



New South Wales

Commission for Children and Young People Amendment Bill 2005

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Commission for Children and Young People Act 1998* (the **Principal Act**) as follows:

- (a) to confer on the Commission for Children and Young People (the **Commission**) the functions of encouraging organisations to develop their capacity to be safe and friendly for children and of developing and administering a voluntary accreditation scheme for programs for sex offenders,
- (b) to enable the Commission to compel certain information to be produced to enable it to carry out certain functions,
- (c) to incorporate into the Principal Act provisions currently contained in the regulations that relate to special inquiries conducted by the Commission and other matters,
- (d) to incorporate into the Principal Act the provisions of the *Child Protection (Prohibited Employment) Act 1998* (relating to prohibitions on employment in child-related employment),

- (e) to include in the categories of persons who are prohibited from engaging in child-related employment (*prohibited persons*) persons who are convicted of offences committed as adults of intentionally wounding or causing grievous bodily harm to a child where the adult was more than 3 years older than the child,
- (f) to restrict the right of a prohibited person to apply for a review of the prohibition if the person is a person convicted of the murder of a child, certain sexual offences involving a child or of offences involving the production of child pornography,
- (g) to change references to employment screening to references to background checking,
- (h) to extend the offences to be checked as part of background checking procedures for employees in child-related employment,
- (i) to provide for recent previous background checks on potential short-term employees to be used to satisfy requirements under the Act to carry out background checks on such employees,
- (j) to make other minor and consequential amendments and amendments of a savings and transitional nature.

The Bill also repeals the *Child Protection (Prohibited Employment) Act 1998* and the *Commission for Children and Young People Regulation 2000*.

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 a day or days to be appointed by proclamation.

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 amendments to the Acts set out in Schedule 2.

Clause 5 repeals the *Child Protection (Prohibited Employment) Act 1998* and the *Commission for Children and Young People Regulation 2000*.

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

Functions of Commission

Schedule 1 [1] amends the long title to the Principal Act to reflect the additional functions being conferred on the Commission and the incorporation in that Act of the provisions formerly contained in the *Child Protection (Prohibited Employment) Act 1998*.

Schedule 1 [8] amends section 11 of the Principal Act to confer on the Commission the function of determining or intervening in applications by persons prohibited from engaging in child-related employment for a review of that prohibition (*review applications*).

Schedule 1 [11] amends section 11 of the Principal Act to confer on the Commission the function of encouraging organisations to develop their capacity to be safe and friendly for children and the function of developing and administering a voluntary accreditation scheme for programs for persons who have committed sexual offences against children.

Schedule 1 [12] substitutes section 14A of the Principal Act. The proposed section enables the Commission, by notice in writing, to require a government agency to provide it with information (including documents) relevant to whether a person poses a risk to the safety of children for the purposes of preparing submissions to the Industrial Relations Commission or the Administrative Decisions Tribunal or considering a review application. The proposed section also enables the Commission, by notice in writing, to require other persons to provide information relevant to whether a person poses a risk to the safety of children for the purpose of considering any such application.

Schedule 1 [13] amends section 15A of the Principal Act to enable information obtained by the Commission in the exercise of its functions (other than relating to the Child Death Review Team) to be used for the purpose of making a report to the Director-General of the Department of Community Services under section 27 (Mandatory reporting) of the *Children and Young Persons (Care and Protection) Act 1998*.

Schedule 1 [14] amends section 15A of the Principal Act to make it clear that certain protected reports under the *Children and Young Persons (Care and Protection) Act 1998* may be produced to the Commission but remain subject to protections.

Schedule 1 [15] inserts proposed section 15B into the Principal Act. The proposed section enables the Commission, by notice in writing, for the purposes of exercising its monitoring and auditing functions relating to prohibited persons and background checking, to require a government agency or any other person to provide the Commission with statements or documents. It will be an offence to fail to comply with such a notice or knowingly provide false or misleading information.

Special inquiries by Commission

Schedule 1 [17] amends section 20 of the Principal Act to incorporate a provision currently contained in the regulations that enables the Commission to authorise persons to appear and be heard at special inquiries conducted by the Commission if the Commission is satisfied that they are substantially and directly interested in the subject-matter of the inquiry.

Schedule 1 [18] inserts proposed sections 20A and 20B into the Principal Act to incorporate provisions currently contained in the regulations. Proposed section 20A prohibits legal representation at special inquiries conducted by the Commission unless the Commission is satisfied that it is necessary or desirable in the public interest or for the safety, welfare or well-being of a child. Proposed section 20B enables the Commission, if satisfied that it is necessary or desirable in the public interest or for the safety, welfare or well-being of a child, to direct that certain evidence or information relating to a private hearing of a special inquiry not be published except in the manner or to the persons specified by the Commission. **Schedule 1 [16]** amends section 20 of the Principal Act to omit a power to make regulations restricting the publication or disclosure of evidence at a special inquiry.

Prohibited employment

Schedule 1 [19] amends the heading to Part 7 of the Principal Act to reflect the fact that the Part will relate to additional aspects of safeguards relating to child-related employment.

Schedule 1 [20] inserts a heading for the new Division 1 of Part 7 of the Principal Act.

Schedule 1 [21] substitutes sections 31 and 32 of the Principal Act to include in the objects of Part 7 the protection of children by prohibiting certain persons from being engaged in child-related employment and to make the safety and welfare of children, and protecting them from abuse, the paramount consideration in the operation of the Part.

Schedule 1 [22] amends section 33 of the Principal Act to insert definitions, formerly contained in the *Child Protection (Prohibited Employment) Act 1998*, including definitions of **child-related employment**, **employer** and **employee**. These definitions will now apply to Part 7 in place of the previous definitions of those terms.

Schedule 1 [30] inserts proposed section 33A into the Principal Act. The proposed section re-enacts a provision of the *Child Protection (Prohibited Employment) Act 1998* and provides that the background checking provisions of the Principal Act, and the provisions placing prohibitions on child-related employment, do not apply to employment solely concerning children related to the relevant person or children of an employer to whom the person is related.

Schedule 1 [31] inserts proposed Division 2 of Part 7 (Prohibitions on child-related employment) into the Principal Act. The proposed Division re-enacts the provisions of the *Child Protection (Prohibited Employment) Act 1998*, which identify persons who are prohibited from engaging in child-related employment (proposed section 33B) and make it an offence for prohibited persons to apply for, undertake or remain in child-related employment (proposed section 33C) and an offence to employ a person in child-related employment without enquiring of the person whether they are a prohibited person (proposed section 33D) and to employ in child-related employment a person that the employer knows is a prohibited person (proposed section 33E). The category of persons who are prohibited is extended by adding

persons who have been found guilty, as adults, of intentionally wounding or causing grievous bodily harm to a child who is more than 3 years younger.

