



New South Wales

Parliamentary Electorates and Elections Amendment (Child Sexual Offences Disclosures) Bill 2006

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Parliamentary Electorates and Elections Act 1912*:

- (a) to require candidates for election to Parliament to declare whether they have been convicted of the murder of a child or a child sexual offence or have ever been the subject of proceedings for such an offence or the subject of an apprehended violence order for the purposes of protecting a child from sexual assault, and
- (b) to make it an offence, punishable by imprisonment for up to 5 years, to make a false declaration, and
- (c) to require the Commission for Children and Young People to audit the declarations for accuracy and to report on the audit to Parliament, and
- (d) to make other consequential amendments to that Act.

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.

Clause 3 is a formal provision that gives effect to the amendments to the *Parliamentary Electorates and Elections Act 1912* (the **Principal Act**) set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act on the day after the proposed Act commences. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [1] amends section 79 of the Principal Act to require a nomination paper of a candidate for election to the Legislative Assembly to be accompanied by a child-related conduct declaration.

Schedule 1 [2] amends section 79 of the Principal Act to make it clear that a failure to provide a child-related conduct declaration will result in a nominated person being taken not to be a candidate.

Schedule 1 [3] amends section 81B of the Principal Act to require a nomination paper of a candidate for election to the Legislative Council to be accompanied by a child-related conduct declaration.

Schedule 1 [4] amends section 81B of the Principal Act to make it clear that a failure to provide a child-related conduct declaration will result in a nominated person being taken not to be a candidate.

Schedule 1 [5] inserts proposed Division 5A of Part 5 (proposed sections 81J–81P).

Proposed section 81J applies the proposed Division to child-related conduct declarations that are required to accompany the nomination of candidates for election to Parliament.

Proposed section 81K defines expressions used in the proposed Division. The definition of **child sexual offence** lists the offences that are required to be disclosed under the proposed Division. The definition of **relevant apprehended violence order** limits the apprehended violence orders covered by the proposed Division to those made for the protection of a child from sexual activity or acts of indecency. The definition of **conviction** extends the application of the proposed Division to findings of guilt where a court does not proceed to a conviction.

Proposed section 81L requires a child-related conduct declaration by a candidate to state whether or not the candidate has ever been convicted of the murder of a child or a child sexual offence or criminal proceedings for such an offence have ever been commenced against the candidate and whether or not a relevant apprehended violence order has ever been made against the candidate. It will be an offence (punishable by imprisonment for up to 5 years) to make a declaration knowing it to

be false or not believing it to be true. The effect of conviction of a member of Parliament for the offence will be that the member's seat becomes vacant, as a result of the operation of section 13A of the *Constitution Act 1902*.

Proposed section 81M requires the Electoral Commissioner to make public child-related conduct declarations in such manner as the Commissioner thinks fit and to provide copies of the declarations of candidates who are elected to the Commission for Children and Young People (the *CYP Commission*).

Proposed section 81N provides that the CYP Commission must audit the accuracy of a child-related conduct declaration as soon as practicable after the Commission receives the declaration. For that purpose, the Commission may exercise functions conferred on it under the *Commission for Children and Young People Act 1998*. The Commission must consult with a member of Parliament if the Commission has reason to believe that a child-related conduct declaration made by the member is inaccurate. The Commission is to present its report on the results of audits carried out by it to the Presiding Officer of the relevant House of Parliament who is to lay the report before the House of Parliament.

Proposed section 81O makes it an offence to disclose information obtained in connection with the conduct of an audit or consultation under proposed section 81N, except in specified circumstances, and also makes it an offence to dishonestly obtain confidential information relating to the conduct of an audit or consultation.

Proposed section 81P provides a procedure for making a report by the CYP Commission on audits public if a House of Parliament is not sitting.

Schedule 1 [6] amends section 183 of the Principal Act as a consequence of the enactment of the offence contained in proposed section 81L.

