



## CHILD PROTECTION (WORKING WITH CHILDREN) AND OTHER LEGISLATION AMENDMENT BILL 2025

### STATEMENT OF PUBLIC INTEREST

#### Need: Why is the policy needed based on factual evidence and stakeholder input?

The Child Protection (Working with Children) and Other Legislation Amendment Bill 2025 (the **Bill**) amends the *Child Protection (Working with Children) Act 2012* (**WWC Act**) and the *Children (Education and Care Services) National Law NSW* (**National Law**) to clarify that an employer or regulator of a sector may require a working with children check (**WWCC**) clearance as a condition of work. It also puts beyond doubt that workers in early childhood education and care services must hold a WWCC clearance before commencing work.

It makes further amendments the WWC Act to and the National Law to remove the NSW Civil and Administrative Tribunal's (**NCAT**) function to review decisions of the Office of the Children's Guardian (**Children's Guardian**) in relation to a person's WWCC clearance, and decisions of the Early Childhood Education and Care Regulatory Authority's (**ECEC Regulatory Authority**) to give, or refuse to cancel, a prohibition notice. For WWCC clearances, the Bill replaces this external review function with a structured internal review mechanism within the Children's Guardian. The Bill makes similar amendments to the *National Disability Insurance Scheme (Worker Checks) Act 2018* (**NDISWC Act**) to remove NCAT appeal pathways for the Screening Agency's, being the Children's Guardian, decision relating to National Disability Insurance Scheme (**NDIS**) worker checks. Final decision-making on clearances or prohibition orders will now rest with the Children's Guardian (for WWCC and NDIS Worker checks) and the ECEC Regulatory Authority for prohibition notices.

The Bill also amends the *Child Protection (Offender Registration) Amendment Act 2024* (**CPOR Amendment Act**) to provide that a person who is in court when a registrable person order is made against them is taken to be aware they are a registrable person and of their reporting obligations, and to enable the new offence in section 19J of the *Child Protection (Offenders Registration) Act 2000* (**CPOR Act**) to be dealt with by the Local Court. These amendments address two issues identified during implementation work of the CPOR Amendment Act reforms.

Section 3K of the CPOR Act, as inserted by sch 1[17] of the CPOR Amendment Act, provides that a registrable person will be taken to be aware that they are a registrable person and of their reporting obligations when they have been given copies of their registrable person order and notice of reporting obligations by the sentencing court. Agencies have identified that some registrable persons may leave court without going to the court registry to collect these documents, which nullifies the effect of section 3K. The Bill addresses this by providing that a person who is in court when a registrable person order is made is taken to know they are a registrable person and to know their reporting obligations.

The new offence in section 19J of the CPOR Act, as inserted by sch 1[56] of the CPOR 2024 Act, prohibits online gaming by registrable persons on platforms that allow communication with children. The offence is strictly indictable, which means it only be dealt with by the District Court. Other indictable offences in the CPOR Act with equivalent maximum penalties can be dealt with by the Local Court. The Bill amends the CPOR Act and the *Criminal Procedure Act 1986* to enable the new offence to be prosecuted in the Local Court, where appropriate.



### **Objectives: What is the policy's objective couched in terms of the public interest?**

The objective of this Bill is to enhance the integrity, consistency and protective capacity of the NSW WWCC and NDIS worker check schemes, and the ECEC prohibition scheme, which aligns with the public interest to prioritise the safety and wellbeing of children and people with disability. The Bill ensures decisions around risk and suitability are made by specialised statutory authorities, namely the Children's Guardian and the ECEC Regulatory Authority. Importantly, the Bill upholds procedural fairness by establishing an internal review mechanism within the Children's Guardian, providing individuals with an opportunity to seek reconsideration of certain decisions made by the Children's Guardian. In addition to the internal review process, judicial review of the legality of these administrative decisions will continue to be available.

