



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.