



New South Wales

Commission for Children and Young People Amendment Bill 2009

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* to give effect to a COAG decision to enable the exchange of information between the States and Territories about the criminal history of persons who work or wish to work with children, and for that purpose:

- (a) to enable the Commissioner of Police to disclose information relating to criminal histories to Commonwealth and interstate law enforcement agencies and employment screening agencies of other States and Territories, and
- (b) to make a consequential amendment to the *Criminal Records Act 1991*.

The Bill also makes statute law revision amendments.

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.

Schedule 1 Amendment of Commission for Children and Young People Act 1998 No 146

Schedule 1 [6] inserts proposed section 38A into the *Commission for Children and Young People Act 1998*. The proposed section enables the Commissioner of Police to disclose information about the criminal history of persons for the purposes of child-related employment screening to CrimTrac, the police forces of the Commonwealth or other States or Territories and specified employment screening agencies of other States or Territories. Such information may then be disclosed to the employment screening agencies. The Commissioner of Police may also disclose, or arrange for the disclosure of, information about the circumstances of offences or alleged offences to be disclosed to the employment screening agencies. The power to provide this additional information will only have effect for a period of 12 months but may be extended by the regulations. **Schedule 1 [5]** makes a consequential amendment.

Schedule 1 [7] makes it clear that interstate child-related employment screening and related disclosures, as effected by proposed section 38A, may be carried out despite any other Act or law to the contrary.

Schedule 1 [1]–[4] and [8]–[10] update references to Government bodies and employees.

Schedule 1 [11] enables regulations providing for savings and transitional matters to be made consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Criminal Records Act 1991 No 8

Schedule 2 makes it a defence to the offence of disclosing information about a spent conviction, quashed conviction or pardon if the disclosure was made in accordance with proposed section 38A of the *Commission for Children and Young People Act 1998*.

First print



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New South Wales

Commission for Children and Young People Amendment Bill 2009

No. , 2009

A Bill for

An Act to amend the *Commission for Children and Young People Act 1998* and the *Criminal Records Act 1991* with respect to the disclosure of information relating to criminal history; 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 2009</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6

Schedule 1	Amendment of Commission for Children and Young People Act 1998 No 146	1
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[1] Section 15 Referral of matters to police and other investigative agencies		3
	Omit “Department of Community Services” from section 15 (2).	4
	Insert instead “Department of Human Services”.	5
[2] Section 15A Reports under Children and Young Persons (Care and Protection) Act 1998		6
	Omit “Department of Community Services” from section 15A (1).	7
	Insert instead “Department of Human Services”.	8
[3] Section 33 Definitions		9
	Omit “Department of Community Services” from section 33 (3).	10
	Insert instead “Department of Human Services”.	11
[4] Section 38 Notification of information relating to relevant criminal records or other orders		12
	Omit “Police Service” from section 38 (1). Insert instead “NSW Police Force”.	13
[5] Section 38 (5)		14
	Omit the subsection.	15
[6] Section 38A		16
	Insert after section 38:	17
38A Notification of information relating to criminal history for interstate child-related employment screening		18
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(1)	The Commissioner of Police may disclose (or arrange for a member of the NSW Police Force to disclose) information relating to any criminal history of persons to the following persons for the purposes of interstate child-related employment screening:	20
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(a)	CrimTrac,	22
(b)	a police force or service of the Commonwealth or another State or Territory,	23
(c)	an approved interstate screening agency.	24
(2)	A person to whom information is disclosed under subsection (1) may disclose that information to an approved interstate screening	25
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	agency for the purposes of interstate child-related employment screening undertaken by the agency.	1 2
(3)	The Commissioner of Police may disclose (or arrange for a member of the NSW Police Force to disclose) to an approved interstate screening agency, at the request of the agency, information relating to the circumstances of an offence or alleged offence disclosed under this section for the purposes of interstate child-related employment screening.	3 4 5 6 7 8
(4)	Subsection (3) applies:	9
	(a) for the period of 12 months after the commencement of this section, or	10 11
	(b) for such further period or periods as may be prescribed by the regulations.	12 13
(5)	Information that may be disclosed under this section includes:	14
	(a) information relating to convictions, including spent convictions, quashed convictions and offences for which a pardon has been given, despite anything to the contrary in the <i>Criminal Records Act 1991</i> ,	15 16 17 18
	(b) information relating to criminal charges, whether heard or not heard, proven, dismissed, withdrawn or discharged,	19 20
	(c) information relating to offences, despite anything to the contrary in section 579 of the <i>Crimes Act 1900</i> .	21 22
(6)	This section does not limit the persons to whom, or the circumstances in which, information relating to the criminal history, including the criminal record of persons, may be disclosed apart from this Act.	23 24 25 26
(7)	In this section:	27
	<i>approved interstate screening agency</i> means:	28
	(a) a person or body prescribed by the regulations, or	29
	(b) a body that is authorised under a law of the Commonwealth, another State or a Territory to conduct interstate child-related employment screening and is approved by the Minister for the purposes of this section.	30 31 32 33
	<i>interstate child-related employment screening</i> means using information about persons who work, or seek to work with children, in a way that is authorised or required under a law of the Commonwealth, another State or a Territory, for the purpose of estimating the risk to the safety of children posed by any such person if working with children.	34 35 36 37 38 39

[7] Section 44 Effect of Division on other rights and procedures	1
Insert “or interstate child-related employment screening (as referred to in section 38A)” after “Background checking” in section 44 (1).	2 3
[8] Section 45C Composition of the Team	4
Omit “Department of Community Services” from section 45C (2) (a).	5
Insert instead “Department of Human Services”.	6
[9] Section 45C (2) (e)–(g)	7
Omit the paragraphs. Insert instead:	8
(e) the Department of Justice and Attorney General,	9
(f) the Office of the NSW State Coroner, within the Department of Justice and Attorney General,	10 11
(g) Ageing, Disability and Home Care, within the Department of Human Services.	12 13
[10] Section 45U Confidentiality of information	14
Omit “Community Services” from section 45U (1) (c) (ii).	15
Insert instead “Human Services”.	16
[11] Schedule 3 Savings, transitional and other provisions	17
Insert at the end of clause 1 (1):	18
<i>Commission for Children and Young People Amendment Act 2009</i>	19 20

**Schedule 2 Amendment of Criminal Records Act
1991 No 8**

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**Section 13 Unlawful disclosure of information concerning spent
convictions**

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Insert “or 38A” after “section 38” in section 13 (4A).

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