The proposed Division also re-enacts provisions relating to orders declaring that the prohibition provisions do not apply to persons in respect of particular offences. The re-enacted provisions enable the Commission, the Industrial Relations Commission and the Administrative Decisions Tribunal (the *relevant tribunals*) to make such an order on application by a prohibited person (proposed sections 33H and 33I) and set out the requirements for making such an order (proposed section 33J). Procedural provisions relating to stays, multiple applications, notice to the Commissioner of Police and the limits on the jurisdiction of the Industrial Relations Commission are re-enacted (proposed sections 33L–33O). Other provisions making it clear that a prohibited person may be transferred to other employment (proposed section 33Q) are also re-enacted.

In addition, persons found guilty of the murder of a child, certain child sexual assault offences and certain child pornography offences will be prohibited from seeking a review of their prohibited status (proposed section 33G). However, persons convicted of an offence involving sexual intercourse with a child not more than 3 years younger may make an application for an order with the leave of the Commission or a relevant tribunal. The provisions also make it clear that the applicant for an order must establish that he or she does not pose a risk to the safety of children. Proposed section 33M is a new provision that enables the Commission to apply to a relevant tribunal for a review of an order (including an order made by the Commission). Proposed section 33P is a new provision that enables regulations to be made to establish a scheme that will require self-employed persons to obtain, display and produce certificates that they are not prohibited persons. Proposed section 33R enables the Commission to advise persons on their prohibited person status. Proposed section 33S confers monitoring and auditing functions on the Commission.

Schedule 1 [53] inserts proposed section 52, which re-enacts a provision of the *Child Protection (Prohibited Employment) Act 1998* that provides that a prohibition on employment under the Principal Act prevails to the extent of inconsistency with any other Act or law and removes the jurisdiction of the Industrial Relations Commission or any other court or tribunal to make orders for the re-instatement or re-employment of, or payment of compensation to, a person employed contrary to a prohibition under the Principal Act.

Background checking of employees

Schedule 1 [2] changes all references in the Principal Act to employment screening to references to background checking. **Schedule 1 [9], [32], [39] and [49]** make consequential amendments.

Schedule 1 [3] amends section 3 of the Principal Act to replace the definition of *employment screening* with a definition of *background checking*.

Schedule 1 [10] amends section 11 of the Principal Act as a consequence of the background checking provisions being included as Division 3 of Part 7 of the Principal Act, rather than comprising the whole of Part 7.

Schedule 1 [27] amends section 33 of the Principal Act to include a criminal record relating to child-related personal violence offences or offences involving indecent filming committed in relation to children as matters for which a check is to be made as part of background checking of a person who is employed or has applied to be employed in child-related employment. **Schedule 1 [26]** makes a consequential amendment.

Schedule 1 [29] amends section 33 of the Principal Act to incorporate provisions currently contained in the regulations that exclude certain apprehended violence orders and certain offences and criminal records from matters that are to be covered by background checking. **Schedule 1 [23]–[25] and [28]** make consequential amendments.

Schedule 1 [32] and [36] change references to “Part” to “Division” as a consequence of the background checking provisions being included as Division 3 of Part 7 of the Principal Act, rather than comprising the whole of Part 7.

Schedule 1 [33] amends section 34 of the Principal Act to replace a requirement that background checking include an assessment of risk to children involved in child-related employment of a person with a requirement that it include an estimate of the risk to children involved in such employment, having regard to all the circumstances of the case, including any risk arising from the particular workplace. **Schedule 1 [34] and [46]** make consequential amendments.

Schedule 1 [37] amends section 35 of the Principal Act to provide for the amendment and revocation and the publication of guidelines made by the Minister under that section. **Schedule 1 [35]** makes a consequential amendment.

Schedule 1 [38] amends section 36 of the Principal Act to make it clear that the Commission may update and correct entries in its database of relevant apprehended violence orders and child protection prohibition orders made against persons and relevant employment proceedings completed against persons.

Schedule 1 [41] removes a reference in section 37 of the Principal Act to the *Child Protection (Prohibited Employment) Act 1998* (which is being repealed) and clarifies the duty to carry out background checking of religious officials engaged in child-related employment. Currently, it extends to Ministers of religion and members of religious organisations, as amended it will extend to ministers, priests, rabbis, muftis or other like religious leaders or spiritual officials of religions.

Schedule 1 [42] inserts proposed section 37A. The proposed section provides for background checking carried out within the previous 12 months to be used to fulfil the duty to carry out background checking for employees who are to be employed for less than 6 months and who are being employed in the same kind of child-related employment for which the checking was carried out. If the employer is not the same employer as the employer for whom background checking was carried out, the background check must be one carried out by an employer-related body approved by the Minister. **Schedule 1 [40]** makes a consequential amendment.

Schedule 1 [43] amends section 38 of the Principal Act to enable employer-related bodies to disclose information gained in background checking to employers other than those for whom the checking was undertaken. This will enable disclosure for the purposes of proposed section 37A.

Schedule 1 [44] amends section 38 of the Principal Act to enable information relating to relevant criminal records, relevant apprehended violence orders and child protection prohibition orders obtained in background checking to be disclosed to an employer or employer-related body situated outside New South Wales and approved by the Minister.

Schedule 1 [45] amends section 39 of the Principal Act to remove the duty of an employer to notify the Commission of relevant employment proceedings against a person where the allegations in respect of which the proceedings were brought are found to be vexatious or misconceived. It also provides that relevant employment proceedings are taken to be completed (and therefore reportable to the Commission) if the employer has determined the proceedings, whether or not any right of appeal or review has been exercised or exhausted.

Schedule 1 [47] omits sections 41 and 42 of the Principal Act (which are to be re-enacted and extended as proposed sections 48A and 48B) and inserts proposed section 41. Proposed section 41 enables the Commission, by notice in writing, to require an employer to comply with background checking duties, duties to report completed relevant employment proceedings and to notify of applicants rejected on the grounds of estimates of risk arising from background checking. It will be an offence to fail, without reasonable excuse, to comply with a notice.

Schedule 1 [48] inserts proposed section 43A into the Principal Act. The proposed section enables an employer to amend or withdraw a notification of relevant employment proceedings against a person or of the rejection of a person for employment on the grounds of risk, if the employer determines that the notification was incorrect or wrongly made.

Schedule 1 [50] omits section 45 of the Principal Act, which provided for the staged implementation of employment provisions.

Schedule 1 [51] inserts proposed sections 48A and 48B which extend the protection from liability provisions, and the offences relating to unauthorised disclosure of information, to the exercise of functions relating to prohibited persons, in addition to background checking functions.

Other amendments

Schedule 1 [4]–[7] update references to a repealed Act.

Schedule 1 [52] amends section 49 of the Principal Act to extend the period within which proceedings for offences must be commenced from 6 months to 2 years.

Schedule 1 [54] amends section 53 of the Principal Act to provide for a review of the Principal Act as soon as possible after 5 years from the date of assent to the proposed Act.

