

Passed by both Houses



New South Wales

Child Protection Legislation Amendment Bill 2003

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2003*



New South Wales

Child Protection Legislation Amendment Bill 2003

Act No , 2003

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

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

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.

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) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or
- (c) 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.

[3] Sections 25A (3), 25B (1) (b), 25C, 25E, 25F and 25G and Schedule 1, clause 12 (d)

Omit “child abuse allegation”, “child abuse allegations”, “child abuse conviction” and “child abuse convictions” wherever occurring.

Insert instead, respectively, “reportable allegation”, “reportable allegations”, “reportable conviction” and “reportable convictions”.

[4] Sections 25B (1) (a), 25D and 25I

Omit “child abuse” wherever occurring.

Insert instead “reportable conduct”.

[5] Section 25C Reporting of allegations or convictions to Ombudsman

Omit section 25C (4).

[6] Section 25CA

Insert after section 25C:

25CA Ombudsman may exempt conduct from reporting

- (1) The Ombudsman may exempt any class or kind of conduct of employees of an agency from being reportable conduct.
- (2) The Ombudsman is to notify the agency concerned of any such exemption.

[7] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

Child Protection Legislation Amendment Act 2003

[8] Schedule 2, clause 3

Insert after clause 2:

3 Child Protection Legislation Amendment Act 2003

Subject to any regulations under clause 1, the amendments made to this Act by the *Child Protection Legislation Amendment Act 2003* extend to matters arising before the commencement of those amendments, but do not affect any 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.

Schedule 2 Amendment of Commission for Children and Young People Act 1998 No 146

(Section 3 (2))

[1] Section 33 Definitions

Omit the definition of *child abuse* from section 33 (1).

[2] Section 33 (1), definition of “reportable conduct”

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) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the employer is an agency to which Part 3A of the *Ombudsman Act 1974* applies and the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or
- (c) conduct of a class or kind that is exempted from being reportable conduct by the guidelines under section 35.

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.

[3] Section 33 (1), definition of “relevant criminal record”

Omit “an offence involving sexual activity, acts of indecency, child abuse or child pornography”.

Insert instead “an offence involving reportable conduct or any sexual offence”.

[4] Section 33 (1), definition of “relevant employment proceedings”

Omit the definition of *relevant disciplinary proceedings*.

Insert in alphabetical order:

relevant employment proceedings 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:

- (a) reportable conduct by the employee, or
- (b) an act of violence committed by the employee in the course of employment and in the presence of a child.

[5] Sections 33 (2), 34, 36 (1) and 43

Omit “relevant disciplinary proceedings” wherever occurring.

Insert instead “relevant employment proceedings”.

[6] Section 33 (4)

Omit “*relevant disciplinary proceedings*”.

Insert instead “*relevant employment proceedings*”.

[7] Section 39 Duties of employers with respect to relevant employment proceedings

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).

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)”.

[8] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Child Protection Legislation Amendment Act 2003

[9] Schedule 3, Part 4

Insert after Part 3:

**Part 4 Provisions consequent on Child
Protection Legislation Amendment Act
2003**

6 Child Protection Legislation Amendment Act 2003

Subject to any regulations under clause 1, the amendments made to this Act by the *Child Protection Legislation Amendment Act 2003* 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.