

## Child Protection Legislation Amendment Bill 2002

### Explanatory note

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

#### Overview of Bill

The objects of this Bill are:

(a) to amend the *Child Protection (Offenders Registration) Act 2000*:

(i) to extend the operation of that Act to certain spent convictions and to offences involving an intention to commit certain offences already covered by the Act, and

(ii) to enable information required to be given by registrable persons under that Act to be given at places other than police stations if the Commissioner of Police so approves, and

(iii) to provide for the giving of certain certificate evidence in proceedings for offences under that Act, and

(b) to amend the *Child Protection (Prohibited Employment) Act 1998*:

(i) to extend the operation of that Act to certain spent convictions and to offences involving an intention to commit certain offences already covered by the Act, and

(ii) to enable a person to apply to the Commission for Children and Young People for an order declaring that the person is not a prohibited person under that Act, and

(c) to amend the *Commission for Children and Young People Act 1998*:

(i) to enable the Commission to request information for the purpose of determining applications for orders referred to in paragraph (b) (ii) above, and

(ii) to extend the definition of **relevant criminal record** in that Act so as to cover certain spent convictions, offences involving intention to commit certain offences already covered by the definition and offences of conspiracy or incitement to commit such offences, and

(iii) to make it clear that references to disciplinary proceedings in the employment screening provisions of that Act extend to investigations and action taken under Part 8A or 9 of the *Police Act 1990*, and

(iv) to clarify when certain employment screening obligations are taken to have been fulfilled, and

(v) to enable the Commissioner of Police to pass on information to the Commission for Children and Young People concerning certain apprehended violence orders and certain spent convictions, and

(d) to amend the *Summary Offences Act 1988* to extend the operation of a provision of that Act containing an offence relating to loitering by convicted child sexual offenders near premises frequented by children to certain spent convictions and to offences involving an intention to commit offences already covered by the provision.

#### 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 a day or days to be appointed by proclamation.

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

**Clause 4** is a formal provision giving effect to the amendments to the *Child Protection (Prohibited Employment) Act 1998* set out in Schedule 2.

**Clause 5** is a formal provision giving effect to the amendments to the *Commission for Children and Young People Act 1998* set out in Schedule 3.

**Clause 6** is a formal provision giving effect to the amendments to the *Summary Offences Act 1988* set out in Schedule 4.

#### **Schedule 1 Amendment of Child Protection (Offenders Registration) Act 2000**

The Act defines a **registrable person** as (with certain exceptions) a person who has been found guilty and sentenced in respect of a registrable offence. **Schedule 1 [1] and [2]** extend the registrable offences specified in the Act to an offence which includes an intention to commit certain of those offences already specified.

**Schedule 1 [3]** provides that section 579 of the *Crimes Act 1900* does not apply to registrable offences. That section provides for convictions to be disregarded in certain circumstances where a recognizance has been entered into 15 years previously.

**Schedule 1 [4]** enables the Commissioner of Police to approve of a registrable person giving the information required by the Act to a police officer at a place other than a police station. **Schedule 1 [5] and [6]** make consequential amendments.

**Schedule 1 [7]** enables the Commissioner of Police, or persons holding certain positions in NSW Police designated by the Commissioner, to provide certificate evidence as to certain matters relating to the Register of Offenders kept under the Act.

**Schedule 1 [8] and [9]** contain savings and transitional provisions.

#### **Schedule 2 Amendment of Child Protection (Prohibited Employment) Act 1998**

The Act defines a **prohibited person** as a person who has been convicted of a serious sex offence or a person who is a registrable person under the *Child Protection (Offenders Registration) Act 2000*. **Schedule 2 [1]** extends the serious sex offences specified in the Act to an offence which includes an intention to commit certain of those offences already specified.

**Schedule 2 [2]** provides that section 579 of the *Crimes Act 1900* does not apply to serious sex offences. That section provides for convictions to be disregarded in certain circumstances where a recognizance has been entered into 15 years previously.

