

Introduced by Hon P E J Collins, QC MP

First print



New South Wales

Child Protection Bill 1997

Explanatory note

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

Overview of Bill

The object of this Bill is to ensure that persons whom courts have found guilty of child assault offences are not employed to carry out child-related activities.

Outline of provisions

Clause 1 specifies 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.

Clause 3 defines certain expressions (*child*, *child assault offence*, *child-related activity*, *employ* and *person to whom this Act applies*) for the purposes of the proposed Act. The expression *person to whom this Act applies* is defined to mean a person whom a court has found guilty of a child assault offence, other than a person who is the subject of an order under proposed section 9.

Clause 4 requires prospective employers to ascertain whether prospective employees are persons to whom the proposed Act applies, and makes it an offence for a prospective employee to make false or misleading statements in this regard.

Clause 5 requires a prospective employee who is a person to whom the proposed Act applies to notify any prospective employer of that fact when applying for employment to carry out child-related activities.

Clause 6 requires employers to ensure that persons to whom the proposed Act applies do not remain employed to carry out child-related activities.

Clause 7 requires employees to immediately notify their employers on becoming persons to whom the proposed Act applies.

Clause 8 provides for an offence against the proposed Act to be dealt with by a Local Court constituted by a Magistrate sitting alone.

Clause 9 enables the Supreme Court to make an order declaring that a person is no longer a person to whom the proposed Act applies. Such an order ceases to have effect if a court subsequently finds the person guilty of a child assault offence.

Clause 10 provides for the proposed Act to bind the Crown.

Clause 11 provides for the proposed Act to prevail over other Acts and laws in the event of an inconsistency between them.



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Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Definitions	2
4 Prospective employers to ascertain whether prospective employees are persons to whom Act applies	3
5 Prospective employees to disclose to prospective employers their status as persons to whom Act applies	3
6 Employers to take action with respect to employees who are persons to whom Act applies	3
7 Employees to disclose their status as persons to whom Act applies	4
8 Proceedings for offences	4
9 Supreme Court may make declarations concerning persons to whom Act applies	4
10 Act binds Crown	5
11 Relationship with other Acts	5



New South Wales

Child Protection Bill 1997

No. , 1997

A Bill for

An Act to ensure that persons whom courts have found guilty of child assault offences are not employed to carry out child-related activities, and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Child Protection Act 1997*.

2 Commencement

This Act commences on the date of assent.

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3 Definitions

In this Act:

child means a person who is under 16 years of age.

child assault offence means an offence under Part 3 of the *Crimes Act 1900*, being an offence that is committed against a child, and includes any other offence of the same kind under the laws of the Commonwealth, of some other State or Territory or of a foreign country. 10

child-related activity means any activity that primarily involves direct contact, or unsupervised association, with children. 15

employ means:

- (a) to employ a person to carry out child-related activities, whether on a paid or unpaid basis, or
- (b) to allow a person to carry out child-related activities in relation to children in the charge, or under the control, of the person by whom that person is allowed to carry out child-related activities, 20

and **employer**, **employee** and **employment** have corresponding meanings.

person to whom this Act applies means a person whom a court has at any time found guilty of a child assault offence, but does not include a person who is the subject of an order in force under section 9. 25

4 Prospective employers to ascertain whether prospective employees are persons to whom Act applies

- (1) A person must not employ any other person to carry out child-related activities without requiring that other person to declare whether or not that other person is a person to whom this Act applies. 5

Maximum penalty: 100 penalty units (in the case of a corporation) and 50 penalty units, or imprisonment for 12 months, or both (in any other case).

- (2) A person must not, in purported compliance with a requirement under this section, make any statement that is false or misleading in a material particular. 10

Maximum penalty: 100 penalty units, or imprisonment for 12 months, or both.

5 Prospective employees to disclose to prospective employers their status as persons to whom Act applies 15

A person to whom this Act applies must ensure that any employer to whom he or she applies for employment to carry out child-related activities is made aware, when the application is made, that the applicant is a person to whom this Act applies. 20

Maximum penalty: 100 penalty units, or imprisonment for 12 months, or both.

6 Employers to take action with respect to employees who are persons to whom Act applies

An employer who becomes aware that any person employed by the employer to carry out child-related activities is a person to whom this Act applies must ensure that the person is immediately removed from that employment. 25

Maximum penalty: 100 penalty units (in the case of a corporation) and 50 penalty units, or imprisonment for 12 months, or both (in any other case). 30

7 Employees to disclose their status as persons to whom Act applies

- (1) An employee:
- (a) who at any time becomes a person to whom this Act applies, and 5
 - (b) who is at that time employed to carry out child-related activities,
- must ensure that the employer is immediately made aware of that fact.
- Maximum penalty: 100 penalty units, or imprisonment for 12 months, or both. 10
- (2) An employee:
- (a) who at the commencement of this Act is a person to whom this Act applies, and
 - (b) who at the commencement of this Act is employed to carry out child-related activities, 15
- must ensure that the employer is immediately made aware of that fact.
- Maximum penalty: 100 penalty units, or imprisonment for 12 months, or both. 20

8 Proceedings for offences

Proceedings for an offence against this Act are to be taken before a Local Court constituted by a Magistrate sitting alone.

9 Supreme Court may make declarations concerning persons to whom Act applies 25

- (1) On the application of a person to whom this Act applies, the Supreme Court may make an order declaring that this Act is not to apply to that person.
- (2) In deciding whether or not to make such an order, the Supreme Court may have regard to the following: 30
 - (a) the seriousness of the offences with respect to which the applicant is a person to whom this Act applies,
 - (b) the time that has elapsed since those offences were committed,

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- (c) the age of the applicant, as at the time those offences occurred,
 - (d) the age of each victim of those offences, as at the time those offences occurred,
 - (e) the difference in age between the applicant and each such victim, 5
 - (f) the seriousness of the applicant's general criminal record,
 - (g) such other matters as the Supreme Court considers relevant.
- (3) An order under this section ceases to have effect with respect to a person if a court subsequently finds the person guilty of a child assault offence. 10

10 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities. 15

11 Relationship with other Acts

This Act prevails to the extent of any inconsistency between it and any other Act or law.

