

Passed by both Houses



New South Wales

Child Protection (Working with Children) Amendment (Statutory Review) Bill 2018

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2018

Clerk of the Parliaments



New South Wales

Child Protection (Working with Children) Amendment (Statutory Review) Bill 2018

Act No , 2018

An Act to amend the *Child Protection (Working with Children) Act 2012* to make further provision for checks and clearances for the purposes of working with children; and for related purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Child Protection (Working with Children) Amendment (Statutory Review) Act 2018*.

2 Commencement

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

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

[1] Section 5 Definitions

Insert in alphabetical order in section 5 (1):

authorised officer means a person appointed as an authorised officer by the Children’s Guardian under section 50B of this Act.

continuing residence approval means an approval granted by the Children’s Guardian under section 11D that is in force.

criminal history—see section 5C.

[2] Sections 5B and 5C

Insert after section 5A:

5B Meaning of “risk to the safety of children”

A reference in this Act to a *risk to the safety of children* is a reference to a real and appreciable risk to the safety of children.

5C Meaning of “criminal history”

(1) A person’s *criminal history* includes:

- (a) convictions (including convictions that have been spent, quashed or set aside or for which a pardon has been granted), despite anything to the contrary in the *Criminal Records Act 1991*, and
- (b) criminal charges, whether or not heard, proven, dismissed, withdrawn or discharged, and
- (c) convictions or findings to which section 579 of the *Crimes Act 1900* applies (despite the provisions of that section).

(2) In this section:

conviction has the same meaning as it has in the *Criminal Records Act 1991*.

[3] Section 6 Child-related work

Omit section 6 (1) (a). Insert instead:

- (a) the worker is engaged in work referred to in subsection (2) that involves direct contact by the worker with a child or children and that contact is a usual part of and more than incidental to the work, or

[4] Section 6 (3A)

Insert after section 6 (3):

- (3A) The regulations may provide for circumstances in which direct contact by a worker with a child or children is taken to be a usual part of and more than incidental to a worker’s work.

[5] Section 9 Employers must require clearance or current application

Insert after section 9 (2):

- (3) This section extends to an employer who, in the course of business, arranges for the placement of a worker in employment with others (a *placement agency*) if:
 - (a) the employment is child-related work, and

- (b) the placement agency is a person or a person of a class declared by the regulations to be subject to this section.
- (4) For the purposes of applying this section to a placement agency referred to in subsection (3), the placement agency is taken to employ the worker during any period in which the placement agency arranges for the employment of the worker in child-related work.

[6] Sections 9A and 9AA

Omit section 9A. Insert instead:

9A Employer must verify and record clearance details

- (1) An employer must not commence employing, or continue to employ, a worker in child-related work unless the employer has obtained and verified the worker's relevant details and made a record of those relevant details.
- (2) The worker's *relevant details* are the following:
 - (a) the worker's full name and date of birth,
 - (b) the working with children number of the worker's clearance or the application number of the worker's current application,
 - (c) the expiry date for each clearance of the worker, being the date on which the clearance ceases to have effect.
- (3) The worker's relevant details are taken to have been *verified* only if the relevant details accord with the information relating to the worker recorded in the working with children register as at the date the record is made by the employer.
- (4) An employer who employs a worker in child-related work must ensure that the record kept under subsection (1) in relation to a worker is updated no later than 5 working days after the expiry date for each clearance of the worker.
- (5) An employer must retain a record made under this section:
 - (a) during the period in which the worker carries out child-related work for the employer, and
 - (b) for a period of at least 7 years after the worker ceases to carry out child-related work for the employer.
- (6) An employer who, without reasonable excuse, fails to comply with subsection (1), (4) or (5) is guilty of an offence.
Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in any other case).
- (7) This section extends to an employer who, in the course of business, arranges for the placement of a worker in employment with others (a *placement agency*) if:
 - (a) the employment is child-related work, and
 - (b) the placement agency is a person or a person of a class declared by the regulations to be subject to this section.
- (8) For the purposes of applying this section to a placement agency referred to in subsection (7), the placement agency is taken to employ the worker during any period in which the placement agency arranges for the employment of the worker in child-related work.

- (9) This section does not apply:
- (a) in respect of an employer if the employer is an individual who is the parent of, or has the care of, a child or young person and the child-related work relates to that child or young person, or
 - (b) in respect of a worker who is exempted by the regulations from the requirement to hold a clearance, or
 - (c) in respect of an employer who is exempted by the regulations from this section.

