

Child Protection Legislation Amendment Act 2002 No 98

[2002-98]



New South Wales

Status Information

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill 2005](#)

Authorisation

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Child Protection Legislation Amendment Act 2002 No 98



New South Wales

An Act to amend the *Child Protection (Offenders Registration) Act 2000*, the *Child Protection (Prohibited Employment) Act 1998*, the *Commission for Children and Young People Act 1998* and the *Summary Offences Act 1988* to make further provision with respect to the protection of children; and for other purposes.

1 Name of Act

This Act is the *Child Protection Legislation Amendment Act 2002*.

2 Commencement

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

3 Amendment of *Child Protection (Offenders Registration) Act 2000 No 42*

The *Child Protection (Offenders Registration) Act 2000* is amended as set out in Schedule 1.

4 Amendment of *Child Protection (Prohibited Employment) Act 1998 No 147*

The *Child Protection (Prohibited Employment) Act 1998* is amended as set out in Schedule 2.

5 Amendment of *Commission for Children and Young People Act 1998 No 146*

The *Commission for Children and Young People Act 1998* is amended as set out in Schedule 3.

6 Amendment of *Summary Offences Act 1988 No 25*

The *Summary Offences Act 1988* is amended as set out in Schedule 4.

Schedule 1 Amendment of *Child Protection (Offenders Registration)*

Act 2000

(Section 3)

[1] Section 3 Definitions

Insert after paragraph (b1) of the definition of **Class 1 offence** in section 3 (1):

- (b2) an offence an element of which is an intention to commit an offence referred to in paragraph (a) or (b), or

[2] Section 3 (1)

Insert after paragraph (e) of the definition of **Class 2 offence**:

- (e1) an offence an element of which is an intention to commit an offence referred to in paragraph (a), (b), (c), (d) or (e), or

[3] Section 3 (5)

Insert after section 3 (4):

- (5) For the purposes of this Act, section 579 of the *Crimes Act 1900* does not apply to or in respect of a registrable offence.

[4] Section 12 Manner in which relevant personal information to be given

Omit section 12 (1). Insert instead:

- (1) The information that is required to be given to the Commissioner of Police under this Division is to be given to a police officer:
 - (a) at any police station in the locality in which the registrable person is currently residing, or
 - (b) if a direction is given in accordance with the regulations as to the police station at which the information is to be given, at the police station so directed, or
 - (c) at some other place approved (either generally or in a particular case) by the Commissioner of Police.

[5] Section 12 (3)

Insert at the end of section 12 (3) (b):

, and

- (c) if the information was given at a place other than a police station, the address of the place at which the information was given.

[6] Section 12 (7)

Omit “at a police station”.

[7] Section 21A

Insert after section 21:

21A Certificate evidence

- (1) In proceedings under this Act, a certificate signed by the Commissioner of Police, or a member of NSW Police holding a position designated in writing by the Commissioner of Police for the purposes of this section, certifying that the Register of Offenders:
- (a) at any particular date contained information specified in the certificate, or
 - (b) indicated that, during any particular period, a specified person failed to notify information as required by this Act,
- is evidence (unless evidence to the contrary is adduced) of the particulars certified in the certificate.
- (2) Not more than 3 positions are to be designated at any one time under subsection (1).

[8] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Child Protection Legislation Amendment Act 2002

[9] Schedule 2, clause 2

Insert after clause 1:

2 Registrable offences

- (1) In this clause:

amending Act means the *Child Protection Legislation Amendment Act 2002*.

new registrable person means a person who becomes a registrable person on the commencement of an amendment made by the amending Act because of that amendment.

- (2) The amendments made by Schedule 1 [1], [2] and [3] to the amending Act are taken to have had effect from 15 October 2001.
- (3) A new registrable person is taken to have complied with any reporting obligations the person may have had for the period commencing on 15 October 2001 and ending on the commencement of this clause.
- (4) Division 1 of Part 2 (except section 7) and section 10 (1) do not apply to a new registrable person who is not in government custody at the commencement of this clause.
- (5) A new registrable person who is not in government custody at the commencement of this clause must notify the Commissioner of Police of the relevant personal information within 28 days after the person is given written notice under section 7.
- (6) Division 1 of Part 2 (except sections 6, 7 and 8) and section 10 (1) do not apply to a new registrable person who is in government custody at the commencement of this clause.
- (7) A new registrable person who is in government custody at the commencement of this clause must notify the Commissioner of Police of the relevant personal information within 28 days after the person ceases to be in government custody.
- (8) A reference in:
 - (a) the definition of **reporting obligations** in section 3 (1) to Division 2 of Part 2 includes a reference to this clause, and
 - (b) section 12 (1) to “information that is required to be given to the Commissioner of Police under this Division” includes a reference to information that is required to be given to the Commissioner of Police under this clause.