**Schedule 2 [3]** enables a person to apply to the Commission for Children and Young People for an order declaring that the Act is not to apply to the person in respect of a particular offence. The Commission for Children and Young People may make an order only if it considers that the person does not pose a risk to the safety of children. The Commission cannot make an order subject to conditions unless the person has consented to the conditions. A person whose application has not been granted by the Commission for Children and Young People may still apply to the Industrial Relations Commission or the Administrative Decisions Tribunal for such an order (as is currently the case). However, a person may not make an application under the new provisions and the existing provisions at the same time (**Schedule 2 [6]**). **Schedule 2 [4] and [5]** make consequential amendments.

**Schedule 2 [7] and [8]** contain savings and transitional provisions.

#### **Schedule 3 Amendment of Commission for Children and Young People Act 1998**

**Schedule 3 [1] and [2]** enable the Commission for Children and Young People to request information from officers of government agencies and other persons for the purposes of determining an application for an order referred to above in relation to Schedule 2 [3]. The request may only be made with the consent of the

applicant for the order.

**Schedule 3 [4]** makes it clear that the meaning of **employment** in the employment screening provisions of the Act includes the performance of work as the holder of a remunerated position.

**Schedule 3 [5]** makes it clear that the definition of **relevant criminal record** for the purposes of the employment screening provisions of the Act extends to the criminal record of a person in relation to an offence which includes an intention to commit certain of those offences already specified in the definition and to an offence of conspiracy or incitement to commit one of those offences.

**Schedule 3 [6]** makes it clear that, for the purposes of the employment screening provisions of the Act, **relevant disciplinary proceedings** include the investigation of, and the taking of action in relation to, complaints under Part 8A (Complaints about conduct of police officers) of the *Police Act 1990* and the taking of action under Part 9 (Management of conduct within NSW Police) of that Act if those investigations or actions relate to conduct involving child abuse, sexual misconduct or acts of violence.

**Schedule 3 [7]** provides that section 579 of the *Crimes Act 1900* does not apply to offences referred to in the definition of **relevant criminal record**. That section provides for convictions to be disregarded in certain circumstances where a recognizance has been entered into 15 years previously. **Schedule 3 [10]** enables the Commissioner of Police to arrange for information in relation to those “spent” convictions to be provided to the Commission for Children and Young People for the purposes of the employment screening provisions of the Act.

**Schedule 3 [8]** provides that an employer is taken to have fulfilled the employer’s obligations in relation to the carrying out of checks of relevant criminal records, relevant apprehended violence orders or relevant disciplinary proceedings for the purpose of employment screening, and the assessment of risks to children arising from anything disclosed in those checks, if the employer engages an approved screening agency to carry out those procedures and receives the results from that agency. The amendment makes it clear that an employer or approved screening agency need only carry out such of those procedures as are able to be carried out at the relevant time. **Schedule 3 [3]** makes a consequential amendment.

**Schedule 3 [9]** makes it clear that the Commissioner of Police can arrange for the Commission for Children and Young People to receive information relating to relevant apprehended violence orders for the purposes of the employment screening provisions of the Act. **Schedule 3 [11]** makes a consequential amendment.

**Schedule 3 [12] and [13]** contain savings and transitional provisions.

#### **Schedule 4 Amendment of Summary Offences**

##### **Act 1988**

The existing section 11G of the Act makes it an offence for a convicted child sexual offender to loiter without reasonable excuse in or near a school or other public place which children frequent or in which children are actually present.

**Convicted child sexual offender** is defined as a person who has been convicted of a specified offence. **Schedule 4 [1]** extends that definition to an offence which includes an intention to commit one of those offences already specified.

**Schedule 4 [2]** provides that section 579 of the *Crimes Act 1900* does not apply to offences specified in the definition of **convicted child sexual offender**. That section provides for convictions to be disregarded in certain circumstances where a recognizance has been entered into 15 years previously.