

Passed by both Houses



New South Wales

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

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

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

Act No , 2006

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.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Parliamentary Electorates and Elections Amendment (Child Sexual Offences Disclosures) Act 2006*.

2 Commencement

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

3 Amendment of Parliamentary Electorates and Elections Act 1912 No 41

The *Parliamentary Electorates and Elections Act 1912* is amended as set out in Schedule 1.

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Section 79 Nomination of Assembly candidates

Insert before section 79 (4A):

- (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.

[2] Section 79 (4A)

Insert “(including subsection (4AA))” after “this section”.

[3] Section 81B Nomination of Council candidates

Insert after section 81B (4):

- (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.

[4] Section 81B (6)

Insert “(including subsection (4A))” after “this section”.

[5] Part 5, Division 5A

Insert after Division 5 of Part 5:

Division 5A Child sexual offences etc disclosures by candidates for the Assembly or Council

81J Application of Division

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.

81K Definitions

(1) In this Division:

child sexual offence means:

- (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

in the presence of a child (including a child pornography offence that is so punishable), or

- (b) an offence involving sexual activity or acts of indecency, that was committed elsewhere and that would have been an offence punishable by penal servitude or imprisonment for 12 months or more if committed in New South Wales, and that was committed against, with or in the presence of a child (including a child pornography offence that is so punishable), or
- (c) an offence under section 80D or 80E of the *Crimes Act 1900*, where the person against whom the offence is committed is a child, or
- (d) an offence under sections 91D–91G of the *Crimes Act 1900* (other than if committed by a child prostitute) or a similar offence under a law other than a law of New South Wales, or
- (e) an offence under section 91H, 578B or 578C (2A) of the *Crimes Act 1900* or a similar offence under a law other than a law of New South Wales, or
- (f) an offence an element of which is an intention to commit an offence referred to in the preceding paragraphs, or
- (g) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in the preceding paragraphs.

conviction includes a finding that the charge for an offence is proven, or that a person is guilty of an offence, even though the court does not proceed to a conviction, but does not include a conviction that is quashed by any court.

CYP Commission—see section 81M (2).

murder includes an offence of murder committed outside New South Wales or an offence of attempting, or of conspiracy or incitement, to commit murder.

Presiding Officer means the President of the Legislative Council or Speaker of the Legislative Assembly.

relevant apprehended violence order means a relevant apprehended violence order, within the meaning of Part 7 of the *Commission for Children and Young People Act 1998*, that was made by a court for the protection of a child from sexual activity or acts of indecency.

- (2) An offence that was a child sexual offence at the time of its commission is not a child sexual offence for the purposes of this Division if the conduct constituting the offence has ceased to be an offence in New South Wales.

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- (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:
- (a) occurred in a public place, and
 - (b) would not have constituted an offence in New South Wales if the place were not a public place.
- (4) For the purposes of this Division, section 579 of the *Crimes Act 1900* does not apply to or in respect of a child sexual offence.

81L Child-related conduct declarations

- (1) A child-related conduct declaration is to state:
- (a) whether or not the candidate has ever been convicted of the murder of a child or of a child sexual offence, and
 - (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
 - (c) whether or not any relevant apprehended violence order has ever been made against the candidate.
- (2) The child-related conduct declaration is to identify any such conviction, proceedings or order.
- (3) A child-related conduct declaration is to be in such form (if any) as is prescribed by the regulations.
- (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.
- Maximum penalty (subsection (4)): Imprisonment for 5 years.

81M Duties of Electoral Commissioner with respect to child-related conduct declarations

- (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.
- (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 *CYP Commission*).

81N Duties of CYP Commission with respect to child-related conduct declarations

- (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.
- (2) For the purpose of carrying out an audit, the CYP Commission:
 - (a) may exercise any of the functions it has under Part 7 of the *Commission for Children and Young People Act 1998*, and
 - (b) has the same protections as are conferred by that Act on the Commission when exercising its functions under that Part.
- (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.
- (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.

Note. Section 81P provides for the procedure where a House of Parliament is not sitting when a report is presented.
- (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.

81O Unauthorised disclosure or dishonest disclosure of information

- (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:
 - (a) is made in good faith for the purposes of the audit or consultation, or
 - (b) is made with the consent of the person to whom the information relates, or
 - (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
 - (d) is made for the purpose of providing information to the Commissioner of Police in connection with a possible criminal offence, or

- (e) is made for the purposes of exercising a function under this Division, or
 - (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.
- (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.

81P Reports presented to Presiding Officer of House of Parliament

- (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.
- (2) A report that is made public by the Presiding Officer of a House of Parliament:
 - (a) is, for all purposes, taken to have been laid before the House, and
 - (b) is to be printed by authority of the Presiding Officer of the House, and
 - (c) is, for all purposes, taken to be a document published by order or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Council, in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Presiding Officer.

[6] Section 183 Proceedings for offences

Insert after section 183 (3):

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