



New South Wales

# Child Protection Legislation Amendment Bill 2003

## Explanatory note

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

## Overview of Bill

The object of this Bill is to improve the operation of the following child protection legislation by clarifying the reportable conduct of employees under that legislation:

- (a) Part 3A of the *Ombudsman Act 1974* (which relates to notification to and monitoring by the Ombudsman of disciplinary proceedings against employees of government and certain non-government agencies),
- (b) Part 7 of the *Commission for Children and Young People Act 1998* (which relates to employment screening for child-related employment).

The Bill gives effect to the recommendations of a Government review into the impact of that legislation, particularly in connection with the work of teachers.

## 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 *Ombudsman Act 1974* and the *Commission for Children and Young People Act 1998* set out in Schedules 1 and 2.

## **Schedule 1 Amendment of Ombudsman Act 1974**

Part 3A of the *Ombudsman Act 1974* provides for the notification to the Ombudsman of “child abuse allegations” and “child abuse convictions” against employees of designated government or non-government agencies that have children in their care and for the monitoring by the Ombudsman of investigations and the results of investigations into those matters.

**Schedule 1 [1] and [2]** replace the definition of *child abuse* and related definitions based on child abuse with a definition of *reportable conduct* and related definitions based on reportable conduct. The replacement definitions maintain the principal elements of the existing definitions, namely, any child-related sexual offences or misconduct, any assault, ill-treatment or neglect of a child and any behaviour that causes psychological harm to a child. However, specific provision is made:

- (a) to exclude conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards, and
- (b) to confirm the authority of the Ombudsman to exempt any class or kind of conduct from being reportable conduct.

Examples of conduct that would not constitute *reportable conduct* include (without limitation) touching a child in order to attract a child’s attention, to guide a child or to comfort a distressed child; a school teacher raising his or her voice in order to attract attention or to restore order in the classroom; and conduct that is established to be accidental.

**Schedule 1 [3] and [4]** make consequential amendments.

**Schedule 1 [5] and [6]** restate, and extend to all the relevant provisions of Part 3A of the Principal Act, the authority of the Ombudsman to exempt any class or kind of conduct from being reportable conduct.

**Schedule 1 [7]** authorises the making of savings and transitional regulations consequent on the enactment of the proposed Act.

**Schedule 1 [8]** provides that the amendments extend to matters arising before the commencement of the amendments, but not so as to affect action taken with respect to a matter notified to the Ombudsman before that commencement.

## **Schedule 2 Amendment of Commission for Children and Young People Act 1998**

Part 7 of the *Commission for Children and Young People Act 1998* provides for employment screening for child-related employment administered by the Commission and other agencies. As part of that process, the Commission is required to be notified of relevant criminal records and disciplinary proceedings involving child abuse, sexual misconduct and acts of violence by employees. In the case of disciplinary proceedings, the regulations under that Act have limited notifiable sexual misconduct to conduct against, with or in the presence of children.

**Schedule 2 [1]–[3]** make similar amendments to those proposed to the *Ombudsman Act 1974* with respect to replacing the definition of *child abuse* with a definition of *reportable conduct* in order to promote consistency in dealing with these matters. In this case the exemption of conduct of a class or kind from reportable conduct will be effected by the guidelines for employment screening under section 35 of the Principal Act. The amendments do not affect the current obligation with respect to the notification of criminal records relating to adult sexual offences for the purposes of employment screening.

**Schedule 2 [4]–[6]** make consequential changes to the current definition of *relevant disciplinary proceedings* and replace that expression with *relevant employment proceedings*.

**Schedule 2 [7]** alters the duties of employers to report on completed relevant employment proceedings by removing the obligation to report a finding that reportable conduct, or an act of violence, did not occur.

**Schedule 2 [8]** authorises the making of savings and transitional regulations consequent on the enactment of the proposed Act.

**Schedule 2 [9]** provides that the amendments extend to matters arising before the commencement of the amendments, but not so as to affect action taken by the Commission or employers (or any employment screening) in relation to matters notified to the Commission before that commencement.

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# Child Protection Legislation Amendment Bill 2003

No. , 2003

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## A Bill for

An Act to amend the *Ombudsman Act 1974* and the *Commission for Children and Young People Act 1998* with respect to child protection.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Child Protection Legislation Amendment Act 2003*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of child protection legislation**

- (1) The *Ombudsman Act 1974* is amended as set out in Schedule 1.
- (2) The *Commission for Children and Young People Act 1998* is amended as set out in Schedule 2.



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## Schedule 1 Amendment of Ombudsman Act 1974 No 68

(Section 3 (1))

### [1] Section 25A Definitions

Omit the definitions of *child abuse*, *child abuse allegation* and *child abuse conviction* from section 25A (1).

### [2] Section 25A (1)

Insert in alphabetical order:

***reportable conduct*** means:

- (a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence), or
- (b) any assault, ill-treatment or neglect of a child, or
- (c) any behaviour that causes psychological harm to a child,

whether or not, in any case, with the consent of the child.  
Reportable conduct does not extend to:

- (a) conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards, or
- (b) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.

**Note.** Examples of conduct that would not constitute ***reportable conduct*** include (without limitation) touching a child in order to attract a child's attention, to guide a child or to comfort a distressed child; a school teacher raising his or her voice in order to attract attention or to restore order in the classroom; and conduct that is established to be accidental.

