



New South Wales

# Commission for Children and Young People Amendment Bill 2007

## 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 *Commission for Children and Young People Act 1998*:
  - (i) to clarify when relevant employment proceedings are taken to have been completed, and thus when they are required to be notified to the Commission for Children and Young People (*the Commission*), and
  - (ii) to require full details of such employment proceedings to be notified, and not just the name and identifying particulars of the employee, and
  - (iii) to make it compulsory for background checks to be conducted on any preferred applicant for employment in primary child-related employment, even if that person is related to the children he or she will work with, and
  - (iv) to establish the Child Death Review Team as a committee of the Commission, rather than a statutory corporation, and to empower the Team to register, classify, analyse and research not only child deaths that occur in New South Wales, but also the deaths of children who ordinarily reside in New South Wales but who die elsewhere, and

- (v) to empower the Commission to charge fees for the issue of certain certificates, and
- (vi) to make other minor amendments, and
- (b) to amend the *Parliamentary Electorates and Elections Act 1912* to require the Commissioner of Police, the Registrars of courts and certain other persons to provide the Commission for Children and Young People with access to information that the Commission requires for the purposes of the conduct of audits of the child-related conduct declarations of candidates for election who are subsequently elected to Parliament.

## 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.

**Clause 3** is a formal provision that gives effect to the amendments to the *Commission for Children and Young People Act 1998* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendment to the *Parliamentary Electorates and Elections Act 1912* set out in Schedule 2.

**Clause 5** repeals two amending Acts that contain uncommenced provisions concerning relevant employment proceedings.

**Clause 6** provides for the repeal of the proposed Act after the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## **Schedule 1      Amendment of Commission for Children and Young People Act 1998**

**Schedule 1 [1]** updates a reference to the Act that regulates the annual reporting of the Commission, which was formerly a Department, but is now a statutory corporation.

**Schedule 1 [2]** updates a cross-reference to the Act under which a defined term is defined.

**Schedule 1 [3] and [10]** make it clear that relevant employment proceedings, the completion of which is required to be notified to the Commission, include all proceedings (and not just disciplinary proceedings) involving either reportable conduct by an employee or an act of violence committed by an employee in the course of employment and in the presence of a child.

**Schedule 1 [4] and [6]** narrow the operation of an existing exemption, so that people who are preferred applicants for employment in primary child-related employment will be subject to background checking regardless of whether they are related to the children they work with. Such people will continue to be exempt from the prohibitions on certain persons (prohibited persons) applying for child-related employment with such children, undertaking such employment or remaining in such employment. To achieve this result, the exemption is transferred to the Division that imposes those prohibitions.

**Schedule 1 [5]** empowers the Commission to charge fees for the issue of certificates to self-employed persons, certifying that the persons are not prohibited persons within the meaning of the *Commission for Children and Young People Act 1998*.

**Schedule 1 [7]** omits a redundant provision about a review that has already occurred.

**Schedule 1 [8]** makes it clear that relevant employment proceedings are completed, and are therefore required to be reported to the Commission, when a finding has been made by an employer as to whether the alleged reportable conduct, or the alleged commission of an act of violence, occurred or may have occurred, and a decision has been made by the employer as to what action (if any) is to be taken against the employee in respect of the finding.

**Schedule 1 [9]** requires an employer who notifies the Commission that relevant employment proceedings have been completed to also notify sufficient details of the proceedings concerned to the Commission, or an approved screening agency that requests the information, for the purposes of background checking by the Commission or that approved screening agency or for the purposes of the Commission exercising its function of maintaining a database of completed relevant employment proceedings.

**Schedule 1 [11]** establishes the Child Death Review Team as a committee of the Commission, rather than a statutory corporation. The old Team is abolished by Schedule 1 [16].

**Schedule 1 [12]** provides that any function that the Child Death Review Team may exercise with respect to child deaths occurring in New South Wales may also be exercised by the Team in connection with the death of a child dying outside the State while ordinarily resident in the State. The amendment also provides that the Convenor of the Child Death Review Team may enter into an agreement or arrangement for the exchange of information between the Child Death Review Team and an equivalent body of another State or Territory.

**Schedule 1 [13]** empowers the Convenor of the Child Death Review Team to disclose information in a way that gives effect to any such agreement or arrangement.

**Schedule 1 [14]** clarifies that the protection from personal liability provided to the Commission and certain persons is available for anything omitted to be done in good faith in the execution of the *Commission for Children and Young People Act 1998*, as well as for anything done in good faith.

