



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.

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

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.