



New South Wales

# Child Protection Legislation (Registrable Persons) Amendment Bill 2009

## Explanatory note

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

## Overview of Bill

The objects of this Bill are:

- (a) to amend the *Child Protection (Offenders Registration) Act 2000*:
  - (i) to require a registrable person to report a change in the children who generally reside in the same household as that in which the person generally resides or with whom the person has regular unsupervised contact within 24 hours of the change occurring (instead of within 3 days as at present), and
  - (ii) to require a registrable person to report an intended change in the place where he or she generally resides to the Commissioner of Police, and
  - (iii) to provide for the extension of a registrable person's reporting period during the period in which the registrable person is travelling outside Australia for a month or more or residing outside Australia (unless the person is a person to whom Division 5 of Part 3 or section 11B of the Act applies), and

- (iv) to confer power on the Administrative Decisions Tribunal to exempt a registrable person from the reporting obligations imposed by such an extension of the reporting period, and
  - (v) to enable the Commissioner of Police to direct certain agencies to provide to the Commissioner certain personal information about a registrable person collected or used by the agencies for the purposes of developing or giving effect to a case management plan for a registrable person, and
- (b) to amend the *Child Protection (Offenders Prohibition Orders) Act 2004* to enable the Local Court to make an order prohibiting a registrable person in relation to a particular registrable offence from contacting a victim of, or co-offender in relation to, that offence.

## 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.

## **Schedule 1      Amendment of Child Protection (Offenders Registration) Act 2000 No 42**

**Schedule 1 [1] and [2]** amend sections 9 (1) (e) and 11 (1) (a) of the *Child Protection (Offenders Registration) Act 2000* (the **2000 Act**) to achieve the object described in paragraph (a) (i) of the Overview above.

**Schedule 1 [3]** inserts proposed section 11F into the 2000 Act to achieve the object described in paragraph (a) (ii) of the Overview above.

**Schedule 1 [4]** amends section 15 of the 2000 Act to achieve the object described in paragraph (a) (iii) of the Overview above.

**Schedule 1 [5]–[8]** amend section 16 of the 2000 Act to achieve the object described in paragraph (a) (iv) of the Overview above.

**Schedule 1 [9]** amends section 19BA of the 2000 Act to achieve the object described in paragraph (a) (v) of the Overview above.

**Schedule 1 [10]** amends Schedule 2 to the 2000 Act to enable the making of savings and transitional regulations consequent on the enactment of the proposed Act.

**Schedule 1 [11]** inserts a savings and transitional provision into Schedule 2 to the 2000 Act.

## **Schedule 2      Amendment of Child Protection (Offenders Prohibition Orders) Act 2004 No 46**

**Schedule 2** amends the *Child Protection (Offenders Prohibition Orders) Act 2004* (the **2004 Act**) to achieve the object described in paragraph (b) of the Overview above.

**Schedule 2 [3]** inserts new Part 2A (proposed sections 16A–16H) into the 2004 Act.

Section 16A defines *contact* and *contact prohibition order* for the purposes of the proposed Part.

Section 16B enables the Commissioner of Police to apply for a contact prohibition order in specified circumstances.

Section 16C enables the Local Court to make a contact prohibition order if it is satisfied that there are sufficient grounds to do so. A registrable person who is subject to a contact prohibition order will be prohibited from contacting or attempting to contact a victim or co-offender specified in the order or from procuring another person to contact or attempt to contact the victim or co-offender.

Section 16D limits the power of the Local Court to make contact prohibition orders prohibiting contact with a member of a registrable person's close family.

Section 16E provides for the variation and revocation of contact prohibition orders.

Section 16F requires the Local Court to explain the effect of a contact prohibition order to the registrable person who is subject to the order.

Section 16G makes it an offence to contravene a contact prohibition order.

Section 16H provides for applications under the proposed Part to be dealt with in the absence of the public (with some limited exceptions).

**Schedule 2 [1] and [2]** make consequential amendments.

**Schedule 2 [4]** amends section 17 of the 2004 Act to limit the power of the Commissioner of Police to delegate the Commissioner's functions under the proposed Part where the powers concern a young registrable person.

