



New South Wales

Parliamentary Electorates and Elections Amendment (Child-related Conduct Declaration) Regulation 2007

under the

Parliamentary Electorates and Elections Act 1912

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Parliamentary Electorates and Elections Act 1912*.

MORRIS IEMMA, M.P.,
Premier

Explanatory note

The object of this Regulation is to amend the *Parliamentary Electorates and Elections Regulation 2001* to prescribe the form of a child-related conduct declaration that is required to accompany the nomination of a candidate for election to the Legislative Assembly or Legislative Council.

This Regulation is made under the *Parliamentary Electorates and Elections Act 1912*, including section 81L and section 176 (the general regulation-making power).

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Clause 1

Parliamentary Electorates and Elections Amendment (Child-related
Conduct Declaration) Regulation 2007

**Parliamentary Electorates and Elections Amendment
(Child-related Conduct Declaration) Regulation 2007**

under the

Parliamentary Electorates and Elections Act 1912

1 Name of Regulation

This Regulation is the *Parliamentary Electorates and Elections
Amendment (Child-related Conduct Declaration) Regulation 2007*.

2 Amendment of Parliamentary Electorates and Elections Regulation 2001

The *Parliamentary Electorates and Elections Regulation 2001* is
amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 2)

[1] **Clause 17A**

Insert after clause 17:

17A Child-related conduct declaration

For the purposes of section 81L (3) of the Act, the prescribed form for a child-related conduct declaration is Form 9A.

[2] **Schedule 1 Forms**

Insert after Form 9:

Form 9A Child-related conduct declaration

(Clause 17A)

Parliamentary Electorates and Elections Act 1912 (Section 81L (3))

Notice to candidates

As part of the nomination process, all candidates for the Legislative Assembly and the Legislative Council are required by the *Parliamentary Electorates and Elections Act 1912* to make a child-related conduct declaration.

You are required to:

- read the Notice to candidates and the Attachment,
- sign the Notice to candidates acknowledging that you have read the Notice and the Attachment,
- complete and sign Part A,
- if required to because of an answer given in Part A—complete and sign Part B,
- return the declaration to the New South Wales Electoral Commission with your nomination form and deposit.

If you do not complete, sign and return these forms, your nomination will not be valid.

Not legal advice

The *Parliamentary Electorates and Elections Act 1912* specifies what must be declared in this declaration. The information contained in this form about what must be declared is intended as general guidance for candidates only. You should seek independent legal advice if you have any specific legal queries about whether any conviction, proceeding or order must be declared in your declaration.

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Schedule 1 Amendments

Guidance on which offences must be included in declaration

Your declaration must set out and describe any of the following convictions, proceedings or court orders:

- any conviction against you for a **child sexual offence**, which includes (but is not limited to) offences against children involving sexual activity or acts of indecency punishable by 12 months or more imprisonment, child pornography offences if punishable by 12 months or more imprisonment and similar offences committed outside New South Wales (see the definition set out in the Attachment),
- any conviction against you for **child murder**,
- any **criminal proceedings** ever commenced against you for child murder or child sexual offences. This includes criminal charges laid against you that were subsequently withdrawn for any reason or which did not lead to a conviction. This also includes proceedings where you were found not guilty or where your conviction was subsequently quashed on appeal, and
- any **relevant apprehended violence order** which has ever been made by a court against you, being an order made on the application of a police officer or other public official, for the protection of a child from sexual activity or acts of indecency.

A child is a person under 18 years of age.

You must include any convictions, proceedings or court orders against you in your current name or any former name.

Offence for false statement and disqualification

It is a **serious offence** for you to make a false statement on this form, **punishable by up to five (5) years imprisonment**. If you are elected as a member of either House of Parliament, and are convicted of such an offence, **your seat will become vacant because of that conviction**.

Declaration will be public

Your declaration will be made public by the New South Wales Electoral Commissioner, and if you are elected, it will be audited by the Commission for Children and Young People and a report will be prepared on the results of that audit and provided to the Presiding Officer of the House of Parliament to which you have been elected. That report will then be made public.