9AA Licensing authorities must verify and record clearance details

- (1) A licensing authority must not issue a relevant licence to a person unless the licensing authority has obtained and verified the person's relevant details and made a record of those relevant details.
- (2) The person's *relevant details* are the following:
- (a) the person's full name and date of birth,
 - (b) the working with children number of the person's clearance or the application number of the person's current application,
 - (c) the expiry date for each clearance of the person, being the date on which the clearance ceases to have effect.
- (3) The person's relevant details are taken to have been *verified* only if the relevant details accord with the information relating to the person recorded in the working with children register as at the date the record is made by the licensing authority.
- (4) A licensing authority must ensure that the record kept under subsection (1) in relation to a person who is the holder of a relevant licence issued by the licensing authority is updated no later than 5 working days after the expiry date for each clearance of the person.
- (5) A licensing authority must retain a record made under this section:
- (a) during the period in which the person holds a relevant licence issued by the licensing authority, and
 - (b) for a period of at least 7 years after the person ceases to hold a relevant licence issued by the licensing authority.
- (6) A licensing authority that, without reasonable excuse, fails to comply with subsection (1), (4) or (5) is guilty of an offence.
Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in any other case).
- (7) This section does not apply:
- (a) in respect of a licensing authority that is exempted by the regulations from this section, or
 - (b) in respect of the issue of a licence to a person who is exempted by the regulations from the requirement to hold a clearance.
- (8) In this section:
- issue* includes grant or renew.
- licence* means a licence, registration, accreditation, certificate, permit or any other authority.
- licensing authority* means a person or body responsible for issuing a licence.

relevant licence means a licence, or a licence of a class, declared by the regulations to be a relevant licence.

[7] Section 10 Adult persons residing with authorised carers or persons providing certain services

Insert at the end of section 10 (5) (b) (ii):

, or

- (c) the adult person is the holder of a continuing residence approval granted by the Children's Guardian.

[8] Section 10 (6)

Omit "section 9". Insert instead "sections 9 and 9A".

[9] Section 11A Prospective guardians and adults residing with them

Omit "section 9" from section 11A (3). Insert instead "sections 9 and 9A".

[10] Section 11B Responsible agency must verify person has clearance or current application

Insert after section 11B (5):

- (6) In relation to the residency of an adult person on the same property as an authorised carer, a requirement to verify that the person is the holder of a working with children check clearance is satisfied if the responsible agency verifies that the adult person is the holder of a continuing residence approval.
- (7) For the purposes of subsection (6):
- (a) a reference to the working with children number of the person includes a reference to the particulars of the continuing residence approval, and
- (b) a reference to the expiry date of a clearance, or the date on which it ceases to have effect, includes a reference to the date on which a continuing residence approval ceases to have effect.

[11] Section 11D

Insert at the end of Division 3 of Part 2:

11D Continuing residence approval

- (1) The Children's Guardian may, by notice in writing given to a person, grant an approval (a *continuing residence approval*) to the person to reside on the same property as an authorised carer, even though the person does not hold a working with children check clearance, if:
- (a) the person is or was, immediately before turning 18 years of age, in the out-of-home care of the authorised carer, and
- (b) the Children's Guardian is satisfied that any risks to the safety of children associated with the person residing at the property have been sufficiently mitigated.
- Note.** A continuing residence approval is sufficient authority for a person who is or was in the out-of-home care of an authorised carer before turning 18 years of age to continue to reside at the residence of the authorised carer, even though the person does not hold a working with children check clearance.
- (2) A continuing residence approval has effect for 5 years after the date it is granted or, if a shorter period is specified by the Children's Guardian, that period.

- (3) A continuing residence approval may be renewed by the Children's Guardian.
- (4) The Children's Guardian may, by notice in writing served on a person, cancel a continuing residence approval granted to the person if:
 - (a) the Children's Guardian is no longer satisfied that any risks to the safety of children associated with the person residing at the property have been sufficiently mitigated, or
 - (b) a change of circumstances occurs that, in the opinion of the Children's Guardian, makes it no longer appropriate to continue the approval.
- (5) A continuing residence approval ceases to have effect if it is cancelled by the Children's Guardian.
- (6) The Children's Guardian must advise the designated agency that authorised the authorised carer of a decision to grant, refuse, renew or cancel a continuing residence approval as soon as practicable after the decision is made.
- (7) In this section:
out-of-home care has the same meaning as it has in the *Children and Young Persons (Care and Protection) Act 1998*.