Schedule 2 Amendment of [Child Protection \(Prohibited Employment\) Act 1998](#)

(Section 4)

[1] Section 5 Prohibited persons

Insert after paragraph (d) of the definition of **serious sex offence** in section 5 (3):

- (d1) an offence an element of which is an intention to commit an offence referred to in paragraph (a), (b) or (d), or

[2] Section 5 (6)

Insert after section 5 (5):

- (6) For the purposes of this Act, section 579 of the *Crimes Act 1900* does not apply to or in respect of a serious sex offence.

[3] Section 8A

Insert before section 9:

8A Commission may make declarations concerning prohibited persons

- (1) On the application of a prohibited person, the Commission for Children and Young People may make an order declaring that this Act is not to apply to the person in respect of a specified offence.
- (2) An application under this section must be made in a form approved by the Commission for Children and Young People.
- (3) The Commission for Children and Young People is not to make an order under this section unless it considers that the person the subject of the proposed order does not pose a risk to the safety of children.
- (4) In deciding whether or not to make an order under this section in relation to a person, the Commission for Children and Young People is to take into account the matters referred to in section 9 (5) (a)–(e) and such other matters as it considers relevant.
- (5) Orders under this section may be made subject to conditions.
- (6) The Commission for Children and Young People is not to make an order under this section that is subject to conditions without the consent in writing of the applicant to the conditions.
- (7) If the Commission for Children and Young People proposes to make an order under this section that is subject to conditions, it is to notify the applicant in writing that:
 - (a) it proposes to make the order subject to the conditions specified in the notification, and
 - (b) the applicant may consent in writing to the making of the order subject to those specified conditions or request the Commission to take no further action, and
 - (c) the Commission will take no further action in relation to the application

unless the applicant has consented in writing to the making of the proposed order subject to the specified conditions, and

- (d) if the applicant does not consent to the making of the order subject to the specified conditions, the applicant may apply under section 9 to the Industrial Relations Commission or the Administrative Decisions Tribunal for an order declaring that this Act is not to apply to the person in respect of a specified offence.
- (8) If the Commission for Children and Young People makes an order under this section, it is to notify the applicant in writing that the Commission has made the order and (if applicable) that the order is subject to the conditions specified in the notification.
- (9) If the Commission for Children and Young People considers that an applicant under this section poses a risk to the safety of children or, for whatever reason, cannot make a decision as to whether the applicant poses such a risk, the Commission is to notify the applicant in writing that:
 - (a) the Commission cannot make an order under this section, and
 - (b) the Commission will take no further action in relation to the application, and
 - (c) the applicant may apply under section 9 to the Industrial Relations Commission or the Administrative Decisions Tribunal for an order declaring that this Act is not to apply to the person in respect of a specified offence.
- (10) On an application under this section, the Commission for Children and Young People may, by order, stay the operation of a prohibition under this Act pending the determination of the matter.
- (11) The Commission for Children and Young People must notify the Commissioner of Police of the terms of any order made under this section.

[4] Section 9 IRC and ADT may make declarations concerning prohibited persons

Insert “, by order,” after “may” in section 9 (6).

[5] Section 9 (8)

Insert “or section 8A” after “application for an order under this section”.

[6] Section 9A

Insert after section 9:

9A Multiple applications not permitted

A person may not make an application under section 8A or 9 if the person has another application pending under either of those sections.

[7] Section 15A

Insert after section 15:

15A Savings, transitional and other provisions

Schedule 1 has effect.

[8] Schedule 1

Insert after section 16:

Schedule 1 Savings, transitional and other provisions

(Section 15A)

Part 1 Preliminary

1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

 this Act

[*Child Protection Legislation Amendment Act 2002*](#)

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of **Child**

Protection Legislation Amendment Act 2002

2 Prohibited persons

- (1) In this clause, **new prohibited person** means a person who becomes a prohibited person on the commencement of an amendment made by the *Child Protection Legislation Amendment Act 2002* to this Act or the *Child Protection (Offenders Registration) Act 2000* because of that amendment.
- (2) Section 6 (3) and (4) apply to and in respect of a person who is a new prohibited person as if:
 - (a) the references in those subsections to “the commencement of this section” and “that commencement” were references to the day on which the person became a new prohibited person, and
 - (b) the words “and who is a prohibited person at that commencement” were omitted.
- (3) Section 7 (2) applies to and in respect of an employee who is a new prohibited person as if the references in that subsection to “the commencement of this subsection” and “that commencement” were references to the day on which the employee became a new prohibited person.
- (4) Section 7 (3) applies to and in respect of an employee who is a new prohibited person as if the reference in that subsection to “the commencement of that subsection” were a reference to the day on which the employee became a new prohibited person.
- (5) Section 8 (2) applies to and in respect of a prohibited person who is a new prohibited person as if the reference in that subsection to “the commencement of this section” were a reference to the day on which the person became a new prohibited person.