**Schedule 2 [5]** amends Schedule 2 to the 2004 Act to insert a savings and transitional provision.



First print



New South Wales

# Child Protection Legislation (Registrable Persons) Amendment Bill 2009

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New South Wales

# Child Protection Legislation (Registrable Persons) Amendment Bill 2009

No. , 2009

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## A Bill for

An Act to amend the *Child Protection (Offenders Registration) Act 2000* and the *Child Protection (Offenders Prohibition Orders) Act 2004* to make further provision with respect to registrable persons.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Child Protection Legislation (Registrable Persons) Amendment Act 2009</i> .	3 4
<b>2 Commencement</b>	5
(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).	6 7
(2) Schedule 1 [1]–[3] commence on a day to be appointed by proclamation.	8 9

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<b>Schedule 1</b>	<b>Amendment of Child Protection</b>	1
	<b>(Offenders Registration) Act 2000 No 42</b>	2
<b>[1]</b>	<b>Section 9 Relevant personal information to be reported</b>	3
	Omit “ages” from section 9 (1) (e). Insert instead “dates of birth”.	4
<b>[2]</b>	<b>Section 11 Registrable person must report changes to relevant personal information</b>	5
	Omit “3 days” from section 11 (1) (a). Insert instead “24 hours”.	7
<b>[3]</b>	<b>Section 11F</b>	8
	Insert after section 11E:	9
<b>11F</b>	<b>Intended change of place where registrable person generally resides</b>	10
		11
(1)	This section applies if a registrable person intends to change the place where the registrable person generally resides.	12
		13
	<b>Note.</b> This section imposes an additional reporting requirement with respect to residence to that imposed under section 11 (1) (b), which requires a registrable person to report actual (as opposed to intended) changes in the place where the person generally resides.	14
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(2)	At least 14 days before changing the place, the registrable person must report the intended change to the Commissioner of Police and must provide details of:	18
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(a)	the address where the person proposes to generally reside, or	21
		22
(b)	if the person does not intend to reside at particular premises—the name of the locality of the place where the person intends to generally reside.	23
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(3)	If a change in the place at which a person generally resides occurs because of an emergency or other exceptional circumstances arise making it impracticable for the registrable person to report the intended change, it is sufficient compliance with subsection (2) if the registrable person:	26
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(a)	reports the required information to the Commissioner of Police as soon as practicable (but not more than 3 days) after the change occurs, and	31
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(b)	provides satisfactory evidence of the circumstances which made it impracticable to report the required information sooner to the Commissioner of Police.	34
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(4)	A registrable person who reports an intended change of place under this section and who subsequently changes the place where he or she generally resides to the place detailed in the report is not required to comply with the reporting obligations imposed by section 11 with respect to that change of place.	1 2 3 4 5
(5)	A registrable person who reports an intended change and does not make the change within 14 days after it is reported must report this fact to the Commissioner of Police within 3 days after the end of that 14-day period.	6 7 8 9
<b>[4]</b>	<b>Section 15 Suspension and extension of reporting obligations</b>	10
	Insert after section 15 (2):	11
(3)	The period for which a registrable person's reporting obligations continue is extended by the length of time for which those obligations are suspended from time to time under subsection (1) (b) if, during the time in which the obligations are suspended, the registrable person:	12 13 14 15 16
(a)	is travelling outside Australia for one month or more or is resident outside Australia, and	17 18
(b)	is not required to report under any corresponding Act.	19
<b>[5]</b>	<b>Section 16 ADT may exempt persons from compliance with reporting obligations</b>	20 21
	Omit section 16 (1). Insert instead:	22
(1)	This section applies to a registrable person:	23
(a)	who is required to continue to comply with the reporting obligations imposed by this Part for the remainder of his or her life, or	24 25 26
(b)	whose reporting period has been extended under section 15 (3) (whether or not he or she is a person referred to in paragraph (a)).	27 28 29
<b>[6]</b>	<b>Section 16 (2)</b>	30
	Insert "(in the case of a registrable person referred to in subsection (1) (a))" after "If".	31 32
<b>[7]</b>	<b>Section 16 (3)</b>	33
	Omit "an eligible registrable person".	34
	Insert instead "a registrable person referred to in subsection (2)".	35

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<b>[8] Section 16 (3A)</b>	1
Insert after section 16 (3):	2
(3A) On the application of a registrable person referred to in subsection (1) (b), the Administrative Decisions Tribunal may make an order suspending the registrable person's reporting obligations for the length of time by which the registrable person's reporting period was extended under section 15 (3).	3 4 5 6 7
<b>[9] Section 19BA Exemption of certain agencies from privacy protection legislation</b>	8 9
Insert after section 19BA (3):	10
(3A) For the purposes of avoiding an adverse impact or for developing or giving effect to a case management plan for a registrable person as referred to in subsection (3), the Commissioner of Police may, by written notice served on a scheduled agency, direct the scheduled agency to provide to the Commissioner personal information about the registrable person collected or used by the scheduled agency of the kind described in the notice.	11 12 13 14 15 16 17
(3B) The scheduled agency is authorised to disclose, and must disclose, the personal information about the registrable person to the Commissioner of Police.	18 19 20
(3C) The provision of information under this section in good faith:	21
(a) does not give rise to any liability to civil, criminal or disciplinary action, and	22 23
(b) is not a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.	24 25 26
<b>[10] Schedule 2 Savings, transitional and other provisions</b>	27
Insert at the end of clause 1 (1):	28
<i>Child Protection Legislation (Registrable Persons) Amendment Act 2009</i>	29 30