Schedule 1 [55] amends Schedule 3 to the Principal Act to enable savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [56] inserts savings and transitional provisions into Schedule 3 to the Principal Act as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of other Acts

Schedule 2 amends the following Acts to replace references to the *Child Protection (Prohibited Employment) Act 1998* with references to the provisions of that Act as re-enacted in the Principal Act:

Administrative Decisions Tribunal Act 1997

Child Protection (Offenders Registration) Act 2000

Education Act 1990

Industrial Relations Act 1996

Institute of Teachers Act 2004



New South Wales

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No. , 2005

A Bill for

An Act to amend the *Commission for Children and Young People Act 1998* with respect to child-related employment and the functions of the Commission for Children and Young People; to repeal the *Child Protection (Prohibited Employment) Act 1998*; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Commission for Children and Young People Amendment Act 2005</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Amendment of Commission for Children and Young People Act 1998 No 146	7 8
The <i>Commission for Children and Young People Act 1998</i> is amended as set out in Schedule 1.	9 10
4 Amendment of other Acts	11
The Acts specified in Schedule 2 are amended as set out in that Schedule.	12 13
5 Repeals	14
(1) The <i>Child Protection (Prohibited Employment) Act 1998</i> is repealed.	15
(2) The <i>Commission for Children and Young People Regulation 2000</i> is repealed.	16 17

Schedule 1	Amendment of Commission for Children and Young People Act 1998	1
		2
	(Section 3)	3
[1] Long title		4
	Omit “to provide for employment screening for child-related employment;”.	5
	Insert instead “to provide for safeguards and impose prohibitions relating to child-related employment;”.	6
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[2] Whole Act (other than Schedule 3), except where otherwise amended by this Schedule		8
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	Omit “employment screening” wherever occurring.	10
	Insert instead “background checking”.	11
[3] Section 3 Definitions		12
	Omit the definition of <i>employment screening</i> from section 3 (1).	13
	Insert instead in alphabetical order:	14
	<i>background checking</i> —see Division 3 of Part 7.	15
	<i>review application</i> —see Part 7.	16
[4] Section 5 Commissioner		17
	Omit section 5 (2). Insert instead:	18
	(2) The employment of the Commissioner is subject to Part 3.1 of the <i>Public Sector Employment and Management Act 2002</i> , but is not subject to Chapter 2 of that Act.	19
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		21
[5] Section 5 (3)		22
	Omit “section 42F of the <i>Public Sector Management Act 1988</i> ”.	23
	Insert instead “section 68 of the <i>Public Sector Employment and Management Act 2002</i> ”.	24
		25
[6] Section 5 (4)		26
	Omit “section 42Q of the <i>Public Sector Management Act 1988</i> ”.	27
	Insert instead “section 77 of the <i>Public Sector Employment and Management Act 2002</i> ”.	28
		29

[7] Section 7 Staff of Commission	1
Omit “Part 2 of the <i>Public Sector Management Act 1988</i> ” from section 7 (1).	2
Insert instead “Chapter 2 of the <i>Public Sector Employment and Management Act 2002</i> ”.	3 4
[8] Section 11 Principal functions of Commission	5
Insert after section 11 (h):	6
(h1) to determine or intervene in review applications concerning prohibited persons,	7 8
[9] Section 11 (i)	9
Omit “screening”. Insert instead “background checking”.	10
[10] Section 11 (i)	11
Insert “Division 3 of” before “Part 7”.	12
[11] Section 11 (l) and (m)	13
Insert after section 11 (k):	14
(l) to encourage organisations to develop their capacity to be safe and friendly for children,	15 16
(m) to develop and administer a voluntary accreditation scheme for programs for persons who have committed sexual offences against children.	17 18 19
[12] Section 14A	20
Omit the section. Insert instead:	21
14A Powers of Commission for Children and Young People to compel production of information	22 23
(1) The Commission for Children and Young People may, by notice in writing, require any government agency to provide the Commission with information (including documents) relevant to an assessment of whether a person poses a risk to the safety of children.	24 25 26 27 28
(2) A notice under subsection (1) may be given for the purposes of:	29
(a) preparing submissions to the Industrial Relations Commission or Administrative Decisions Tribunal under Subdivision 2 of Division 2 of Part 7 of this Act or section 16 of the <i>Child Protection (Offenders Registration) Act 2000</i> , or	30 31 32 33 34

(b)	considering a review application made to the Commission.	1
(3)	A government agency to which any such notice is given is by this section authorised and required to provide the Commission for Children and Young People with the information sought by the notice.	2 3 4 5
(4)	The Commission for Children and Young People may, by notice in writing, request a person other than a government agency to provide the Commission with a statement setting out information specified by the notice relevant to an assessment of whether a person poses a risk to the safety of children for the purposes of considering a review application made to the Commission.	6 7 8 9 10 11
(5)	A person other than a government agency to whom any such request is given is by this section authorised to provide the Commission for Children and Young People with the information requested.	12 13 14 15
(6)	A notice under this section may specify a day on or before which the notice is to be complied with.	16 17
(7)	If documents are given to the Commission under this section, the Commission:	18 19
(a)	may take possession of, and make copies of or take extracts from, the documents, and	20 21
(b)	may keep possession of the documents for such period as is necessary for the purposes of preparing the submission or considering an application, and	22 23 24
(c)	during that period must permit them to be inspected at all reasonable times by the persons who would be entitled to inspect them if they were not in the possession of the Commission.	25 26 27 28
[13]	Section 15A Reports under Children and Young Persons (Care and Protection) Act 1998	29 30
	Insert “or 27 (Mandatory reporting)” after “harm”.	31
[14]	Section 15A (2)	32
	Insert at the end of section 15A:	33
(2)	A report referred to in section 29 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> may be provided to the Commission in accordance with a requirement under a provision of this Act. Any such report may not be subsequently dealt with by the Commission in a manner that contravenes that section,	34 35 36 37 38

except to the extent that it is necessary for the Commission to do
so in the exercise of its functions.

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[15] Section 15B

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Insert after section 15A:

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**15B Power to compel production of information for monitoring or
auditing purposes**

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(1) For the purposes of exercising its monitoring or auditing
functions under Part 7, the Commission may, by notice in
writing, require an officer of a government agency or an
employer or employer-related body to do any one or more of the
following:

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(a) to provide to the Commission, on or before a day specified
in the notice, a statement setting out such information as is
so specified relating to the matters being monitored or
audited,

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(b) to provide to the Commission, on or before a day specified
in the notice, such documents as are so specified relating
to the matters being monitored or audited.

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(2) A person who:

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(a) fails, without reasonable excuse, to comply with a
requirement of a notice under this section, or

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(b) provides the Commission with information that the person
knows is false or misleading in a material particular,

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is guilty of an offence.

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Maximum penalty: 50 penalty units.

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(3) A notice may specify the manner in which a statement or
documents may be given to the Commission.

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(4) If documents are given to the Commission under this section, the
Commission:

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(a) may take possession of, and make copies of or take
extracts from, the documents, and

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(b) may keep possession of the documents for such period as
is necessary for the purposes of exercising its monitoring
or auditing functions, and

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(c) during that period must permit them to be inspected at all
reasonable times by the persons who would be entitled to
inspect them if they were not in the possession of the
Commission.

