



New South Wales

Child Protection (Working with Children) and Other Child Protection Legislation Amendment Bill 2016

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Child Protection (Working with Children) Act 2012* (***the Working with Children Act***) to make provision for the exchange of information relating to working with children clearance checks with relevant bodies in other jurisdictions and other miscellaneous matters relating to clearances and the disclosure and notification of certain information, and
- (b) to amend the *Children and Young Persons (Care and Protection) Act 1998* (***the Care Act***) to make provision for enforceable undertakings, entry without warrant into premises, the issue of penalty notices by certain employees of the Children's Guardian and the production of certain information relating to the employment of children, and
- (c) to amend the *Teaching Service Act 1980* (***the Teaching Act***) and the *Education (School Administrative and Support Staff) Act 1987* (***the Education Act***) to provide that a person whose clearance has been cancelled pending determination of proceedings against the person for an offence, may be suspended or placed on alternative duties, rather than being immediately dismissed.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Child Protection (Working with Children) Act 2012 No 51

Schedule 1 [4] amends section 16 of the Working with Children Act to provide that the Children's Guardian may cancel a clearance if the holder of the clearance fails, without reasonable excuse, to provide further information in relation to the clearance within 3 months of the Children's Guardian requesting the information in accordance with that section.

Schedule 1 [5] substitutes section 24 of the Working with Children Act to require that the holder of a clearance obtain the consent of the Children's Guardian before surrendering the clearance. The Children's Guardian must not consent to the surrender of a clearance if the Children's Guardian is of the opinion that it is likely that there is a risk to the safety of children if the holder were to engage in child-related work.

Schedule 1 [6] makes it clear that a person, whose clearance has been cancelled on the grounds that proceedings have commenced against the person for an offence, is not entitled to make an application for a review or enabling order under Part 4 of the Working with Children Act.

Schedule 1 [7] and [8] amend section 26 (2) of the Working with Children Act to make it clear that a person satisfies the requirements of that provision if they are convicted of an offence in another jurisdiction that would constitute an offence referred to in section 26 (1) of that Act and an order that is equivalent to an order referred to in section 26 (2) of that Act is imposed on the person by a court in another jurisdiction.

Schedule 1 [9] and [10] amend sections 27 and 28, respectively, of the Working with Children Act to make it clear that a person whose clearance has been cancelled (because the person is a disqualified person or otherwise) is entitled to apply for an administrative review of the decision to cancel the clearance or for an enabling order only if the clearance was cancelled under section 23 of that Act.

Schedule 1 [12] amends section 35 of the Working with Children Act to require the notification of findings of misconduct involving children made by a reporting body before 3 July 1995 if a person holding a key position in the organisation has knowledge of a finding made by the organisation. However, a reporting body and a person holding a key position is not required to review or to seek out records created before 3 July 1995, otherwise than in accordance with a direction given by the Children's Guardian. **Schedule 1 [1] and [2]** move the current definition of *key position* from section 9B of the Working with Children Act to section 5 of that Act.

Schedule 1 [13] inserts proposed section 36A to provide for the exchange of certain working with children check information with bodies that grant working with children check clearances in other jurisdictions, provided that the exchange is in accordance with protocols made by the Minister in consultation with the Privacy Commissioner. **Schedule 1 [3] and [11]** make it clear that information obtained under proposed section 36A may be considered in determining applications.

Schedule 1 [14] amends section 45 of the Working with Children Act to provide that if a worker has consented to the disclosure to an agency prescribed by the regulations of information indicating that a criminal record check did not disclose any criminal record in relation to the worker, the Children's Guardian may, at the time of the verification of the worker, disclose that information to the Secretary of the agency.

Schedule 1 [15] makes it an offence to knowingly make a statement or furnish information that is false or misleading in relation to an application or inquiry made under the Working with Children Act. This offence is equivalent to the offence in section 253 of the *Children and Young Persons (Care and Protection) Act 1998*.

Schedule 1 [16] substitutes clause 16 of Schedule 3 to the Working with Children Act to make it clear that sections 15 and 30 of the Working with Children Act do not apply to an application for a clearance made by a person before 2 November 2015 or to an administrative review of a decision to refuse that application.

Schedule 1 [17] inserts a number of savings and transitional provisions consequent on the amendments made to the Working with Children Act by the proposed Act.