The Bill also seeks to put beyond doubt that a current WWCC clearance is required before a person commences work in education and care services. Amending the National Law puts beyond doubt the policy position of the NSW Early Childhood Education and Care Regulatory Authority that a person must have a clearance to work in early childhood education centres.

The Bill supports the public interest in ensuring that registrable persons are unable to claim they are unaware of their registrable status and reporting obligations and avoid being held accountable for failing to comply with their reporting obligations. The Bill supports the public interest in enabling the new offence in section 19J of the CPOR Act to be dealt with in the Local Court, where appropriate.

### **Options: What alternative policies and mechanisms were considered in advance of the Bill?**

There is no alternative avenue, apart from legislative reform, that will achieve the intended outcome of removing NCAT's functions to review decisions of the Children's Guardian in relation to a person's WWCC or NDIS worker check clearance.

The NSW Government considered a range of alternative approaches to the amendments to the National Law, including strengthening internal procedures, relying on voluntary sector improvements, expanding the existing remit of the ECEC Regulatory Authority, and waiting for national-level harmonisation.

In relation to the amendments to the CPOR Act and the CPOR Amendment Act, postal, email and personal service of registration documentation after the offender leaves court were considered but were concluded to be operationally impracticable. Reporting obligations for registrable persons in the community commence five days after the registrable person order is made. Courts do not have always have up to date details to effect postal or email service and it is operationally impracticable to effect personal service within five days, especially where the registrable person is directed by the court to collect copies of their registration documentation from the court registry. Legislation is the only pathway available to enable the new offence in section 19J of the CPOR Act to be dealt with by the Local Court, where appropriate

### **Analysis: What were the pros/cons and benefits/costs of each option considered?**

Without legislative reform, the current settings will continue to enable NCAT to review decisions made by the Children's Guardian in relation to a person's WWCC or NDIS worker check clearance. This is inconsistent with the policy intent to remove external review of these decisions and ensure that decisions are made, and reconsidered, by the Children's Guardian as the expert on child protection, disability and risk assessment.

With regards to the National Law amendments, while the alternative options to amending the National Law avoided legislative reform, these approaches lacked the urgency, independence, or enforcement strength needed to respond to serious risks and were not sufficient to address systemic issues. Legislative reform was necessary to deliver a clear, accountable regulatory framework to protect children.

The alternative option of effecting service of documents by post, email or personally is provided for in other kinds of legal processes. However, in the CPOR Act context these processes are operationally impracticable. Reporting obligations for registrable persons in the community commence five days after the registrable person order is made. Courts do not always have up to date details to effect postal or email service and it is operationally impracticable to ensure personal service is effected within the five-day period. In addition, it is an unreasonable burden on courts and other agencies to undertake personal service where the registrable person is present in court when the registrable order is made against them and they are directed by the court to collect copies of their registration documentation from the court registry.

**Pathway: What are the timetable and steps for the policy's rollout and who will administer it?**

The Bill will commence on proclamation.

In relation to the amendments to the WWC Act and the NDISWC Act, the Bill incorporates a transitional period to allow current NCAT proceedings to be finalised and internal review processes within the Children's Guardian to be established. The Children's Guardian will be responsible for administering the internal review process established under the Bill.

In relation to the National Law, the Bill is anticipated to have minimal impacts as it legislates the long-held and publicly communicated position of the ECEC Regulatory Authority that a WWCC clearance is required before a person commences work in education and care services. The Department of Education administers the National Law and is the ECEC Regulatory Authority.

The amendments in the Bill relating to the CPOR Act will commence by proclamation at the same time as the CPOR Amendment Act, which will also commence by proclamation. Implementation work for the CPOR Amendment Act is well underway and the NSW Government anticipates that it commences shortly. The Minister for Police and Counter-terrorism will have portfolio responsibility for these amendments.

**Consultation: Were the views of affected stakeholders sought and considered in making the policy?**

The Bill was informed by targeted consultation with key government agency stakeholders, including the Children's Guardian, NCAT, the NSW Police Force, and the Courts and Tribunal Services Division of the Department of Communities and Justice.