[11] Schedule 2, Part 7	1
Insert after Part 6:	2
<b>Part 7 Provisions consequent on enactment of Child Protection Legislation (Registrable Persons) Amendment Act 2009</b>	3 4 5
<b>19 Reporting requirements</b>	6
(1) In this clause:	7
<i>amending Act</i> means the <i>Child Protection Legislation (Registrable Persons) Amendment Act 2009</i> .	8 9
<i>new reporting obligation</i> means any information required to be provided by registrable persons under section 9 (1) (e) or 11F (as amended and inserted, respectively, by the amending Act).	10 11 12
(2) It is sufficient compliance with a new reporting obligation to report the date of birth of a child if a registrable person who has reported the name and age of a child before the commencement of the amendment to section 9 (1) (e) made by the amending Act reports the date of birth of the child when the registrable person next reports in accordance with this Act after the commencement of the amendment.	13 14 15 16 17 18 19
(3) It is sufficient compliance with a new reporting obligation for a registrable person who changes the place where he or she generally resides within 14 days before the insertion of section 11F by the amending Act if the person reports the required information to the Commissioner of Police as soon as possible (but not more than 3 days) after the insertion of that section.	20 21 22 23 24 25
(4) Section 19BA (3A)–(3C), as inserted by the amending Act, extend to personal information collected or used before the insertion of those subsections.	26 27 28

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<b>Schedule 2</b>	<b>Amendment of Child Protection (Offenders Prohibition Orders) Act 2004 No 46</b>	1 2 3
<b>[1] Section 3 Definitions</b>		4
	Insert in alphabetical order in section 3 (1):	5
	<i>contact prohibition order</i> means a contact prohibition order made under section 16C.	6 7
<b>[2] Section 15 Appeal does not stay order</b>		8
	Transfer section 15 to Part 3 and insert it (renumbered as section 17A) after section 17.	9 10
<b>[3] Part 2A</b>		11
	Insert after Part 2:	12
	<b>Part 2A Contact prohibition orders</b>	13
<b>16A Definitions</b>		14
	In this Part:	15
	<i>contact</i> means to communicate in person or by any other means (including by post, facsimile, telephone and email or any other form of electronic communication).	16 17 18
	<i>contact prohibition order</i> means an order prohibiting a person who is a registrable person in relation to a particular registrable offence from contacting:	19 20 21
	(a) any victim of the registrable offence who is specified in the order, or	22 23
	(b) any person who was a co-offender in relation to that registrable offence who is specified in the order.	24 25
<b>16B Commissioner of Police may apply for orders</b>		26
	An application may be made by the Commissioner of Police to the Local Court for a contact prohibition order against a registrable person if:	27 28 29
	(a) the Commissioner has reasonable grounds to suspect that the registrable person will seek to contact the victim or co-offender concerned, and	30 31 32

- (b) the registrable person is not subject to, and the Commissioner considers contact cannot be prevented by the making of, any of the following:
  - (i) an extended supervision order under the *Crimes (Serious Sex Offenders) Act 2006*,
  - (ii) a prohibition order under this Act,
  - (iii) any court order prescribed by the regulations, and
- (c) the Commissioner is satisfied that there are sufficient grounds to justify the making of the application.

**Note.** Part 4 of the *Local Court Act 2007* sets out the procedures for the making and hearing of applications and confers rights of appeal against the granting of contact prohibition orders.

**16C Local Court may make contact prohibition order**

- (1) The Local Court may make a contact prohibition order if it is satisfied that there are sufficient grounds for making the order.
- (2) The Local Court must specify the term (not exceeding 12 months) of the contact prohibition order.
- (3) A contact prohibition order takes effect:
  - (a) when the order is made, or
  - (b) if it is stayed under section 17A by a court to which an appeal is made but is confirmed on appeal (whether expressly or impliedly)—when it is confirmed.
- (4) This section does not limit the kinds of prohibition or restriction that may be imposed on a registrable person by means of any other order or direction under this Act.