**Schedule 1 [15]** provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

**Schedule 1 [16]** makes savings and transitional provisions consequent on the enactment of the proposed Act.

## **Schedule 2      Amendment of Parliamentary Electoralates and Elections Act 1912**

**Schedule 2** imposes a duty on the Commissioner of Police, the Registrars of courts and certain other persons prescribed by the regulations to provide the Commission for Children and Young People with access to information that the Commission requires for the purposes of conducting an audit of a child-related conduct declaration made by a candidate for election who is subsequently elected to Parliament. Under the new provision, a person is not prevented from complying with that duty by any provision of any Act or law that otherwise restricts or denies access to records.



New South Wales

# Commission for Children and Young People Amendment Bill 2007

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New South Wales

# Commission for Children and Young People Amendment Bill 2007

No. , 2007

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## A Bill for

An Act to amend the *Commission for Children and Young People Act 1998* in relation to background checking of applicants for employment, the functions and status of the Child Death Review Team and other matters; and to amend the *Parliamentary Electorates and Elections Act 1912* in relation to the audit of child-related conduct declarations.

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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>Commission for Children and Young People Amendment Act 2007</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6
<b>3 Amendment of Commission for Children and Young People Act 1998 No 146</b>	7 8
The <i>Commission for Children and Young People Act 1998</i> is amended as set out in Schedule 1.	9 10
<b>4 Amendment of Parliamentary Electorates and Elections Act 1912 No 41</b>	11
The <i>Parliamentary Electorates and Elections Act 1912</i> is amended as set out in Schedule 2.	12 13
<b>5 Repeal of other Acts</b>	14
The following Acts are repealed:	15
(a) the <i>Child Protection Legislation Amendment Act 2002</i> ,	16
(b) the <i>Child Protection Legislation Amendment Act 2003</i> .	17
<b>6 Repeal of this Act</b>	18
(1) This Act is repealed on the day following the day on which this Act commences.	19 20
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	21 22



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<b>Schedule 1</b>	<b>Amendment of Commission for Children and Young People Act 1998</b>	1
		2
	(Section 3)	3
<b>[1]</b>	<b>Section 26 Provisions relating to reports to Parliament</b>	4
	Omit “ <i>Annual Reports (Departments) Act 1985</i> ” from section 26 (6).	5
	Insert instead “ <i>Annual Reports (Statutory Bodies) Act 1984</i> ”.	6
<b>[2]</b>	<b>Section 33 Definitions</b>	7
	Omit “interstate restraint order (within the meaning of Part 15A” from paragraph (b) of the definition of <i>relevant apprehended violence order</i> in section 33 (1).	8
		9
		10
	Insert instead “external protection order (within the meaning of Division 10 of Part 15A”.	11
		12
<b>[3]</b>	<b>Section 33 (1), definition of “relevant employment proceedings”</b>	13
	Omit “disciplinary proceedings (in this State or elsewhere)”.	14
	Insert instead “proceedings (including disciplinary proceedings), in this State or elsewhere,”.	15
		16
<b>[4]</b>	<b>Section 33A Child-related employment to which Part does not apply</b>	17
	Omit the section.	18
<b>[5]</b>	<b>Section 33P Self-employed persons</b>	19
	Insert after section 33P (2) (c):	20
	(c1) the charging of fees for the issue of such certificates, being fees prescribed by the regulations,	21
		22
<b>[6]</b>	<b>Section 33PA</b>	23
	Insert after section 33P:	24
<b>33PA</b>	<b>Child-related employment to which Division does not apply</b>	25
(1)	This Division does not apply to the employment of a person in child-related employment if:	26
		27
(a)	all the children with whom the person is required to have contact in that employment are related to the person, or	28
		29
(b)	all the children with whom the person is required to have contact in that employment are related to the employer and the person is related to the employer.	30
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(2)	For the purposes of this section, a person is <i>related</i> to another person if:	1
	(a) the person is a relative of the other person, or	2
	(b) the person is the guardian of the other person or a person having the custody of or parental responsibility for the other person (otherwise than as the holder of a public office), or	3
	(c) the spouse of the person is related to the other person (as referred to in paragraph (a) or (b)).	4
(3)	In this section:	5
	<i>relative</i> of a person means the spouse, parent, child, grandparent, grandchild, uncle, aunt, brother, sister, niece or nephew of the person, whether the relationship is of the whole or the half-blood and whether the relationship is natural or depends on the adoption of a person.	6
	<i>spouse</i> of a person includes any person who is living with that other person as that other person's partner on a bona fide domestic basis.	7
[7]	<b>Section 35 Guidelines relating to procedures and standards for background checking</b>	8
	Omit section 35 (5).	9
[8]	<b>Section 39 Duties of employers with respect to relevant employment proceedings</b>	10
	Omit section 39 (1A). Insert instead:	11
	(1A) For the purposes of this Part, relevant employment proceedings are taken to have been completed when a finding has been made by the employer as to whether the alleged reportable conduct, or the alleged commission of an act of violence, occurred or may have occurred, and a decision has been made by the employer as to what action (if any) is to be taken against the employee in respect of the finding.	12
[9]	<b>Section 39 (2)</b>	13
	Omit the subsection. Insert instead:	14
	(2) The employer who notifies the Commission of information under subsection (1) must also notify sufficient details of the proceedings concerned to the Commission and each approved screening agency that requests the information:	15

