

Child Protection (Offender Prohibition Order) Bill 2007

Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable Judy Spence MP

1 Clause 2 (Commencement)

Originally the commencement of the legislation was to be a day fixed by proclamation which was to allow time for the development and implementation of training programs to support police in the enforcement of the new legislation and the establishment of an electronic register. As most of these key deliverables are well on the way to being completed, the commencement date is now 2 June 2008.

2 Clause 16 (Temporary order made by a court)

Formerly this clause allowed the court the discretion of making a temporary order for a respondent. The provision has been changed to require the court to make a decision about whether to make a temporary order for the respondent.

3 After clause 24 – the insertion of clauses 24A, 24B, 24C and 24D

The insertion of these clauses is to allow a magistrate or a court to make a disqualification order against a respondent in cases where a decision is made not to impose a prohibition order, but it is considered that it would not be in the best interests of children for the respondent to be issued with a Blue Card.

24A Making disqualification order instead of temporary order

If an application for a temporary prohibition order is made to a magistrate who decides not to make a temporary order, the magistrate must consider whether it is appropriate to make a disqualification order that states that the

person must not hold a positive notice or apply for a prescribed notice under the *Commission for Children and Young People and Child Guardian Act 2000*. The magistrate may make the disqualification order if it is considered that it would not be in the interests of children for the children's commissioner to issue the respondent with a blue card.

Similarly, if a court is hearing an application for an offender prohibition order and a final order has not been made for the respondent and the court decides not to make a temporary order under section 16, then the court must consider whether it is appropriate to make a disqualification order if it considers that it is not in the interests of children for the person to hold a blue card.

If a disqualification order is made in the absence of the respondent then a copy of the disqualification order must be served by a police officer.

24B Term of a disqualification order

If the person who is subject to a disqualification order is present in court, then it takes effect when it is made. However if the person is not present in court when the disqualification order is made, then the order takes effect when a copy of the order is served on the person.

A disqualification order remains in effect until whichever of the following occurs first:

- if an application for a temporary prohibition order is being heard by a magistrate under section 15 and a disqualification order is made by the magistrate – a proceeding for a final order is not started by the return date and time fixed by the magistrate; or
- if the application for the final order is next mentioned in court and the court does not extend the term of the disqualification order; or
- the prescribed period of 28 days ends; or
- a court decides an application for the final order; or
- the application for the final order is discontinued by the commissioner; or
- the disqualification order is revoked under section 24D.

24C Extending a disqualification order if an application for a final order is adjourned

Section 19 allows for the extension of a temporary order if the application for a final order is adjourned. This provision enables the provisions of section 19 to be applied in relation to a disqualification order as if it were a reference in the section to a temporary order were a reference to the disqualification order and a reference to the respondent were a reference to the person who is subject to the disqualification order.

24D Revoking a disqualification order

An application, under the relevant rules of court, may be made to the court, by the person who is subject to a disqualification order for the order to be revoked. However, the person may only make an application with the leave of the court, unless the disqualification order has been made in the person's absence.

If the court is satisfied that it is in the interests of justice to grant the leave then it may do so, but in deciding the application, the court must give consideration to whether it is in the best interests of children for the children's commissioner to issue the person with a Blue Card. If the court decides to revoke the disqualification order, the revocation takes effect immediately.

4 Clauses 63 to 73

These clauses have been omitted because the development of the *Commission for Children and Young People and Child Guardian and Another Act Amendment Bill 2008* has made them redundant.

5 Schedule (Dictionary)—

A minor amendment is made to subsection (e)(iii) of the definition for "*appearance notices*". Previously, the making of a prohibition order resulted in a Blue Card being cancelled, however, in the case of a temporary order being made the Blue Card is suspended and in the case of a final order being made, it is cancelled.

6 Schedule (Dictionary)—

A definition for “*disqualification order*” is inserted after the definition for “*court*”.

Also, in the definition for “*final order*” the reference to “part 2, division 2” has been omitted.

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