First print



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New South Wales

Parliamentary Electorates and Elections Amendment (Child Sexual Offences Disclosures) Bill 2006

No. , 2006

A Bill for

An Act to amend the *Parliamentary Electorates and Elections Act 1912* to require candidates for election to disclose child sexual offences and certain other child-related conduct; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Parliamentary Electorates and Elections Amendment (Child Sexual Offences Disclosures) Act 2006</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Parliamentary Electorates and Elections Act 1912 No 41	7
The <i>Parliamentary Electorates and Elections Act 1912</i> is amended as set out in Schedule 1.	8 9
4 Repeal of Act	10
(1) This Act is repealed on the day following the day on which this Act commences.	11 12
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	13 14

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 79 Nomination of Assembly candidates	3
	Insert before section 79 (4A):	4
	(4AA) A nomination paper of a candidate for election under this section must be accompanied by a child-related conduct declaration that complies with section 81L.	5 6 7
[2]	Section 79 (4A)	8
	Insert “(including subsection (4AA))” after “this section”.	9
[3]	Section 81B Nomination of Council candidates	10
	Insert after section 81B (4):	11
	(4A) A nomination paper of a candidate for election under this section must be accompanied by a child-related conduct declaration that complies with section 81L.	12 13 14
[4]	Section 81B (6)	15
	Insert “(including subsection (4A))” after “this section”.	16
[5]	Part 5, Division 5A	17
	Insert after Division 5 of Part 5:	18
	Division 5A Child sexual offences etc disclosures by candidates for the Assembly or Council	19 20
81J	Application of Division	21
	This Division applies to a child-related conduct declaration that is required to accompany the nomination paper of a candidate for election to the Assembly or the Council.	22 23 24
81K	Definitions	25
	(1) In this Division:	26
	<i>child sexual offence</i> means:	27
	(a) an offence involving sexual activity or acts of indecency that was committed in New South Wales and that was punishable by penal servitude or imprisonment for 12 months or more, and that was committed against, with or	28 29 30 31

-
- in the presence of a child (including a child pornography offence that is so punishable), or 1
2
- (b) an offence involving sexual activity or acts of indecency, 3
that was committed elsewhere and that would have been an 4
offence punishable by penal servitude or imprisonment for 5
12 months or more if committed in New South Wales, and 6
that was committed against, with or in the presence of a 7
child (including a child pornography offence that is so 8
punishable), or 9
- (c) an offence under section 80D or 80E of the *Crimes Act* 10
1900, where the person against whom the offence is 11
committed is a child, or 12
- (d) an offence under sections 91D–91G of the *Crimes Act* 13
1900 (other than if committed by a child prostitute) or a 14
similar offence under a law other than a law of New South 15
Wales, or 16
- (e) an offence under section 91H, 578B or 578C (2A) of the 17
Crimes Act 1900 or a similar offence under a law other 18
than a law of New South Wales, or 19
- (f) an offence an element of which is an intention to commit 20
an offence referred to in the preceding paragraphs, or 21
- (g) an offence of attempting, or of conspiracy or incitement, to 22
commit an offence referred to in the preceding paragraphs. 23
- conviction** includes a finding that the charge for an offence is 24
proven, or that a person is guilty of an offence, even though the 25
court does not proceed to a conviction, but does not include a 26
conviction that is quashed by any court. 27
- CYP Commission**—see section 81M (2). 28
- murder** includes an offence of murder committed outside New 29
South Wales or an offence of attempting, or of conspiracy or 30
incitement, to commit murder. 31
- Presiding Officer** means the President of the Legislative Council 32
or Speaker of the Legislative Assembly. 33
- relevant apprehended violence order** means a relevant 34
apprehended violence order, within the meaning of Part 7 of the 35
Commission for Children and Young People Act 1998, that was 36
made by a court for the protection of a child from sexual activity 37
or acts of indecency. 38
- (2) An offence that was a child sexual offence at the time of its 39
commission is not a child sexual offence for the purposes of this 40
Division if the conduct constituting the offence has ceased to be 41
an offence in New South Wales. 42