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	(a) for the purposes of background checking by the Commission or that approved screening agency, or	1 2
	(b) for the purposes of the Commission exercising its function under section 36 (1) (a) of maintaining a database of completed relevant employment proceedings.	3 4 5
<b>[10]</b>	<b>Section 39 (3)</b>	6
	Omit “disciplinary”.	7
<b>[11]</b>	<b>Section 45B</b>	8
	Omit the section. Insert instead:	9
	<b>45B Establishment of the Team</b>	10
	A committee of the Commission, to be known as the Child Death Review Team, is established by this Act.	11 12
<b>[12]</b>	<b>Section 45N Functions of the Team</b>	13
	Insert after section 45N (1):	14
	(1A) Any function of the Team with respect to child deaths occurring in New South Wales may also be exercised by the Team in connection with the death of a child dying outside the State while ordinarily resident in the State.	15 16 17 18
	(1B) The Convenor may enter into an agreement or other arrangement for the exchange of information between the Team and a person or body having functions under the law of another State or a Territory that are substantially similar to the functions of the Team, being information relevant to the exercise of the functions of the Team or that person or body.	19 20 21 22 23 24
<b>[13]</b>	<b>Section 45U Confidentiality of information</b>	25
	Insert after section 45U (1) (c) (iv):	26
	(v) giving effect to any agreement or other arrangement entered into under section 45N (1B), or	27 28
<b>[14]</b>	<b>Section 48 Protection from liability</b>	29
	Insert “or omitted” after “was done”.	30
<b>[15]</b>	<b>Schedule 3 Savings, transitional and other provisions</b>	31
	Insert at the end of clause 1 (1):	32
	<i>Commission for Children and Young People Amendment Act 2007</i>	33 34

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<b>[16] Schedule 3, Part 6</b>	1
Insert after clause 11:	2
<b>Part 6 Provisions consequent on enactment of Commission for Children and Young People Amendment Act 2007</b>	3 4 5
<b>12 Meaning of “amending Act”</b>	6
In this Part:	7
<i>amending Act</i> means the <i>Commission for Children and Young People Amendment Act 2007</i> .	8 9
<b>13 Abolition of old Child Death Review Team</b>	10
The Child Death Review Team constituted as a corporation by section 45B (as in force immediately before the repeal and re-enactment of that section by the amending Act), is abolished.	11 12 13
<b>14 Continuation of existing membership of Child Death Review Team</b>	14
A person who, immediately before the repeal and re-enactment of section 45B by the amending Act, held office as a member of the Child Death Review Team established by that section continues to hold office as a member of the Child Death Review Team established by section 45B as re-enacted for the balance of his or her term of office, subject to this Act.	15 16 17 18 19 20

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## Schedule 2      Amendment of Parliamentary Electorates and Elections Act 1912

(Section 4)

### Section 81NA

Insert after section 81N:

#### 81NA    Duty of persons to assist the CYP Commission

- (1) It is the duty of a prescribed person to provide the CYP Commission with full and unrestricted access to records that are under the person's control, or whose production the person may, in an official capacity, reasonably require, being records to which the CYP Commission reasonably requires access for the purpose of exercising its functions under this Part.
- (2) A provision of any Act or law that restricts or denies access to records does not prevent a person to whom subsection (1) applies from complying, or affect the person's duty to comply, with that subsection.
- (3) Access to which the CYP Commission is entitled under subsection (1) includes:
  - (a) the right to inspect and, on request, to be provided with copies of, any record referred to in that subsection, and
  - (b) the right to inspect any non-documentary evidence associated with any such record.
- (4) In this section:

***prescribed person*** means any of the following persons:

  - (a) the Registrar or other proper officer of a court,
  - (b) the Commissioner of Police,
  - (c) any person holding a statutory office prescribed by the regulations,
  - (d) any person employed under Chapter 1A (The Government Service) of the *Public Sector Employment and Management Act 2002* to hold a position or an office prescribed by the regulations.

Commission for Children and Young People Amendment Bill 2007

Schedule 2      Amendment of Parliamentary Electorates and Elections Act 1912

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*record* means any document or other source of information  
compiled, recorded or stored in written form or on film, or by  
electronic process, or in any other manner or by any other means.      1  
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