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(5)	In any proceedings for an offence against this section, the onus of proving that a person had a reasonable excuse lies with the defendant.	1 2 3
(6)	Words and expressions used in this section have the same meanings as they have in Part 7.	4 5
[16]	Section 20 Hearings in special inquiries	6
	Omit “prohibiting or restricting the publication or disclosure of evidence or other” from section 20 (8).	7 8
[17]	Section 20 (9)	9
	Insert after section 20 (8):	10
(9)	If it is shown to the satisfaction of the Commission that any person is substantially and directly interested in the subject-matter of a special inquiry, the Commission may authorise the person to appear and be heard at the hearing or a specified part of the hearing.	11 12 13 14 15
[18]	Sections 20A and 20B	16
	Insert after section 20:	17
20A	Legal representation	18
(1)	A person appearing at a hearing of a special inquiry is not entitled to be represented by an Australian legal practitioner unless the Commission authorises such representation.	19 20 21
(2)	The Commission is to give a person a reasonable opportunity to make submissions regarding representation by an Australian legal practitioner.	22 23 24
(3)	The Commission is not to give an authorisation unless satisfied that the authorisation is necessary or desirable in the public interest or for the safety, welfare or well-being of a child.	25 26 27
20B	Restriction on publication of evidence at private hearings	28
(1)	The Commission may direct that:	29
(a)	any evidence given before the Commission at a private hearing of a special inquiry, or	30 31
(b)	the contents of any document, or a description of any thing, produced to the Commission at a private hearing, or	32 33
(c)	any information that might enable a person who has given or may be about to give evidence at a private hearing to be identified or located, or	34 35 36

(d)	that fact that any person has given or may be about to give evidence at a private hearing,	1
	must not be published except in such manner, and to such persons, as the Commission specifies.	2
(2)	The Commission is not to give a direction unless satisfied that the direction is necessary or desirable in the public interest or for the safety, welfare or well-being of a child.	3
		4
(3)	A person must not make a publication in contravention of a direction given under this section.	5
	Maximum penalty: 20 penalty units.	6
		7
[19] Part 7, heading		8
	Omit “ Employment screening ”.	9
	Insert instead “ Child-related employment ”.	10
[20] Part 7, Division 1, heading		11
	Insert before section 31:	12
	Division 1 Preliminary	13
[21] Sections 31 and 32		14
	Omit the sections. Insert instead:	15
	31 Object of Part	16
	The object of this Part is to protect children:	17
	(a) by prohibiting certain persons from being involved in child-related employment, and	18
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	(b) by means of background checking for child-related employment administered by the Commission and other agencies.	20
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	32 Safety and welfare of children to be paramount consideration	26
	The safety and welfare of children and, in particular, protecting them from child abuse, is the paramount consideration in the operation of this Part.	27
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[22] Section 33 Definitions

Omit the definitions of *child-related employment*, *employee*, *employer* and *employment* from section 33 (1).

Insert instead in alphabetical order:

***child-related employment*:**

- (a) means any employment of the following kind that primarily involves direct contact with children where that contact is not directly supervised by a person having the capacity to direct the person in the course of the employment:
 - (i) employment involving the provision of child protection services,
 - (ii) employment in pre-schools, kindergartens and child care centres (including residential child care centres),
 - (iii) employment in schools or other educational institutions (not being universities),
 - (iv) employment in detention centres (within the meaning of the *Children (Detention Centres) Act 1987*),
 - (v) employment in refuges used by children,
 - (vi) employment in wards of public or private hospitals in which children are patients,
 - (vii) employment in clubs, associations, movements, societies, institutions or other bodies (including bodies of a cultural, recreational or sporting nature) having a significant child membership or involvement,
 - (viii) employment in any religious organisation,
 - (ix) employment in entertainment venues where the clientele is primarily children,
 - (x) employment as a babysitter or childminder that is arranged by a commercial agency,
 - (xi) employment involving fostering or other child care,
 - (xii) employment involving regular provision of taxi services for the transport of children with a disability,
 - (xiii) employment involving the private tuition of children,

(xiv)	employment involving the direct provision of child health services,	1 2
(xv)	employment involving the provision of counselling or other support services for children,	3 4
(xvi)	employment on school buses,	5
(xvii)	employment at overnight camps for children, and	6
(b)	includes any other employment of a kind prescribed by the regulations, but does not include any employment of a kind excluded by the regulations.	7 8 9
	<i>conviction</i> includes a finding that the charge for an offence is proven, or that a person is guilty of an offence, even though the court does not proceed to a conviction.	10 11 12
	<i>employee</i> means any person who is engaged in employment.	13
	<i>employer</i> includes:	14
(a)	a person who, in the course of business, arranges for the placement of a person in employment with others, or	15 16
(b)	a person who engages a person under a contract to perform work.	17 18
	<i>employment</i> means (subject to the regulations):	19
(a)	performance of work under a contract of employment, or	20
(b)	performance of work as a self-employed person or as a subcontractor, or	21 22
(c)	performance of work as a volunteer for an organisation, or	23
(d)	undertaking practical training as part of an educational or vocational course, or	24 25
(e)	performance of work as a minister, priest, rabbi, mufti or other like religious leader or spiritual officer of a religion or other member of a religious organisation, or	26 27 28
(f)	performance of the duties of an authorised carer within the meaning of the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	29 30 31
	<i>prohibited person</i> —see section 33B.	32
[23]	Section 33 (1), definition of “relevant apprehended violence order”	33
	Omit “subsection (2)”. Insert instead “subsection (6)”.	34
[24]	Section 33 (1), definition of “relevant criminal record”	35
	Omit “subsection (2)”. Insert instead “subsections (7) and (8)”.	36

[25] Section 33 (1), definition of “relevant employment proceedings”	1
Omit “(subject to subsection (2))”.	2
[26] Section 33 (1), definition of “reportable conduct”	3
Omit “(including a child pornography offence)” from paragraph (a).	4
[27] Section 33 (1), definition of “reportable conduct”	5
Insert after paragraph (a):	6
(a1) any child pornography offence or misconduct involving child pornography, or	7
	8
(a2) any child-related personal violence offence (within the meaning of Division 2), or	9
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(a3) an offence under section 21G or 21H of the <i>Summary Offences Act 1988</i> committed against, with or in the presence of a child, or	11
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[28] Section 33 (2)	14
Omit the subsection.	15
[29] Section 33 (6)–(8)	16
Insert after section 33 (5):	17
(6) The following are not relevant apprehended violence orders:	18
(a) an apprehended violence order made by a court before 3 July 1995 under Part 15A of the <i>Crimes Act 1900</i> ,	19
	20
(b) an external protection order (within the meaning of section 562RA of the <i>Crimes Act 1900</i>) made before 3 July 1995,	21
	22
(c) an external protection order (within the meaning of section 562RA of the <i>Crimes Act 1900</i>) that is not registered under Division 3 of Part 15A of that Act.	23
	24
	25
(7) The following offences are not part of the relevant criminal record of a person:	26
	27
(a) an offence that was a serious sex offence at the time of its commission if the conduct constituting the offence has ceased to be an offence in New South Wales,	28
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(b) an offence involving sexual activity or an act of indecency if the conduct constituting the offence occurred in a public place and would not have constituted an offence in New South Wales if the place were not a public place.	31
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- (8) A criminal record is not a relevant criminal record if: 1
 - (a) the record relates to a registrable offence within the 2 meaning of the *Child Protection (Offenders Registration)* 3 *Act 2000* that was committed elsewhere than in New South 4 Wales, and 5
 - (b) the Commission, or an employer or employer-related 6 body, is unable to obtain access to the record (whether 7 because the record cannot be released under the law of the 8 jurisdiction in which the offence concerned was 9 committed or for any other reason). 10

