

Passed by both Houses



New South Wales

Child Protection Legislation (Registrable Persons) Amendment Bill 2009

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

Legislative Council
2009

Clerk of the Parliaments



New South Wales

Child Protection Legislation (Registrable Persons) Amendment Bill 2009

Act No , 2009

An Act to amend the *Child Protection (Offenders Registration) Act 2000* and the *Child Protection (Offenders Prohibition Orders) Act 2004* to make further provision with respect to registrable persons.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Child Protection Legislation (Registrable Persons) Amendment Act 2009*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1 [1]–[3] commence on a day to be appointed by proclamation.

Schedule 1 Amendment of Child Protection (Offenders Registration) Act 2000 No 42

[1] Section 9 Relevant personal information to be reported

Omit “ages” from section 9 (1) (e). Insert instead “dates of birth”.

[2] Section 11 Registrable person must report changes to relevant personal information

Omit “3 days” from section 11 (1) (a). Insert instead “24 hours”.

[3] Section 11F

Insert after section 11E:

11F Intended change of place where registrable person generally resides

- (1) This section applies if a registrable person intends to change the place where the registrable person generally resides.

Note. This section imposes an additional reporting requirement with respect to residence to that imposed under section 11 (1) (b), which requires a registrable person to report actual (as opposed to intended) changes in the place where the person generally resides.

- (2) At least 14 days before changing the place, the registrable person must report the intended change to the Commissioner of Police and must provide details of:

- (a) the address where the person proposes to generally reside, or
(b) if the person does not intend to reside at particular premises—the name of the locality of the place where the person intends to generally reside.

- (3) If a change in the place at which a person generally resides occurs because of an emergency or other exceptional circumstances arise making it impracticable for the registrable person to report the intended change, it is sufficient compliance with subsection (2) if the registrable person:

- (a) reports the required information to the Commissioner of Police as soon as practicable (but not more than 3 days) after the change occurs, and
(b) provides satisfactory evidence of the circumstances which made it impracticable to report the required information sooner to the Commissioner of Police.

- (4) A registrable person who reports an intended change of place under this section and who subsequently changes the place where he or she generally resides to the place detailed in the report is not required to comply with the reporting obligations imposed by section 11 with respect to that change of place.
- (5) A registrable person who reports an intended change and does not make the change within 14 days after it is reported must report this fact to the Commissioner of Police within 3 days after the end of that 14-day period.

[4] Section 15 Suspension and extension of reporting obligations

Insert after section 15 (2):

- (3) The period for which a registrable person's reporting obligations continue is extended by the length of time for which those obligations are suspended from time to time under subsection (1) (b) if, during the time in which the obligations are suspended, the registrable person:
 - (a) is travelling outside Australia for one month or more or is resident outside Australia, and
 - (b) is not required to report under any corresponding Act.

[5] Section 16 ADT may exempt persons from compliance with reporting obligations

Omit section 16 (1). Insert instead:

- (1) This section applies to a registrable person:
 - (a) who is required to continue to comply with the reporting obligations imposed by this Part for the remainder of his or her life, or
 - (b) whose reporting period has been extended under section 15 (3) (whether or not he or she is a person referred to in paragraph (a)).

[6] Section 16 (2)

Insert "(in the case of a registrable person referred to in subsection (1) (a))" after "If".

[7] Section 16 (3)

Omit "an eligible registrable person".

Insert instead "a registrable person referred to in subsection (2)".

[8] Section 16 (3A)

Insert after section 16 (3):

- (3A) On the application of a registrable person referred to in subsection (1) (b), the Administrative Decisions Tribunal may make an order suspending the registrable person's reporting obligations for the length of time by which the registrable person's reporting period was extended under section 15 (3).

[9] Section 19BA Exemption of certain agencies from privacy protection legislation

Insert after section 19BA (3):

- (3A) For the purposes of avoiding an adverse impact or for developing or giving effect to a case management plan for a registrable person as referred to in subsection (3), the Commissioner of Police may, by written notice served on a scheduled agency, direct the scheduled agency to provide to the Commissioner personal information about the registrable person collected or used by the scheduled agency of the kind described in the notice.
- (3B) The scheduled agency is authorised to disclose, and must disclose, the personal information about the registrable person to the Commissioner of Police.
- (3C) The provision of information under this section in good faith:
- (a) does not give rise to any liability to civil, criminal or disciplinary action, and
 - (b) is not a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.

