



New South Wales

Children and Young Persons (Care and Protection) Amendment (Protection from Serious Offenders) Bill 2016

Explanatory note

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

Overview of Bill

The objects of this Bill are to:

- (a) ensure that, subject to some exceptions, any person found guilty of the murder or manslaughter of a child or young person, or of certain other serious offences in relation to a child or young person, where the offender was the parent or guardian of the victim, will automatically have his or her future children removed from his or her care at birth or will be prevented from residing with, approaching or contacting them, and
- (b) provide for the issue of restraining notices so that any person found guilty of such an offence may be prevented from residing with, approaching or having any contact with a child or young person.

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 Children and Young Persons (Care and Protection) Act 1998 No 157**

Schedule 1 [1] provides for the protection of children and young persons from persons who have been found guilty of certain offences where the victim was a child or young person and the offender was a parent or guardian of that child or young person. The item includes a new Part 3A

(Protection from persons found guilty of certain serious offences) in Chapter 4. The proposed Part contains the following provisions:

- (a) **Proposed section 38H** inserts definitions of terms used in the proposed Part. In particular, *disqualifying offence* is defined to include murder, manslaughter, infanticide, and certain other serious offences, or an attempt to commit such offences, where the victim is a child or young person and the offender a parent or guardian of that child or young person. It does not matter whether the offence was committed before or after the commencement of the proposed Part, and those offences include interstate offences.
- (b) **Proposed section 38I** explains the extended meaning of being *found guilty* in the proposed Part.
- (c) **Proposed section 38J** provides that, for the purposes of the proposed Part, a newborn baby will be taken to reside on the same property as a person if the baby is likely to reside on the same property as the person when the baby is discharged from hospital.
- (d) **Proposed section 38K** requires the Secretary of the Department of Family and Community Services to assume guardianship of a child if the Secretary becomes aware that the child has been born to a parent who has been found guilty of a disqualifying offence.

This is achieved by the Secretary issuing an instrument of guardianship. The child specified in the instrument will, for all purposes, be under the guardianship of the Minister for a period of 60 days, unless a parent of the child makes a successful application to have the instrument of guardianship revoked.

(If the child also resides with a parent who has not been found guilty of a disqualifying offence, the Secretary is not to issue an instrument of guardianship, but must instead issue a restraining notice under proposed section 38Q against the parent found guilty of the disqualifying offence. The Secretary is not required to issue an instrument if he or she is of the opinion that the relevant disqualifying offence occurred where there were significant mitigating circumstances, or arose as a result of any illness or condition from which the offender no longer suffers or from any circumstances that no longer exist.)

- (e) **Proposed section 38L** clarifies the effect of an instrument of guardianship, which is to allocate all aspects of care responsibility for the child to the Minister, authorise the removal of the child from the care of those of his or her parents who have been found guilty of a disqualifying offence, require the child to be kept at a place approved by the Minister and specify the arrangements for the custody, care, protection, health, welfare or education of the child.
- (f) **Proposed section 38M** provides that the Act applies to an instrument of guardianship as if it were a care order.
- (g) **Proposed section 38N** provides that an instrument of guardianship remains in force for 60 days, unless it is earlier revoked, but can be extended.
- (h) **Proposed section 38O** provides that a parent can apply for the revocation of an instrument of guardianship.
- (i) **Proposed section 38P** provides that a woman who has been found guilty of a disqualifying offence and who is expecting a child may, during the term of her pregnancy, apply for an order of the Children's Court to prevent the issuing of an instrument of guardianship in relation to the child.
- (j) **Proposed section 38Q** requires the Secretary, if he or she becomes aware that a child or young person is residing, or is about to reside, on the same property as a person who has been found guilty of a disqualifying offence, to issue a restraining notice to the person. The Secretary is not required to issue a notice if of the opinion that the relevant disqualifying offence occurred where there were significant mitigating circumstances, or arose as a result of any illness or condition from which the offender no longer suffers or from any circumstances that no longer exist.
- (k) **Proposed section 38R** provides that a restraining notice may prohibit the offender from:

- (i) residing on the same property as the child or young person, or
 - (ii) coming within a specified distance of the child or young person's residence, or
 - (iii) having any physical contact with the child or young person except under supervision,
or
 - (iv) having any contact at all with the child or young person.
- (l) **Proposed section 38S** provides that a restraining notice will apply for a period of 60 days, unless it is earlier revoked, but can be extended.
- (m) **Proposed section 38T** provides that an offender can apply for the revocation of a restraining notice.
- (n) **Proposed section 38U** specifies the matters to which the Children's Court is to have regard when determining applications for the revocation of instruments of guardianship or restraining notices or to prevent the issue of instruments of guardianship.
- (o) **Proposed section 38V** requires a court that finds a person guilty of a disqualifying offence to provide the Secretary with certain information relating to the finding of guilt.
- (p) **Proposed section 38W** provides that a document purporting to be an instrument of guardianship or restraining notice is admissible in evidence in any proceedings under the Act and, in the absence of evidence to the contrary, is proof of the instrument or notice and its terms and that it was duly given.

Schedule 1 [2] requires the Secretary to apply to the Children's Court for a care order under Chapter 5 as soon as practicable after the Secretary issues an instrument of guardianship or a restraining notice under the new provisions.

Schedule 1 [3] sets out the grounds for such an application, namely that:

- (a) a parent of the child has been found guilty of a disqualifying offence and the child does not reside on, or is not about to reside on, the same property as any other of his or her parents who has not been found guilty of a disqualifying offence, or
- (b) the child or young person is residing, or is about to reside, on the same property as a person who has been found guilty of a disqualifying offence.

Schedule 1 [4] allows the Children's Court to revoke an instrument of guardianship or restraining notice where:

- (a) an application has been made for revocation by a parent of the child or young person, or
- (b) an application for a care order contemplated by the proposed new provisions has been made by the Secretary.