[30] Section 33A 11

Insert after section 33: 12

33A Child-related employment to which Part does not apply 13

- (1) This Part does not apply to the employment of a person in 14 child-related employment if: 15
 - (a) all the children with whom the person is required to have 16 contact in that employment are related to the person, or 17
 - (b) all the children with whom the person is required to have 18 contact in that employment are related to the employer and 19 the person is related to the employer. 20
- (2) For the purposes of this section, a person is *related* to another 21 person if: 22
 - (a) the person is a relative of the other person, or 23
 - (b) the person is the guardian of the other person or a person 24 having the custody of or parental responsibility for the 25 other person (otherwise than as the holder of a public 26 office), or 27
 - (c) the spouse of the person is related to the other person (as 28 referred to in paragraph (a) or (b)). 29
- (3) In this section: 30
 - relative* of a person means the spouse, parent, child, grandparent, 31 grandchild, uncle, aunt, brother, sister, niece or nephew of the 32 person, whether the relationship is of the whole or the half-blood 33 and whether the relationship is natural or depends on the adoption 34 of a person. 35
 - spouse* of a person includes any person who is living with that 36 other person as that other person's partner on a bona fide 37 domestic basis. 38

[31] Part 7, Division 2, Division 3 heading	1
Insert before section 34:	2
Division 2 Prohibitions on child-related employment	3
Subdivision 1 Persons prohibited from being employed in child-related employment	4
33B Prohibited persons	6
(1) For the purposes of this Division, a <i>prohibited person</i> means:	7
(a) a person convicted of a serious sex offence, the murder of a child or a child-related personal violence offence, whether before or after the commencement of this subsection, or	8
(b) a person who is a registrable person within the meaning of the <i>Child Protection (Offenders Registration) Act 2000</i> .	9
(2) For the purposes of this Division, a person is not a prohibited person in respect of an offence if an order in force under Subdivision 2 declares that this Division is not to apply to the person in respect of the offence.	10
(3) In this Division:	11
<i>child-related personal violence offence</i> means:	12
(a) an offence committed by an adult involving intentionally wounding or causing grievous bodily harm to a child, or	13
(b) an offence committed by an adult of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a),	14
but does not include an offence committed by an adult who is not more than 3 years older than the child concerned.	15
<i>serious sex offence</i> means (subject to subsections (4) and (5)):	16
(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, or	17
(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 it had been committed in New South Wales, or	18
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(c)	an offence under section 80D or 80E of the <i>Crimes Act 1900</i> , where the person against whom the offence is committed is a child, or	1 2 3
(d)	an offence under sections 91D–91G of the <i>Crimes Act 1900</i> (other than if committed by a child prostitute) or a similar offence under a law other than a law of New South Wales, or	4 5 6 7
(e)	an offence under section 91H, 578B or 578C (2A) of the <i>Crimes Act 1900</i> or a similar offence under a law other than a law of New South Wales, or	8 9 10
(f)	an offence an element of which is an intention to commit an offence referred to in paragraph (a) or (b), or	11 12
(g)	an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in the preceding paragraphs, or	13 14 15
(h)	any other offence, whether under the law of New South Wales or elsewhere, prescribed by the regulations.	16 17
	Note. A conviction for an offence includes a finding that an offence is proven, or that a person is guilty of an offence, even though the court does not proceed to a conviction.	18 19 20
(4)	An offence that was a serious sex offence at the time of its commission is not a serious sex offence for the purposes of this Division if the conduct constituting the offence has ceased to be an offence in New South Wales.	21 22 23 24
(5)	An offence involving sexual activity or an act of indecency is not a serious sex offence for the purposes of this Division if the conduct constituting the offence:	25 26 27
(a)	occurred in a public place, and	28
(b)	would not have constituted an offence in New South Wales if the place were not a public place.	29 30
(6)	For the purposes of this Division, section 579 of the <i>Crimes Act 1900</i> does not apply to or in respect of a serious sex offence or a child-related personal violence offence.	31 32 33
33C	Offences relating to prohibited persons	34
(1)	A prohibited person must not:	35
(a)	apply for child-related employment, or	36
(b)	undertake child-related employment, or	37
(c)	remain in child-related employment.	38

Maximum penalty: 100 penalty units, or imprisonment for 2 years, or both.	1 2
(2) A person is not criminally responsible for an offence against this section if the person did not know, at the time of the commission of the offence, that the employment concerned was child-related employment.	3 4 5 6
33D Employer to ascertain whether employee is prohibited person	7
(1) An employer must not commence employing any other person in child-related employment without first requiring that other person to disclose whether or not that other person is a prohibited person.	8 9 10 11
Maximum penalty: 20 penalty units, in the case of a corporation, and 10 penalty units in any other case.	12 13
(2) A person must not, in purported compliance with a requirement under this section, make any statement that the person knows is false.	14 15 16
Maximum penalty: 100 penalty units, or imprisonment for 12 months, or both.	17 18
(3) This section does not apply to the employment of a person in child-related employment if all the children with whom the person is required to have contact in that employment are related to the employer (whether or not the person is related to the employer).	19 20 21 22 23
Note. Under section 37, an employer also has a duty to carry out background checking procedures in relation to a preferred applicant for primary child-related employment before employing the applicant. An employer who fails to do so may be required, by notice, to comply with his or her duty.	24 25 26 27 28
33E Employer not to employ prohibited person in child-related employment	29 30
An employer must not commence employing, or continue to employ, in child-related employment a person that the employer knows is a prohibited person.	31 32 33
Maximum penalty: 100 penalty units, in the case of a corporation, and 50 penalty units in any other case.	34 35