[10] Section 19BA (5), definition of "personal information"

Omit the definition. Insert instead:

personal information means anything that constitutes personal information for the purposes of the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.

[11] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Child Protection Legislation (Registrable Persons) Amendment Act 2009

[12] **Schedule 2, Part 7**

Insert after Part 6:

**Part 7 Provisions consequent on enactment of
Child Protection Legislation (Registrable
Persons) Amendment Act 2009**

19 Reporting requirements

- (1) In this clause:
amending Act means the *Child Protection Legislation (Registrable Persons) Amendment Act 2009*.
new reporting obligation means any information required to be provided by registrable persons under section 9 (1) (e) or 11F (as amended and inserted, respectively, by the amending Act).
- (2) It is sufficient compliance with a new reporting obligation to report the date of birth of a child if a registrable person who has reported the name and age of a child before the commencement of the amendment to section 9 (1) (e) made by the amending Act reports the date of birth of the child when the registrable person next reports in accordance with this Act after the commencement of the amendment.
- (3) It is sufficient compliance with a new reporting obligation for a registrable person who changes the place where he or she generally resides within 14 days before the insertion of section 11F by the amending Act if the person reports the required information to the Commissioner of Police as soon as possible (but not more than 3 days) after the insertion of that section.
- (4) Section 19BA (3A)–(3C), as inserted by the amending Act, extend to personal information collected or used before the insertion of those subsections.

Schedule 2 Amendment of Child Protection (Offenders Prohibition Orders) Act 2004 No 46

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

contact prohibition order means a contact prohibition order made under section 16C.

[2] Section 15 Appeal does not stay order

Transfer section 15 to Part 3 and insert it (renumbered as section 17A) after section 17.

[3] Part 2A

Insert after Part 2:

Part 2A Contact prohibition orders

16A Definitions

In this Part:

contact means to communicate in person or by any other means (including by post, facsimile, telephone and email or any other form of electronic communication).

contact prohibition order means an order prohibiting a person who is a registrable person in relation to a particular registrable offence from contacting:

- (a) any victim of the registrable offence who is specified in the order, or
- (b) any person who was a co-offender in relation to that registrable offence who is specified in the order.

16B Commissioner of Police may apply for orders

An application may be made by the Commissioner of Police to the Local Court for a contact prohibition order against a registrable person if:

- (a) the Commissioner has reasonable grounds to suspect that the registrable person will seek to contact the victim or co-offender concerned, and

- (b) the registrable person is not subject to, and the Commissioner considers contact cannot be prevented by the making of, any of the following:
 - (i) an extended supervision order under the *Crimes (Serious Sex Offenders) Act 2006*,
 - (ii) a prohibition order under this Act,
 - (iii) any court order prescribed by the regulations, and
- (c) the Commissioner is satisfied that there are sufficient grounds to justify the making of the application.

Note. Part 4 of the *Local Court Act 2007* sets out the procedures for the making and hearing of applications and confers rights of appeal against the granting of contact prohibition orders.

16C Local Court may make contact prohibition order

- (1) The Local Court may make a contact prohibition order if it is satisfied that there are sufficient grounds for making the order.
- (2) The Local Court must specify the term (not exceeding 12 months) of the contact prohibition order.
- (3) A contact prohibition order takes effect:
 - (a) when the order is made, or
 - (b) if it is stayed under section 17A by a court to which an appeal is made but is confirmed on appeal (whether expressly or impliedly)—when it is confirmed.
- (4) This section does not limit the kinds of prohibition or restriction that may be imposed on a registrable person by means of any other order or direction under this Act.