(3)	An offence involving sexual activity or an act of indecency is not a child sexual offence for the purposes of this Division if the conduct constituting the offence:	1
		2
		3
(a)	occurred in a public place, and	4
(b)	would not have constituted an offence in New South Wales if the place were not a public place.	5
		6
(4)	For the purposes of this Division, section 579 of the <i>Crimes Act 1900</i> does not apply to or in respect of a child sexual offence.	7
		8
81L	Child-related conduct declarations	9
(1)	A child-related conduct declaration is to state:	10
(a)	whether or not the candidate has ever been convicted of the murder of a child or of a child sexual offence, and	11
		12
(b)	whether or not any criminal proceedings have ever been commenced against the candidate for the murder of a child, or for a child sexual offence, other than proceedings relating to a conviction disclosed under paragraph (a), and	13
		14
		15
		16
(c)	whether or not any relevant apprehended violence order has ever been made against the candidate.	17
		18
(2)	The child-related conduct declaration is to identify any such conviction, proceedings or order.	19
		20
(3)	A child-related conduct declaration is to be in such form (if any) as is prescribed by the regulations.	21
		22
(4)	A candidate who makes a child-related conduct declaration knowing it to be false, or not believing it to be true, is guilty of an indictable offence.	23
		24
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	Maximum penalty (subsection (4)): Imprisonment for 5 years.	26
81M	Duties of Electoral Commissioner with respect to child-related conduct declarations	27
		28
(1)	The Electoral Commissioner must cause a copy of a child-related conduct declaration received by the Commissioner or a returning officer to be made public in such manner as the Commissioner thinks fit.	29
		30
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		32
(2)	The Electoral Commissioner must provide a copy of the child-related conduct declarations of those candidates elected at an election to the Commission for Children and Young People (the <i>CYP Commission</i>).	33
		34
		35
		36

81N	Duties of CYP Commission with respect to child-related conduct declarations	1 2
(1)	The CYP Commission must, as soon as practicable after receiving a copy of a child-related conduct declaration under section 81M, audit the accuracy of the declaration.	3 4 5
(2)	For the purpose of carrying out an audit, the CYP Commission:	6
(a)	may exercise any of the functions it has under Part 7 of the <i>Commission for Children and Young People Act 1998</i> , and	7 8
(b)	has the same protections as are conferred by that Act on the Commission when exercising its functions under that Part.	9 10
(3)	If the CYP Commission has reason to believe that a child-related conduct declaration is inaccurate, the Commission must consult with the member of Parliament concerned before making a report on the audit.	11 12 13 14
(4)	The CYP Commission must present a report on the result of audits carried out by it after an election to the Presiding Officer of the House of Parliament to which the members concerned have been elected. A copy of a report furnished to the Presiding Officer of a House of Parliament is to be laid before that House as soon as practicable after it is received by the Presiding Officer.	15 16 17 18 19 20
	Note. Section 81P provides for the procedure where a House of Parliament is not sitting when a report is presented.	21 22
(5)	The CYP Commission may, if the Commission thinks it appropriate to do so, report on the results of any such audits over more than one report.	23 24 25
81O	Unauthorised disclosure or dishonest disclosure of information	26
(1)	A person must not directly or indirectly disclose any information obtained by the person in connection with the conduct of an audit or consultation under section 81N, unless the disclosure:	27 28 29
(a)	is made in good faith for the purposes of the audit or consultation, or	30 31
(b)	is made with the consent of the person to whom the information relates, or	32 33
(c)	is ordered by a court, or any other body or person exercising judicial functions, for the purposes of the hearing or determination by the court, body or person of any matter, or	34 35 36 37
(d)	is made for the purpose of providing information to the Commissioner of Police in connection with a possible criminal offence, or	38 39 40

(e)	is made for the purposes of exercising a function under this Division, or	1 2
(f)	is made for the purpose of reporting to the Director-General of the Department of Community Services that a child may be at risk of harm.	3 4 5
(2)	A person who dishonestly obtains confidential information relating to the conduct of an audit or consultation under section 81N is guilty of an offence. Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.	6 7 8 9 10
81P	Reports presented to Presiding Officer of House of Parliament	11
(1)	If a House of Parliament is not sitting when the CYP Commission presents a report under section 81N to the Presiding Officer of the House, the Presiding Officer is to make the report public instead of laying the report before the House.	12 13 14 15
(2)	A report that is made public by the Presiding Officer of a House of Parliament:	16 17
(a)	is, for all purposes, taken to have been laid before the House, and	18 19
(b)	is to be printed by authority of the Presiding Officer of the House, and	20 21
(c)	is, for all purposes, taken to be a document published by order or under the authority of the House, and	22 23
(d)	is to be recorded:	24
(i)	in the case of the Council, in the Minutes of the Proceedings of the Legislative Council, and	25 26
(ii)	in the case of the Assembly, in the Votes and Proceedings of the Legislative Assembly,	27 28
	on the first sitting day of the House after receipt of the report by the Presiding Officer.	29 30

Parliamentary Electorates and Elections Amendment (Child Sexual
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Schedule 1 Amendments

[6] Section 183 Proceedings for offences

1

Insert after section 183 (3):

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- (4) Subsection (1) does not apply to proceedings for an offence that
is declared by this Act to be an indictable offence.

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