Subdivision 2	Review of prohibition of employment of prohibited persons	1
		2
33F	Definitions	3
	In this Subdivision:	4
	<i>relevant tribunal</i> —see section 33I.	5
	<i>review application</i> means an application under section 33H or 33I.	6
		7
33G	Persons not entitled to make review applications	8
(1)	A prohibited person who has been convicted of any of the following offences, committed by the person as an adult, is not entitled to make an application under section 33H or 33I:	9
		10
		11
(a)	murder of a child,	12
(b)	an offence under section 66A, 66B, 66C, 66D or 73 of the <i>Crimes Act 1900</i> or a similar offence under that Act or any other law involving sexual intercourse with a child (including a law other than a law of New South Wales),	13
		14
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		16
(c)	an offence under section 91H (2) of the <i>Crimes Act 1900</i> , involving the production of child pornography, or a similar offence under a law other than a law of New South Wales,	17
		18
		19
(d)	an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in the preceding paragraphs.	20
		21
(2)	The Commission or a relevant tribunal may grant leave to a prohibited person to make a review application, despite a conviction for an offence referred to in subsection (1), if the Commission or tribunal is satisfied that:	22
		23
		24
		25
(a)	the offence is an offence referred to in subsection (1) (b), or an offence of attempting, or of conspiracy or incitement to commit such an offence, and	26
		27
		28
(b)	the prohibited person was not more than 3 years older than the child against whom the offence was committed, and	29
		30
(c)	the offence did not involve circumstances of aggravation within the meaning of section 66C of the <i>Crimes Act 1900</i> .	31
		32
33H	Commission may make declarations concerning prohibited persons	33
		34
(1)	On the application of a prohibited person, the Commission may make an order declaring that this Division is not to apply to the person in respect of a specified offence.	35
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- (2) An application must be made in a form approved by the Commission. An applicant must fully disclose to the Commission any matters relevant to the application. 1
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- (3) Orders under this section may be made subject to conditions. 4
- (4) The Commission is not to make an order that is subject to conditions without the consent in writing of the applicant to the conditions. 5
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- (5) If the Commission proposes to make an order that is subject to conditions, it is to notify the applicant in writing that: 8
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- (a) it proposes to make the order subject to the conditions specified in the notification, and 10
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- (b) the applicant may consent in writing to the making of the order subject to those specified conditions or request the Commission to take no further action, and 12
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- (c) the Commission will take no further action in relation to the application unless the applicant has consented in writing to the making of the proposed order subject to the specified conditions, and 15
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- (d) if the applicant does not consent to the making of the order subject to the specified conditions, the applicant may apply under section 33I to the Industrial Relations Commission or the Administrative Decisions Tribunal for an order declaring that this Division is not to apply to the person in respect of a specified offence. 19
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- (6) If the Commission makes an order, it is to notify the applicant in writing that the Commission has made the order and (if applicable) that the order is subject to the conditions specified in the notification. 25
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- (7) If the Commission considers that an applicant under this section poses a risk to the safety of children or, for whatever reason, cannot make a decision as to whether the applicant poses such a risk, the Commission is to notify the applicant in writing that: 29
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- (a) the Commission cannot make an order under this section, and 33
34
- (b) the Commission will take no further action in relation to the application, and 35
36
- (c) the applicant may apply under section 33I to the Industrial Relations Commission or the Administrative Decisions Tribunal for an order declaring that this Division is not to apply to the person in respect of a specified offence. 37
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33I	IRC and ADT may make declarations concerning prohibited persons	1 2
(1)	On the application of a prohibited person, a relevant tribunal may make an order declaring that this Division is not to apply to the person in respect of a specified offence.	3 4 5
(2)	A <i>relevant tribunal</i> is:	6
(a)	the Industrial Relations Commission, or	7
(b)	the Administrative Decisions Tribunal.	8
(3)	The Commission for Children and Young People is to be a party to any proceedings for an order under this section. The Commission may make submissions in opposition to or support of the making of the order.	9 10 11 12
(4)	An applicant must fully disclose to the relevant tribunal any matters relevant to the application.	13 14
(5)	If a relevant tribunal refuses to make an order under this section, the prohibited person is not entitled to make an application for an order under this section or section 33H in respect of that offence until after the period of 5 years from the date of the tribunal's refusal, unless the tribunal otherwise orders at the time of refusal.	15 16 17 18 19
(6)	Orders under this section may be made subject to conditions.	20
(7)	The following applies to proceedings before the Administrative Decisions Tribunal under this section:	21 22
(a)	the Tribunal may not award costs,	23
(b)	an appeal lies on a question of law to the Supreme Court by any party to the proceedings.	24 25
33J	Matters to be considered in determining review applications	26
(1)	The Commission or a relevant tribunal is not to make an order on a review application unless it is satisfied that the person the subject of the application does not pose a risk to the safety of children.	27 28 29 30
(2)	In any proceedings for a review application, it is to be presumed, unless the applicant proves to the contrary, that the applicant poses a risk to the safety of children.	31 32 33
(3)	In deciding whether or not to make an order in relation to a person, the Commission or a relevant tribunal is to take into account the following:	34 35 36
(a)	the seriousness of the offences with respect to which the person is a prohibited person,	37 38

	(b) the period of time since those offences were committed,	1
	(c) the age of the person at the time those offences were committed,	2 3
	(d) the age of each victim of the offences at the time they were committed,	4 5
	(e) the difference in age between the prohibited person and each such victim,	6 7
	(f) whether the person knew, or could reasonably have known, that the victim was a child,	8 9
	(g) the prohibited person's present age,	10
	(h) the seriousness of the prohibited person's total criminal record,	11 12
	(i) such other matters as the Commission or tribunal considers relevant.	13 14
33K	Stay pending determination of review application	15
	On a review application, the Commission or a relevant tribunal may, by order, stay the operation of a prohibition under this Division pending the determination of the matter.	16 17 18
33L	Multiple applications not permitted	19
	A person may not make a review application under section 33H or 33I if the person has another application pending under either of those sections.	20 21 22
33M	Further review of persons who obtain orders	23
	(1) The Commission may apply to a relevant tribunal to revoke or vary an order made under this Subdivision by the Commission or the tribunal.	24 25 26
	(2) The relevant tribunal may:	27
	(a) revoke an order, if it is satisfied, on the basis of fresh evidence provided by the Commission, that the person the subject of the proposed order poses a risk to the safety of children, or	28 29 30 31
	(b) vary an order, if it is satisfied, on the basis of fresh evidence provided by the Commission, that the person is likely to pose such a risk if the order is not varied.	32 33 34
	(3) A relevant tribunal may consider fresh evidence provided by the Commission.	35 36
	(4) Orders under this section may be made subject to conditions.	37

(5)	The following applies to proceedings before the Administrative Decisions Tribunal under this section:	1
		2
(a)	the Tribunal may not award costs,	3
(b)	an appeal lies on a question of law to the Supreme Court by any party to the proceedings.	4
		5
33N	Commissioner of Police to be notified	6
	The Commission or a relevant tribunal must notify the Commissioner of Police of the terms of any order made under this Subdivision by the Commission or tribunal.	7
		8
		9
33O	Jurisdiction of Industrial Relations Commission	10
	The Industrial Relations Commission may not make an order under this Subdivision unless:	11
		12
(a)	the person is an employee within the meaning of the <i>Industrial Relations Act 1996</i> who is liable to be dismissed from that employment under this Act, or	13
		14
		15
(b)	the person was such an employee who was dismissed from that employment under this Act.	16
		17
	Subdivision 3 Miscellaneous	18
33P	Self-employed persons	19
(1)	This section applies to self-employed persons engaged in child-related employment.	20
		21
(2)	The regulations may make provision for or with respect to the following matters:	22
		23
(a)	additional persons who are not self-employed who may be treated as self-employed persons for the purposes of this section and any regulations made under this section,	24
		25
		26
(b)	requirements for obtaining, displaying and producing certificates that a person is not a prohibited person,	27
		28
(c)	the issue of such certificates,	29
(d)	regulating or prohibiting the engagement of self-employed persons in child-related employment if certificate requirements are not complied with,	30
		31
		32
(e)	prohibiting the use of certificates by persons other than self-employed persons,	33
		34
(f)	matters ancillary to matters referred to in paragraphs (a)–(e).	35
		36

