

[Act 1998 No 147]



New South Wales

Child Protection (Prohibited Employment) Bill 1998 (No 3)

Explanatory note

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

This Bill is cognate with the *Commission for Children and Young People Bill 1998 (No 2)*.

Overview of Bill

The objects of this Bill are:

- (a) to prohibit the employment of a person who has been convicted of a serious sex offence (a "prohibited person") in child-related employment. and
- (b) to require an employer to seek a disclosure from a person as to whether the person is a prohibited person when employing a person in child-related employment.

* Amended in committee—see table at end of volume.

Outline of provisions

Part 1 Preliminary

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 defines certain words and expressions used in the proposed Act. In particular, *child-related employment* is defined as meaning any employment of a kind specified in the definition that primarily involves direct unsupervised contact with children. The employment specified includes, for example, employment in schools, child care centres and detention centres.

Employment is defined as the performance of work under a contract of employment, as a self-employed person or as a subcontractor, the performance of work as a volunteer for an organisation and the undertaking of practical training as part of an educational or vocational course.

Employer includes a person who, in the course of a business, arranges for the placement of a person in employment with others and a person who engages a person under a contract to perform work.

Clause 4 provides an exemption from the provisions of the proposed Act in circumstances where the employment concerned involves only children or relatives of the prohibited person or of the prohibited person's spouse, or involves only children or relatives of the employer or of the employer's spouse and the prohibited person is a relative of the employer or of the employer's spouse.

The clause also provides an exemption from the provisions of the proposed Act requiring an employer to request a disclosure of whether a prospective employee in child-related employment is a prohibited person if the employment concerned involves only children or relatives of the employer or of the employer's spouse.

Clause 5 defines the expression *prohibited person* for the purposes of the proposed Act. That expression means a person who has, whether before or after the commencement of the proposed Act, been found guilty by a court of a serious sex offence. *Serious sex offence* is defined as meaning an offence involving sexual activity or acts of indecency punishable in New South Wales by penal servitude or imprisonment of 12 months or more. The expression also includes such offences committed outside New South Wales, offences relating to child prostitution and child pornography and other prescribed offences.

Part 2 Offences

Clause 6 makes it an offence for a prohibited person to apply for, undertake or remain in child-related employment. During the period of 3 months from the commencement of the proposed Act, a prohibited person (other than a self-employed person) who is in child-related employment at that commencement does not commit an offence by remaining in that employment if the person discloses to the employer, within 1 month after that commencement, that the person is a prohibited person and complies with any requirement of the employer concerning unsupervised contact with children during that 3-month period. During the period of 3 months from the commencement of the proposed Act, a prohibited person who is a self-employed person and is in child-related employment at that commencement does not commit an offence by remaining in that employment if the person takes all reasonable steps available in the circumstances to prevent or restrict himself or herself from having unsupervised contact with children during that 3-month period.

Clause 7 makes it an offence for an employer to employ a person in child-related employment without requiring the person to disclose whether or not he or she is a prohibited person. An employer is required to obtain that disclosure, within 6 months after the commencement of the proposed Act, from an employee in child-related employment at that commencement, but is exempt from this requirement if he or she has carried out an official criminal record check on the person within the period of 2 years preceding that commencement. A person in child-related employment at the commencement of the proposed Act is guilty of an offence for failing to disclose, within 1 month of receiving notice to do so by the person's employer, whether or not he or she is a prohibited person. A person is guilty of an offence for making any false statement in a disclosure under the proposed Act.

The clause makes it clear that there is no need for a person to make a disclosure if the person ceases to engage in the child-related employment concerned within 1 month of being required to make the disclosure.

Clause 8 makes it an offence for an employer to commence employing, or continue to employ, in child-related employment a person that the employer knows is a prohibited person. A period of 3 months is allowed from the commencement of the proposed Act before this offence operates. However, during that time the employer must take all reasonable steps available in the circumstances to prevent or restrict the prohibited person from having unsupervised contact with children.

Part 3 Exemptions by declaration

Clause 9 enables the Administrative Decisions Tribunal and, in certain cases, the Industrial Relations Commission to make an order declaring, on application by a prohibited person, that the proposed Act is not to apply to the person in relation to a specific offence. Such an order must not be made unless the tribunal is satisfied that the person concerned does not pose a risk to the safety of children. The tribunal may place conditions on such an order. The Commission for Children and Young People is to be a party to any proceedings for an order. If an order is refused, a prohibited person may not apply again for such an order until 5 years has elapsed from the date of the tribunal's refusal.

Part 4 Miscellaneous

Clause 10 makes it clear that the proposed Act does not prevent a prohibited person from being transferred by an employer to employment that is not child-related employment.

Clause 11 provides that the proposed Act binds the Crown.

Clause 12 provides that the proposed Act prevails over any other Act or law to the extent of any inconsistency and makes it clear that the Industrial Relations Commission or any other court or tribunal has no jurisdiction to order the re-instatement, re-employment or compensation of a person as a result of the person being removed from employment in accordance with the proposed Act.

Clause 13 provides for proceedings for offences under the proposed Act or regulations to be brought before a Local Court constituted by a Magistrate sitting alone.

Clause 14 provides for proceedings for offences in relation to officers of corporations.

Clause 15 enables regulations to be made for the purposes of the proposed Act.

Clause 16 requires the Minister to review the operation of the proposed Act within 5 years of the date of assent to the proposed Act.