Schedule 3 Amendment of Commission for Children and Young People Act 1998

(Section 5)

[1] Section 14A Powers of Commission for Children and Young People to compel production of information

Omit “such a direction” from section 14A (2).

Insert instead “a direction under subsection (1)”.

[2] Section 14A (3)

Insert after section 14A (2):

- (3) For the purpose of determining an application for an order under section 8A of the *Child Protection (Prohibited Employment) Act 1998*, the Commission may, by notice in writing served on an officer of a government agency or any other person, request the officer or other person to send to the Commission, on or before a day specified in the notice, a statement setting out such information as is so specified.
- (4) Any such officer or other person is authorised to provide a statement requested under subsection (3) to the Commission.
- (5) The Commission may request a statement under subsection (3) only if the applicant for the order has consented in writing to the Commission doing so.
- (6) The Commission is to give a copy of every statement referred to in subsection (3) that it receives in relation to an application for an order to the applicant.

[3] Section 33 Definitions

Insert in alphabetical order in section 33 (1):

approved screening agency means the Commission or an employer (or employer-related body) approved by the Minister as referred to in section 37 (4).

[4] Section 33 (1)

Insert “or as the holder of a remunerated position” after “employment” in paragraph (a) of the definition of ***employment***.

[5] Section 33 (1)

Insert “, or an offence an element of which is an intention to commit such an offence, or an offence of attempting, or of conspiracy or incitement, to commit any of the preceding offences” after “child pornography” in the definition of ***relevant criminal record***.

[6] Section 33 (4)

Insert after section 33 (3):

- (4) For the avoidance of doubt, a reference to disciplinary proceedings in the definition of ***relevant disciplinary proceedings*** in subsection (1) includes a reference to the investigation of, and the taking of action in relation to, complaints under Part 8A of the *Police Act 1990* and the taking of action under Part 9 of that Act.

[7] Section 33 (5)

Insert at the end of section 33:

- (5) For the purposes of this Act, section 579 of the *Crimes Act 1900* does not apply to or in respect of an offence referred to in the definition of **relevant criminal record** in subsection (1).

[8] Section 37 Employment screening mandatory for preferred applicants for certain child-related employment

Insert after section (4):

- (4A) An employer is taken to have fulfilled the employer's obligations in relation to carrying out a procedure referred to in section 34 (a) and section 34 (c) (to the extent that it relates to a procedure referred to in section 34 (a)) if:
- (a) the employer engages an approved screening agency to carry out those procedures, and
 - (b) the employer receives the results of carrying out those procedures from that agency.
- (4B) For the purposes of this section, an employer or an approved screening agency need only carry out such of the procedures referred to in section 34 (a) and section 34 (c) (to the extent that it relates to a procedure referred to in section 34 (a)) in relation to an applicant for employment as are required by this Part, and as are able, to be carried out:
- (a) at the time the person is being considered for employment, or
 - (b) if the carrying out of the procedures has been deferred as referred to in subsection (3), at the time those procedures are required to be carried out in accordance with that subsection.

[9] Section 38 Notification of information relating to relevant criminal records or apprehended violence orders

Insert “, or any relevant apprehended violence orders in respect of persons,” after “of persons” in section 38 (1).

[10] Section 38 (3)

Insert at the end of section 38 (3) (b):

, and

- (c) information relating to offences, despite anything to the contrary in section 579 of the *Crimes Act 1900*.

[11] Section 38 (4)

Insert “, or information relating to relevant apprehended violence orders in respect of persons,” after “of persons”.

[12] Section 52A

Insert after section 52:

52A Savings, transitional and other provisions

Schedule 3 has effect.

[13] Schedule 3

Insert after Schedule 2:

Schedule 3 Savings, transitional and other provisions

(Section 52A)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
- this Act
 - Child Protection Legislation Amendment Act 2002*
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date

of its publication.

Part 2 Provisions consequent on enactment of **Child Protection Legislation Amendment Act 2002**

2 Employment screening

- (1) A provision of section 37 (4A) or (4B) applies to and in respect of the screening of an applicant for employment whether occurring before or after the commencement of the provision.
- (2) Section 39 (3) extends to disciplinary proceedings within the meaning of section 33 as amended by Schedule 3 [6] to the *Child Protection Legislation Amendment Act 2002*.

Schedule 4 Amendment of **Summary Offences Act 1988**

(Section 6)

[1] Section 11G Loitering by convicted child sexual offenders near premises frequented by children

Insert after paragraph (c) of the definition of **convicted child sexual offender** in section 11G (2):

- (c1) an offence an element of which is an intention to commit an offence referred to in paragraph (a), (b) or (c),

[2] Section 11G (3)

Insert after section 11G (2):

- (3) For the purposes of this section, section 579 of the *Crimes Act 1900* does not apply to or in respect of an offence referred to in the definition of **convicted child sexual offender** in subsection (2).