33Q	Prohibited person may be transferred to other employment	1
	This Division does not prevent an employer who removes a prohibited person from child-related employment in accordance with this Division from transferring the person to employment of a different kind.	2 3 4 5
33R	Commission may advise on status	6
	The Commission may, on the application of a person, advise the person as to whether the person is a prohibited person or is eligible to make a review application.	7 8 9
33S	Monitoring and auditing functions	10
	(1) The Commission may monitor and audit compliance with requirements and procedures relating to prohibited persons.	11 12
	(2) The Minister may give the Commission a written direction on the exercise of its functions under this section, and the Commission is to comply with any such direction. The Commission is to include any such direction in the Commission's annual report.	13 14 15 16
	Division 3 Background checking	17
[32]	Section 34 Nature of background checking	18
	Omit "Part, <i>employment screening</i> ".	19
	Insert instead "Division, <i>background checking</i> ".	20
[33]	Section 34 (c)	21
	Omit the paragraph. Insert instead:	22
	(c) an estimate of the risk to children involved in that child-related employment arising from anything disclosed by such a check, having regard to all the circumstances of the case, including any risk arising from the particular workplace,	23 24 25 26 27
[34]	Section 34 (d)	28
	Omit "risk assessment". Insert instead "estimate of risk".	29
[35]	Section 35 Guidelines relating to procedures and standards for background checking	30 31
	Omit section 35 (4).	32

[36]	Sections 35 (5), 37 (4B), 38 (1) and (2), 39 (4), 40 (3) and 44 (1)–(3) and (4) (where firstly occurring)	1 2
	Omit “Part” wherever occurring. Insert instead “Division”.	3
[37]	Section 35 (6) and (7)	4
	Insert after section 35 (5):	5
	(6) The Minister may, from time to time, amend or revoke guidelines published under this section.	6 7
	(7) Guidelines made under this section, or amendments to guidelines, are to be published in the Gazette and take effect from the date of publication or such later date as is specified in the guidelines or amendments.	8 9 10 11
[38]	Section 36 Functions of Commission in respect of background checking	12
	Insert “(including updating and correcting)” after “maintaining” in section 36 (1) (a).	13 14
[39]	Section 36 (1) (c)	15
	Omit “such screening”. Insert instead “such checking”.	16
[40]	Section 37 Background checking mandatory for preferred applicants for certain child-related employment	17 18
	Insert “and section 37A” after “this section” in section 37 (6).	19
[41]	Section 37 (6)	20
	Omit paragraphs (a) and (b) of the definition of <i>primary child-related employment</i> .	21 22
	Insert instead:	23
	(a) paid child-related employment, or	24
	(b) child-related employment of a minister, priest, rabbi, mufti or other like religious leader or spiritual official of a religion, or	25 26 27
[42]	Section 37A	28
	Insert after section 37:	29
	37A Background checking for certain short-term employees	30
	(1) This section applies to any decision by an employer to employ a person in primary child-related employment for a period of less than 6 months or such other period as may be prescribed by the regulations.	31 32 33 34

(2)	The employer is taken to have complied with section 37 if:	1
(a)	background checking procedures have been carried out in accordance with that section in relation to the person within the period of 12 months immediately preceding the employment of the person by the employer, and	2 3 4 5
(b)	the background checking procedures were carried out in respect of a decision by the same employer to employ the person in the same kind of primary child-related employment.	6 7 8 9
(3)	The employer is taken to have complied with section 37 if:	10
(a)	background checking procedures have been carried out in accordance with that section in relation to the person by an employer-related body approved by the Minister within the period of 12 months immediately preceding the employment of the person by the employer, and	11 12 13 14 15
(b)	the background checking procedures were carried out in respect of a decision by the same or another employer to employ the person in the same kind of primary child-related employment.	16 17 18 19
[43]	Section 38 Notification of information relating to relevant criminal records or other orders	20 21
	Omit “on their behalf” from section 38 (2).	22
[44]	Section 38 (5)	23
	Insert after section 38 (4):	24
(5)	Information may be disclosed under subsections (1) and (2) to and by an employer (or employer-related body) situated outside New South Wales and approved by the Minister.	25 26 27
[45]	Section 39 Duties of employers with respect to relevant employment proceedings	28 29
	Omit section 39 (1). Insert instead:	30
(1)	It is the duty of an employer to notify the Commission of the name and other identifying particulars of any employee against whom relevant employment proceedings have been completed by the employer, other than proceedings:	31 32 33 34
(a)	in which a finding is made that the alleged reportable conduct, or the alleged commission of an act of violence, did not occur, or	35 36 37

	(b) in which a finding is made that the allegations in respect of which the proceedings were brought were vexatious or misconceived.	1 2 3
	(1A) For the purposes of subsection (1), employment proceedings are taken to be completed by an employer if the employer has determined the proceedings, whether or not any right of appeal or review has been exercised or exhausted.	4 5 6 7
[46]	Section 40 Duties of employers to notify Commission of rejected applicant in connection with background checking	8 9
	Omit “a risk assessment” from section 40 (1).	10
	Insert instead “an estimate of risk”.	11
[47]	Section 41	12
	Omit sections 41 and 42. Insert instead:	13
	41 Enforcement notices	14
	(1) The Commission may, by notice in writing served on an employer, require the employer to comply with obligations of the employer under section 37, 39 or 40 within the period specified in the notice.	15 16 17 18
	(2) The Commission may serve a notice on an employer under this section if it is of the opinion that the employer has failed to comply with any provision of section 37, 39 or 40.	19 20 21
	(3) The notice must set out the reasons for the notice being given.	22
	(4) The period specified in a notice is to be not less than 28 days.	23
	(5) The Commission may revoke a notice at any time.	24
	(6) A person who fails, without reasonable excuse, to comply with a notice in force under this section is guilty of an offence. Maximum penalty: 50 penalty units, or imprisonment for 6 months, or both.	25 26 27 28
	(7) In any proceedings for an offence against this section, the onus of proving that a person had a reasonable excuse lies with the defendant.	29 30 31