***reportable allegation*** means an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct.

***reportable conviction*** means a conviction (including a finding of guilt without the court proceeding to a conviction), in this State or elsewhere, of an offence involving reportable conduct.

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<b>[3] Sections 25A (3), 25B (1) (b), 25C, 25E, 25F and 25G and Schedule 1, clause 12 (d)</b>	1 2
Omit “child abuse allegation”, “child abuse allegations”, “child abuse conviction” and “child abuse convictions” wherever occurring.	3 4
Insert instead, respectively, “reportable allegation”, “reportable allegations”, “reportable conviction” and “reportable convictions”.	5 6
<b>[4] Sections 25B (1) (a), 25D and 25I</b>	7
Omit “child abuse” wherever occurring.	8
Insert instead “reportable conduct”.	9
<b>[5] Section 25C Reporting of allegations or convictions to Ombudsman</b>	10 11
Omit section 25C (4).	12
<b>[6] Section 25CA</b>	13
Insert after section 25C:	14
<b>25CA Ombudsman may exempt conduct from reporting</b>	15
(1) The Ombudsman may exempt any class or kind of conduct of employees of an agency from being reportable conduct.	16 17
(2) The Ombudsman is to notify the agency concerned of any such exemption.	18 19
<b>[7] Schedule 2 Savings and transitional provisions</b>	20
Insert at the end of clause 1 (1):	21
<i>Child Protection Legislation Amendment Act 2003</i>	22
<b>[8] Schedule 2, clause 3</b>	23
Insert after clause 2:	24
<b>3 Child Protection Legislation Amendment Act 2003</b>	25
Subject to any regulations under clause 1, the amendments made to this Act by the <i>Child Protection Legislation Amendment Act 2003</i> extend to matters arising before the commencement of those amendments, but do not affect any	26 27 28 29 30

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action that is or has been taken by the Ombudsman, or by the head or any employee of an agency, in relation to a matter notified to the Ombudsman before that commencement.

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<b>Schedule 2 Amendment of Commission for Children and Young People Act 1998 No 146</b>	1
(Section 3 (2))	2
<b>[1] Section 33 Definitions</b>	3
Omit the definition of <i>child abuse</i> from section 33 (1).	4
<b>[2] Section 33 (1), definition of “reportable conduct”</b>	5
Insert in alphabetical order:	6
<i>reportable conduct</i> means:	7
(a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence), or	8
(b) any assault, ill-treatment or neglect of a child, or	9
(c) any behaviour that causes psychological harm to a child,	10
whether or not, in any case, with the consent of the child.	11
Reportable conduct does not extend to:	12
(a) conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards, or	13
(b) conduct of a class or kind that is exempted from being reportable conduct by the guidelines under section 35.	14
<b>Note.</b> Examples of conduct that would not constitute <i>reportable conduct</i> include (without limitation) touching a child in order to attract a child’s attention, to guide a child or to comfort a distressed child; a school teacher raising his or her voice in order to attract attention or to restore order in the classroom; and conduct that is established to be accidental.	15
<b>[3] Section 33 (1), definition of “relevant criminal record”</b>	16
Omit “an offence involving sexual activity, acts of indecency, child abuse or child pornography”.	17
Insert instead “an offence involving reportable conduct or any sexual offence”.	18

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<b>[4] Section 33 (1), definition of “relevant employment proceedings”</b>	1
Omit the definition of <i>relevant disciplinary proceedings</i> .	2
Insert in alphabetical order:	3
<i>relevant employment proceedings</i> means (subject to subsection (2)) disciplinary proceedings (in this State or elsewhere) against an employee by the employer or by a professional or other body that supervises the professional conduct of the employee, being proceedings involving:	4
(a) reportable conduct by the employee, or	5
(b) an act of violence committed by the employee in the course of employment and in the presence of a child.	6
<b>[5] Sections 33 (2), 34, 36 (1) and 43</b>	7
Omit “relevant disciplinary proceedings” wherever occurring.	8
Insert instead “relevant employment proceedings”.	9
<b>[6] Section 33 (4)</b>	10
Omit “ <i>relevant disciplinary proceedings</i> ”.	11
Insert instead “ <i>relevant employment proceedings</i> ”.	12
<b>[7] Section 39 Duties of employers with respect to relevant employment proceedings</b>	13
Omit “any employee against whom relevant disciplinary proceedings have been completed by the employer (irrespective of the finding in those proceedings)” from section 39 (1).	14
Insert instead “any employee against whom relevant employment proceedings have been completed by the employer (other than proceedings in which a finding is made that the alleged reportable conduct, or the alleged commission of an act of violence, did not occur)”.	15
<b>[8] Schedule 3 Savings, transitional and other provisions</b>	16
Insert at the end of clause 1 (1):	17
<i>Child Protection Legislation Amendment Act 2003</i>	18

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<b>[9] Schedule 3, Part 4</b>	1
Insert after Part 3:	2
<b>Part 4      Provisions consequent on Child Protection Legislation Amendment Act 2003</b>	3
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<b>6 Child Protection Legislation Amendment Act 2003</b>	6
Subject to any regulations under clause 1, the amendments made to this Act by the <i>Child Protection Legislation Amendment Act 2003</i> extend to matters arising before the commencement of those amendments, but do not affect any action that is or has been taken by the Commission or by an employer, or to any employment screening, in relation to a matter notified to the Commission before that commencement.	7
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