Schedule 2 Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157

Schedule 2 [1] inserts proposed sections 226A and 226B into the Care Act. Proposed section 226A provides that the Children's Guardian may accept a written undertaking (including an undertaking to carry out a restorative justice activity) by a person in connection with a matter in relation to which the Children's Guardian has a function under the Care Act. The Children's Guardian may apply to the Supreme Court for an order under proposed section 226A if the Children's Guardian considers that the person who gave the undertaking has breached any of its terms. Proposed section 226B enables the Children's Guardian, by notice in writing, to request that a person provide information (including documents) relevant to the exercise of its functions relating to the employment of children. A notice may be given for the purpose of preparing submissions to the Supreme Court under the Care Act or investigating a complaint relating to the employment of children.

Schedule 2 [2] inserts proposed section 236A into the Care Act to enable the Children's Guardian to enter and inspect any premises (other than a dwelling) that the Children's Guardian reasonably suspects is a place at which a person is employing a child in contravention of Chapter 13 of the Care Act.

Schedule 2 [3] amends section 259A of the Care Act to provide that an employee of the Office of the Children's Guardian may be authorised in writing by the Children's Guardian to serve penalty notices under that section.

Schedule 3 Amendment of Teaching Service Act 1980 No 23

Part 4B of the Teaching Act provides for the immediate dismissal from the Teaching Service of an officer or temporary employee who is or becomes an unauthorised person and who is employed in child-related work.

Schedule 3 [3] amends the definition of *unauthorised person* in section 93R to provide that a person, whose clearance is cancelled pending determination of proceedings against the person for an offence (a *charged person*), is not an unauthorised person for the purposes of Part 4B of the Teaching Act. However, a charged person becomes an unauthorised person on the person being convicted of an offence specified in Schedule 2 to the Working with Children Act. **Schedule 3 [2]** inserts a definition of *charged person*.

Schedule 3 [1] amends section 93L of the Teaching Act to provide that the Secretary may suspend an officer from duty if the officer is a charged person.

Schedule 3 [4] amends section 93W of the Teaching Act to require that a person is entitled to be reinstated or re-employed to their position only if they have obtained a clearance within 12 months of being dismissed under section 93T of that Act.

Schedule 3 [5] inserts proposed Part 6 of Schedule 3 to the Teaching Act to enable the Secretary to reinstate a person in, or re-employ a person to, the Teaching Service if that person was dismissed, before the commencement of the proposed Act, under section 93T of the Teaching Act because the person's clearance was cancelled as a consequence of the commencement of proceedings against the person in relation to an offence (a *dismissed person*). The Secretary must not reinstate or re-employ a dismissed person if the person is an unauthorised person (within the meaning of Part 4B, as amended by the proposed Act).

Schedule 4 Amendment of Education (School Administrative and Support Staff) Act 1987 No 240

Part 6A of the Education Act provides for the immediate dismissal from the Department of Education of a permanent or temporary employee who is or becomes an unauthorised person and who is employed in child-related work.

Schedule 4 [3] amends the definition of *unauthorised person* in section 32I of the Education Act to provide that a person, whose clearance is cancelled pending determination of proceedings against the person for an offence (a *charged person*), is not an unauthorised person for the purposes of Part 6A of the Education Act. However, a charged person becomes an unauthorised person on the person being convicted of an offence specified in Schedule 2 to the Working with Children Act. **Schedule 4 [2]** inserts a definition of *charged person*.

Schedule 4 [1] amends section 32D of the Education Act to provide that the Secretary may suspend an employee from duty if the employee is a charged person.

Schedule 4 [4] amends section 32N of the Education Act to require that a person is entitled to be reinstated or re-employed to their position only if they have obtained a clearance within 12 months of being dismissed under section 32K of that Act.

Schedule 4 [5] inserts proposed Part 3 of Schedule 1 to the Education Act to enable the Secretary to reinstate a person in, or re-employ a person to, the Department if that person was dismissed, before the commencement of the proposed Act, under section 32K of the Education Act because the person's clearance was cancelled as a consequence of the commencement of proceedings against the person in relation to an offence (a *dismissed person*). The Secretary must not reinstate or re-employ a dismissed person if the person is an unauthorised person (within the meaning of Part 6A, as amended by the proposed Act).