[48] Section 43A	1
Insert after section 43:	2
43A Rectification or withdrawals of notifications	3
(1) An employer may amend or withdraw a notification to the Commission under section 39 or 40 if the employer determines that the notification was incorrect or wrongly made.	4 5 6
(2) An amendment or withdrawal of a notification is to be in the form directed by the Commission.	7 8
[49] Section 44 Effect of Division on other rights and procedures	9
Omit “Employment screening” from section 44 (1).	10
Insert instead “Background checking”.	11
[50] Section 45 Staged implementation of duties under Part	12
Omit the section.	13
[51] Sections 48A and 48B	14
Insert after section 48:	15
48A Protection of persons relating to child-related employment	16
(1) Anything done by a person in good faith and with reasonable care:	17 18
(a) for the purpose of background checking, or	19
(b) for the purpose of exercising a function under Part 7,	20
does not subject the person to any action, liability, claim or demand.	21 22
(2) Without limiting subsection (1):	23
(a) a person has qualified privilege in proceedings for defamation in respect of anything done by the person for the purposes of background checking or exercising a function under Part 7, and	24 25 26 27
(b) damages or compensation (whether for breach of contract or otherwise) are not payable in respect of a decision not to employ a person as a result of an estimate of risk carried out in good faith and with reasonable care for the purposes of background checking or an application for an order under Subdivision 2 of Division 2 of Part 7.	28 29 30 31 32 33
(3) This section does not limit or affect any other right, privilege or immunity that a person has as a defendant in any proceedings.	34 35

48B Unauthorised disclosure or dishonest collection of information 1

- (1) A person who discloses any information obtained by the person in connection with background checking or the exercise of functions under Part 7 is guilty of an offence unless the disclosure: 2
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- (a) is made in good faith for the purposes of background checking or the exercise of a function under Part 7, or 6
7
- (b) is made with the consent of the person to whom the information relates, or 8
9
- (c) is ordered by a court, or any other body or person exercising judicial functions, for the purposes of the hearing or determination by the court, body or person of any matter, or 10
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- (d) is made with other lawful excuse. 14
- (2) A person who dishonestly obtains confidential information relating to background checking or the exercise of functions under Part 7 is guilty of an offence. 15
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17
Maximum penalty: 50 penalty units or imprisonment for 6 months, or both. 18
19

[52] Section 49 Proceedings for offences 20

Insert at the end of section 49: 21

- (2) Despite any other law, proceedings for an offence under this Act must be commenced not later than 2 years from when the offence was alleged to have been committed. 22
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[53] Section 52 25

Insert after section 51: 26

52 Relationship with other Acts and laws 27

- (1) A prohibition on employment under this Act prevails to the extent of any inconsistency between it and any other Act or law. 28
29
- (2) The Industrial Relations Commission or any other court or tribunal does not have jurisdiction under any Act or law to order the re-instatement or re-employment of a person or employee contrary to a prohibition on employment imposed by this Act, or to order the payment of damages or compensation for any removal from employment in accordance with this Act. 30
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[54] Section 53 Review of Act	1
Omit section 53 (2). Insert instead:	2
(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the <i>Commission for Children and Young People Amendment Act 2005</i> .	3 4 5
[55] Schedule 3 Savings, transitional and other provisions	6
Insert at the end of clause 1 (1):	7
<i>Commission for Children and Young People Amendment Act 2005</i>	8 9
[56] Schedule 3, Part 5	10
Insert after Part 4:	11
Part 5 Provisions consequent on enactment of Commission for Children and Young People Amendment Act 2005	12 13 14
7 Definitions	15
(1) In this Part:	16
<i>amending Act</i> means the <i>Commission for Children and Young People Amendment Act 2005</i> .	17 18
<i>repealed Act</i> means the <i>Child Protection (Prohibited Employment) Act 1998</i> .	19 20
(2) Words and expressions used in this Part have the same meanings as they have in Part 7 of this Act, as amended by the amending Act.	21 22 23
8 Persons convicted of child-related personal violence offences	24
(1) A person who was, immediately before the commencement of this clause, employed in child-related employment and who had previously been convicted of a child-related personal violence offence does not commit an offence under Part 7 of this Act by remaining in that employment.	25 26 27 28 29
(2) An employer who continues to employ a person referred to in subclause (1) is not guilty of an offence under Part 7 of this Act.	30 31

(3)	However, a person referred to in subclause (1) is a prohibited person in relation to the conviction for the child-related personal violence offence for the purposes of any child-related employment (subject to Subdivision 2 of Division 2 of Part 7) commencing after the commencement of this clause.	1 2 3 4 5
9	Existing declarations	6
(1)	An order made under the repealed Act, and in force immediately before the repeal of that Act, continues in force and is taken to have been made under Division 2 of Part 7.	7 8 9
(2)	Subclause (1) has effect whether or not the prohibited person the subject of the order is a person in respect of whom an order may be made under that Division.	10 11 12
10	Review of existing orders	13
	Section 33M, as inserted by the amending Act, applies in respect of orders made under the repealed Act and in force immediately before the commencement of that section.	14 15 16
11	General savings	17
(1)	Anything of a kind required or permitted to be done by or under a provision of Division 2 of Part 7 of this Act, as inserted by the amending Act, that was required or permitted to be done under a corresponding provision of the repealed Act and that still had effect immediately before its repeal continues in effect on or after that repeal as if:	18 19 20 21 22 23
(a)	Division 2 of Part 7 of this Act had been in force when it was done, and	24 25
(b)	it had been done by or under the corresponding provision of Division 2 of Part 7 of this Act.	26 27
(2)	The repeal of the repealed Act does not affect the operation of the repealed Act to the extent that it provided that a person was not liable for an offence under that Act.	28 29 30

Schedule 2	Amendment of other Acts	1
	(Section 4)	2
2.1	Administrative Decisions Tribunal Act 1997 No 76	3
	Schedule 2 Composition and functions of Divisions	4
	Omit “ <i>Child Protection (Prohibited Employment) Act 1998</i> ” from clause 2 of Division 2 of Part 1.	5 6
	Insert instead “ <i>Commission for Children and Young People Act 1998</i> ”.	7
2.2	Child Protection (Offenders Registration) Act 2000 No 42	8
	Section 9 Relevant personal information to be reported	9
	Omit “ <i>Child Protection (Prohibited Employment) Act 1998</i> ” from section 9 (3).	10 11
	Insert instead “ <i>Commission for Children and Young People Act 1998</i> ”.	12
2.3	Education Act 1990 No 8	13
	Section 47 Registration requirements for non-government schools	14
	Omit “the <i>Child Protection (Prohibited Employment) Act 1998</i> ” from section 47 (g) (ii).	15 16
	Insert instead “Division 2 of Part 7 of the <i>Commission for Children and Young People Act 1998</i> ”.	17 18
2.4	Industrial Relations Act 1996 No 17	19
	Section 164A Powers of Commission as to disclosure of matters before the Commission	20 21
	Omit “the <i>Child Protection (Prohibited Employment) Act 1998</i> ” from section 164A (3) (a).	22 23
	Insert instead “Subdivision 2 of Division 2 of Part 7 of the <i>Commission for Children and Young People Act 1998</i> ”.	24 25

2.5 Institute of Teachers Act 2004 No 65	1
Section 24 General grounds for revocation of accreditation	2
Omit “the <i>Child Protection (Prohibited Employment) Act 1998</i> ” from section 24 (b) (ii).	3
Insert instead “Division 2 of Part 7 of the <i>Commission for Children and Young People Act 1998</i> ”.	4
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