**16D Contact prohibition order not to restrict certain contacts**

- (1) The persons specified in a contact prohibition order as persons the registrable person must not contact may not include any member of the registrable person's close family.
- (2) Despite subsection (1), a member of the registrable person's close family may be specified in a contact prohibition order if, and only if, the Local Court considers that the following exceptional circumstances exist:
  - (a) if the member of the family concerned was a victim of the registrable offence committed by the registrable person—it would be contrary to the best interests of the victim for contact to occur,

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- (b) if the member of the family concerned was a co-offender in relation to the registrable offence committed by the registrable person—there is reasonable cause to believe (having regard to the ongoing nature and pattern of criminal activity of the registrable person) that there is a risk that contact could result in the registrable person being involved with the co-offender in the commission of a further registrable offence. 1  
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- (3) In determining the best interests of a victim under subsection (2) (a), the Local Court may take into account any wishes expressed by the victim. 9  
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- (4) The Local Court must make a record of its reasons for making an order under subsection (2). 12  
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- (5) The failure of the Local Court to comply with subsection (4) does not invalidate the order. 14  
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- (6) In this section, a registrable person’s *close family* includes: 16
- (a) the registrable person’s spouse, de facto or same-sex partner, and 17  
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  - (b) the registrable person’s parents, step-parents and grandparents, and 19  
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  - (c) the registrable person’s children, step-children and grandchildren, and 21  
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  - (d) the registrable person’s brothers and sisters, and step-brothers and step-sisters, and 23  
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  - (e) the registrable person’s guardians or carers, and 25
  - (f) in the case of a registrable person who is an Aboriginal person or a Torres Strait Islander—persons who are or have been part of the extended family or kin of the registrable person according to the indigenous kinship system of the registrable person’s culture. 26  
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- 16E Variation or revocation of contact prohibition orders** 31
- (1) An application may be made to the Local Court by the Commissioner of Police or a person subject to a contact prohibition order for an order varying or revoking a contact prohibition order. 32  
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(2)	The application must be accompanied by a copy of the relevant order, together with any variations to it that have been made under this Part.	1 2 3
(3)	A person subject to a contact prohibition order may not make an application except by leave of the Local Court. Leave may be granted only if the Local Court is satisfied that, having regard to changes in the applicant’s circumstances since the order was made or last varied, it is in the interests of justice that leave be granted.	4 5 6 7 8 9
(4)	The Local Court may dispose of the application:	10
	(a) by varying or revoking the contact prohibition order, or	11
	(b) by dismissing the application.	12
(5)	For the purposes of an application under this section, the <i>respondent</i> to an application is:	13 14
	(a) in the case of an application made by the Commissioner of Police—the registrable person subject to the contact prohibition order, and	15 16 17
	(b) in the case of an application made by a registrable person subject to a contact prohibition order—the Commissioner of Police.	18 19 20
<b>16F</b>	<b>Explanation of orders</b>	21
(1)	If the Local Court makes a contact prohibition order, the Local Court must ensure that all reasonable steps are taken to explain to the registrable person (in language that the registrable person can readily understand):	22 23 24 25
	(a) the person’s obligations under the order, and	26
	(b) the consequences that may follow if the person fails to comply with those obligations.	27 28
(2)	An order is not invalidated by a failure to comply with subsection (1).	29 30
<b>16G</b>	<b>Contravention of contact prohibition order</b>	31
(1)	A registrable person who is subject to a contact prohibition order must not, without reasonable excuse:	32 33
	(a) contact or attempt to contact any victim or co-offender specified in the order, or	34 35

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(b)	procure another person to contact or attempt to contact that victim or co-offender.	1 2
	Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.	3 4
(2)	Without limiting subsection (1), it is a reasonable excuse for contacting a person in contravention of a contact prohibition order if:	5 6 7
(a)	the registrable person did so in compliance with an order of a court, or	8 9
(b)	having contacted the person unintentionally, the registrable person immediately terminated the contact, or	10 11
(c)	contact is made with a co-offender while the registrable person was in strict government custody within the meaning of the <i>Child Protection (Offenders Registration Act) 2000</i> .	12 13 14 15
(3)	A police officer may, without a warrant, arrest a person if the police officer suspects on reasonable grounds that the person has committed an offence under this section.	16 17 18
(4)	This section extends to an act contravening this section done outside Australia by a person resident or domiciled in the State.	19 20
<b>16H</b>	<b>Applications not to be determined in public</b>	21
(1)	Proceedings for an application under this Part must be heard in the absence of the public.	22 23
(2)	Despite subsection (1), the Local Court hearing the proceedings may, if it considers it to be appropriate, permit persons who are not parties to the proceedings or their legal or other representatives to be present during the hearing of the proceedings.	24 25 26 27 28
<b>[4]</b>	<b>Section 17 Applications for orders against young registrable persons</b>	29
	Insert “or contact prohibition order” after “prohibition order” wherever occurring.	30 31

<b>[5]    Schedule 2 Savings and transitional provisions</b>	1
Insert after clause 2:	2
<b>3    Contact prohibition orders</b>	3
Part 2A applies to or in respect of a person who was a registrable person immediately before the insertion of that Part.	4 5