Criminal records check

A criminal records check will be carried out on the National CrimTrac Database for all candidates who are successful at the election. This check will identify offences or proceedings required to be disclosed as part of this form. This criminal records check is carried out at the request of the Commission for Children and Young People in accordance with the *Parliamentary Electorates and Elections Act 1912* and is carried out for the purpose of verifying that the information disclosed by you in this form is correct and accurate.

If a criminal records check is required to be carried out, you will be required to provide proof of identity in the form required by the Commission for Children and Young People.

A report will be prepared for the Presiding Officer of the House of Parliament to which you have been elected using the information obtained from the criminal records check. That report will identify whether your declaration is accurate, and if not, details of any discrepancies. The report will only deal with those offences or proceedings that are required to be disclosed as part of this form. The report will be made public. In addition, if there are any discrepancies, information may also be provided to the NSW Police or the Director of Public Prosecutions for prosecution action.

This criminal records check is required to be carried out in accordance with the provisions of the *Parliamentary Electorates and Elections Act 1912*. A failure to sign the consent below will mean that your nomination to be a candidate for the election will not be valid

Which parts of the Declaration to complete

You must complete Part A of the declaration. If in Part A you declare that you have ever been subject to any of the relevant convictions, proceedings or orders, you must then provide sufficient details in Part B of the declaration to identify those offences, proceedings or orders.

How to complete the declaration

Other than your signature, you should print in BLOCK letters in **black** pen.

Acknowledgement and consent

Please sign below to indicate that you:

- 1 have read and understood the information above and in the Attachment, and
- 2 consent to the criminal records check using the National CrimTrac Database being carried out.

Surname

Given names

Signature of candidate

Date:

ATTACHMENT

For the purposes of Division 5A of Part 5 of the *Parliamentary Electorates and Elections Act 1912*, **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

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- (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.

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

An offence involving sexual activity or an act of indecency is not a child sexual offence for the purposes of that 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.

For the purposes of that Division, section 579 of the *Crimes Act 1900* (which relates to older convictions dealt with by way of recognizance) does not apply to or in respect of a child sexual offence.

Candidate declaration

Part A

(Answer questions 1–4 by ticking the relevant box in **black** pen)

- 1 Have you ever been convicted of a child sexual offence*?
 No
 Yes
- 2 Have you ever been convicted of the murder of a child?
 No
 Yes
- 3 Have any criminal proceedings* ever been commenced against you for the murder of a child, or for a child sexual offence*, other than proceedings relating to a conviction disclosed under questions 1 or 2?
 No
 Yes

- 4 Have you ever had a relevant apprehended violence order* made against you?
- No
- Yes

In completing this declaration, you should have regard to the *Parliamentary Electorates and Elections Act 1912*, and the Notice to candidates and the Attachment to the notice that are part of this declaration.

***See the Notice to candidates for the meaning of these terms. In particular, a *relevant apprehended violence order* is an apprehended violence order that has been made by a court, on the application of a police officer or other public official, for the protection of a child from sexual activity or acts of indecency.**

I DECLARE THAT the answers I have made in this Part to questions 1–4 state the matters required to be stated under section 81L (1) of the *Parliamentary Electorates and Elections Act 1912*.

Surname Given names Signature of candidate

Date:

Part B

(Print using BLOCK letters in **black** pen)

I DECLARE THAT the following list identifies all convictions, proceedings or orders in my current name and any former name that I am required to identify under section 81L (2) of the *Parliamentary Electorates and Elections Act 1912*:

- 1 Convictions for child murder and/or child sexual offences, including findings of guilt where no conviction was recorded, and name under which those convictions were recorded:
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-
-
-
-
-
- 2 Criminal proceedings for child murder and/or child sexual offences, and name under which those charges were laid:
- (a) Charges laid against me that are currently before the courts:
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-
-
-

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- (b) Charges laid against me but withdrawn before or during trial:
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- (c) Charges for which I was tried but found not guilty at trial:
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- (d) Charges for which I was tried and convicted but found to be not
guilty on appeal:
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- (e) Charges for which I was found guilty but for which I was
subsequently pardoned:
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- (f) Any other charges or indictments not declared in the above
categories:
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3 Relevant apprehended violence orders, and name under which those
orders were made:
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(Please attach a further sheet if additional space is required.)

Surname Given names Signature of candidate

Date:

BY AUTHORITY
