instead: | 18 |
| | (1) The Local Court may make a contact prohibition order against a registrable person if: | 19 20 |
| | (a) it is satisfied that there are sufficient grounds for making the order, or | 21 |
| | (b) the Commissioner of Police and the registrable person consent to the making of the order. | 22 23 |
| [5] Section 17 | | 24 |
| | Omit the section. Insert instead: | 25 |
| | 17 Applications for orders against young registrable persons | 26 |
| | The Commissioner of Police may not delegate (under section 31 of the <i>Police Act 1990</i>) any of the following functions unless the delegation is made to a police officer, or to police officers of a class, prescribed by the regulations: | 27 28 29 |
| | (a) making an application for a prohibition order or contact prohibition order against a young registrable person, | 30 31 |
| | (b) making an application to vary or revoke a prohibition order or contact prohibition order against a young registrable person. | 32 33 |
| [6] Section 20 Nature of proceedings for offences | | 34 |
| | Insert “(except an offence under section 13)” after “this Act”. | 35 |
| [7] Section 20 (2) | | 36 |
| | Insert at the end of section 20: | 37 |
| | (2) Chapter 5 of the <i>Criminal Procedure Act 1986</i> (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 13. | 38 39 40 |

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| [8] Schedule 2 Savings and transitional provisions | 1 |
| Insert before clause 1: | 2 |
| Part 1 General | 3 |
| [9] Schedule 2, clause 1 (1) | 4 |
| Omit the subclause. Insert instead: | 5 |
| (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act. | 6 7 |
| [10] Schedule 2, Part 2, heading | 8 |
| Insert after clause 1: | 9 |
| Part 2 Provisions consequent on enactment of this Act | 10 |
| [11] Schedule 2, Part 3, heading | 11 |
| Insert after clause 2: | 12 |
| Part 3 Provisions consequent on enactment of Child Protection Legislation (Registrable Persons) Amendment Act 2009 | 13 14 15 |
| [12] Schedule 2, Part 4 | 16 |
| Insert after clause 3: | 17 |
| Part 4 Provisions consequent on enactment of Child Protection Legislation Amendment (Offenders Registration and Prohibition Orders) Act 2013 | 18 19 20 |
| 4 Definition | 21 |
| In this Part: | 22 |
| <i>amending Act</i> means the <i>Child Protection Legislation Amendment (Offenders Registration and Prohibition Orders) Act 2013</i> . | 23 24 |
| 5 Contravention of orders | 25 |
| Section 13, as in force immediately before its amendment by the amending Act, continues to apply in respect of a contravention that occurred before that amendment. | 26 27 28 |
| 6 Contact prohibition orders | 29 |
| Section 16C (1), as substituted by the amending Act, does not apply in respect of an application that was made before the commencement of that substitution. | 30 31 |
| 7 Applications for orders against young registrable persons | 32 |
| Section 17, as in force immediately before its substitution by the amending Act, continues to apply in respect of an application referred to in that section that was made before that substitution. | 33 34 35 |

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| Schedule 2 | Amendment of Child Protection (Offenders Registration) Act 2000 No 42 | 1 |
| | | 2 |
| [1] Part 3, Division 7A | | 3 |
| Insert after Division 7: | | 4 |
| | Division 7A Entry by police to residential premises | 5 |
| 16C Entry by police officers to verify residence | | 6 |
| (1) | One or more police officers may, without prior notice, enter and inspect any residential premises of a registrable person for the purpose of verifying any relevant personal information reported by the registrable person under section 9. | 7 |
| | Note. Section 201 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> applies in respect of any such entry (see, particularly, section 201 (3) (c) of that Act). | 8 |
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| | | 10 |
| (2) | The power of entry and inspection under this section may be exercised in respect of any particular residential premises of a registrable person: | 11 |
| | (a) twice during the first 12-month period following the making of an initial report by the registrable person under Division 2 (only one of which may be exercised after the period of 28 days following the making of that report), and | 12 |
| | (b) once during each following 12-month period. | 13 |
| (3) | A power may not be exercised under this section if the relevant reporting period of the registrable person has expired. | 14 |
| (4) | A registrable person must allow a police officer to enter and inspect any residential premises of the registrable person under this section and must co-operate with any such police officer with respect to that entry and inspection. | 15 |
| (5) | For the avoidance of doubt, an obligation imposed on a registrable person under subsection (4) is a reporting obligation of the registrable person. | 16 |
| (6) | A power is not exercisable under this section in respect of any part of residential premises that is occupied exclusively by a person other than the registrable person unless the police officer exercising the power has reasonable grounds for suspecting that the part of the premises is used by the registrable person. | 17 |
| (7) | In this section: | 18 |
| | residential premises of a registrable person means premises identified by the registrable person under section 9 (1) (d) as an address at which the registrable person generally resides. | 19 |
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| [2] Schedule 2 Savings, transitional and other provisions | | 37 |
| Omit clause 1 (1). Insert instead: | | 38 |
| (1) | The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act. | 39 |
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| [3] Schedule 2, Part 9 | 1 |
| Insert after Part 8: | 2 |
| Part 9 Provisions consequent on enactment of Child Protection Legislation Amendment (Offenders Registration and Prohibition Orders) Act 2013 | 3 |
| | 4 |
| | 5 |
| 21 Entry by police to residential premises | 6 |
| The powers under section 16C may be exercised in respect of residential premises of a registrable person even if the initial report was made by the registrable person before the commencement of that section. | 7 |
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| Schedule 3 | Amendment of Criminal Procedure Act 1986 | 1 |
| | No 209 | 2 |
| | Schedule 1 Indictable offences triable summarily | 3 |
| | Insert before clause 23 in Table 2: | 4 |
| 22A | Child Protection (Offenders Prohibition Orders) Act 2004 | 5 |
| | An offence under section 13 of the <i>Child Protection (Offenders Prohibition Orders) Act 2004</i> . | 6 |
| | | 7 |