16D Contact prohibition order not to restrict certain contacts

- (1) The persons specified in a contact prohibition order as persons the registrable person must not contact may not include any member of the registrable person's close family.
- (2) Despite subsection (1), a member of the registrable person's close family may be specified in a contact prohibition order if, and only if, the Local Court considers that the following exceptional circumstances exist:
 - (a) if the member of the family concerned was a victim of the registrable offence committed by the registrable person—it would be contrary to the best interests of the victim for contact to occur,

- (b) if the member of the family concerned was a co-offender in relation to the registrable offence committed by the registrable person—there is reasonable cause to believe (having regard to the ongoing nature and pattern of criminal activity of the registrable person) that there is a risk that contact could result in the registrable person being involved with the co-offender in the commission of a further registrable offence.
- (3) In determining the best interests of a victim under subsection (2) (a), the Local Court may take into account any wishes expressed by the victim.
- (4) The Local Court must make a record of its reasons for making an order under subsection (2).
- (5) The failure of the Local Court to comply with subsection (4) does not invalidate the order.
- (6) In this section, a registrable person's *close family* includes:
 - (a) the registrable person's spouse, de facto or same-sex partner, and
 - (b) the registrable person's parents, step-parents and grandparents, and
 - (c) the registrable person's children, step-children and grandchildren, and
 - (d) the registrable person's brothers and sisters, and step-brothers and step-sisters, and
 - (e) the registrable person's guardians or carers, and
 - (f) in the case of a registrable person who is an Aboriginal person or a Torres Strait Islander—persons who are or have been part of the extended family or kin of the registrable person according to the indigenous kinship system of the registrable person's culture.

16E Variation or revocation of contact prohibition orders

- (1) An application may be made to the Local Court by the Commissioner of Police or a person subject to a contact prohibition order for an order varying or revoking a contact prohibition order.

- (2) The application must be accompanied by a copy of the relevant order, together with any variations to it that have been made under this Part.
- (3) A person subject to a contact prohibition order may not make an application except by leave of the Local Court. Leave may be granted only if the Local Court is satisfied that, having regard to changes in the applicant's circumstances since the order was made or last varied, it is in the interests of justice that leave be granted.
- (4) The Local Court may dispose of the application:
 - (a) by varying or revoking the contact prohibition order, or
 - (b) by dismissing the application.
- (5) For the purposes of an application under this section, the *respondent* to an application is:
 - (a) in the case of an application made by the Commissioner of Police—the registrable person subject to the contact prohibition order, and
 - (b) in the case of an application made by a registrable person subject to a contact prohibition order—the Commissioner of Police.

16F Explanation of orders

- (1) If the Local Court makes a contact prohibition order, the Local Court must ensure that all reasonable steps are taken to explain to the registrable person (in language that the registrable person can readily understand):
 - (a) the person's obligations under the order, and
 - (b) the consequences that may follow if the person fails to comply with those obligations.
- (2) An order is not invalidated by a failure to comply with subsection (1).

16G Contravention of contact prohibition order

- (1) A registrable person who is subject to a contact prohibition order must not, without reasonable excuse:
 - (a) contact or attempt to contact any victim or co-offender specified in the order, or

- (b) procure another person to contact or attempt to contact that victim or co-offender.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) Without limiting subsection (1), it is a reasonable excuse for contacting a person in contravention of a contact prohibition order if:
 - (a) the registrable person did so in compliance with an order of a court, or
 - (b) having contacted the person unintentionally, the registrable person immediately terminated the contact, or
 - (c) contact is made with a co-offender while the registrable person was in strict government custody within the meaning of the *Child Protection (Offenders Registration Act) 2000*.
- (3) A police officer may, without a warrant, arrest a person if the police officer suspects on reasonable grounds that the person has committed an offence under this section.
- (4) This section extends to an act contravening this section done outside Australia by a person resident or domiciled in the State.

16H Applications not to be determined in public

- (1) Proceedings for an application under this Part must be heard in the absence of the public.
- (2) Despite subsection (1), the Local Court hearing the proceedings may, if it considers it to be appropriate, permit persons who are not parties to the proceedings or their legal or other representatives to be present during the hearing of the proceedings.

[4] Section 17 Applications for orders against young registrable persons

Insert “or contact prohibition order” after “prohibition order” wherever occurring.

[5] Schedule 2 Savings and transitional provisions

Insert after clause 2:

3 Contact prohibition orders

Part 2A applies to or in respect of a person who was a registrable person immediately before the insertion of that Part.