[12] Section 15 Assessment of applicants and holders

Omit section 15 (4) (h). Insert instead:

- (h) the seriousness of the person's criminal history and the conduct of the person since the matters occurred,

[13] Section 15 (4) (i1)

Insert after section 15 (4) (i):

- (i1) any order of a court or tribunal that is in force in relation to the person,

[14] Section 25 Working with children register

Insert “, licensing authority” after “employer” wherever occurring in section 25 (5).

[15] Section 25 (5)

Insert “, 9AA” after “section 9A”.

[16] Section 27 Applications to Civil and Administrative Tribunal for administrative reviews of clearance decisions

Insert after section 27 (7):

- (8) The Tribunal must not, on a review of a decision under this section, make a stay order in respect of the decision unless the Tribunal is satisfied that there are appropriate arrangements in place for the supervision and enforcement of the conditions (if any) of the stay order by the person's employer.
- (9) A *stay order* is an order under section 60 of the *Administrative Decisions Review Act 1997* that stays or otherwise affects the operation of a decision that is subject to review by the Tribunal under this section.
- (10) This section does not otherwise affect the operation of Division 2 of Part 3 of Chapter 3 of the *Administrative Decisions Review Act 1997*.

[17] Section 28 Orders relating to disqualified and ineligible persons

Insert after section 28 (6):

- (6A) To avoid doubt, Division 5 of Part 3 applies to any clearance granted by the Children's Guardian in accordance with the Tribunal's order.

[18] Section 30 Determination of applications and other matters

Omit section 30 (1) (h). Insert instead:

- (h) the seriousness of the person's criminal history and the conduct of the person since the matters occurred,

[19] Section 30 (1) (i1)

Insert after section 30 (1) (i):

- (i1) any order of a court or tribunal that is in force in relation to the person,

[20] Section 31

Omit the section. Insert instead:

31 Powers of Children's Guardian to require production of information

- (1) The Children's Guardian may, by notice in writing (an *assessment notice*), require any person to provide the Children's Guardian with a statement or information relevant to an assessment of whether a person poses a risk to the safety of children.
- (2) A requirement may be made for the purposes of:
 - (a) preparing submissions to the Tribunal under this Act or section 16 of the *Child Protection (Offenders Registration) Act 2000*, or
 - (b) determining an application for a working with children check clearance or an assessment of an applicant or the holder of a clearance, or
 - (c) determining whether to grant a continuing residence approval.
- (3) A person to whom an assessment notice is given is authorised and required to comply with the notice.
- (4) An assessment notice may specify a day on or before which the notice is to be complied with.
- (5) If a person fails to comply with an assessment notice, the Children's Guardian may, by further notice in writing served on the person (an *enforcement notice*), direct the person to comply with the assessment notice within a period specified in the notice (of not less than 28 days).
- (6) The enforcement notice must warn the person that a failure to comply with the notice is an offence.
- (7) The Children's Guardian may revoke an enforcement notice at any time.
- (8) A person who fails, without reasonable excuse, to comply with an enforcement notice in force under this section is guilty of an offence.
Maximum penalty: 5 penalty units.
- (9) In any proceedings for an offence against this section, the onus of proving that a person had a reasonable excuse lies with the defendant.
- (10) If documents are given to the Children's Guardian under this section, the Children's Guardian:

- (a) may take possession of, and make copies of or take extracts from, the documents, and
- (b) may keep possession of the documents for such period as is necessary for the purposes of preparing the submission or considering an application, and
- (c) during that period must permit them to be inspected at all reasonable times by the persons who would be entitled to inspect them if they were not in the possession of the Children's Guardian.

- (11) In this section:
information includes documents.
person includes a government agency.

[21] Section 33 Notification of offences and other information

Omit section 33 (1) (b). Insert instead:

- (b) information relating to the criminal history of a person,

[22] Section 33 (2)

Omit the subsection.

[23] Section 33 (4)

Omit the subsection. Insert instead:

- (4) Information about a person's criminal history may be disclosed under this Act:
 - (a) whether or not the information relates to events that occurred when the person was under the age of 18 years, and
 - (b) whether or not the information relates to offences that cause or may cause the person to be a disqualified person or result in an assessment requirement affecting the person.

[24] Section 34 Notification of information relating to criminal history for interstate child-related work screening

Omit section 34 (4).

[25] Section 36B

Insert after section 36A:

36B Duty to keep information up to date

- (1) A person who holds a working with children check clearance or who has made a current application to the Children's Guardian for a working with children check clearance must notify the Children's Guardian of any change to the person's personal details within 3 months of the change occurring.
- (2) The notice must be given in a form approved by the Children's Guardian.
- (3) A person's *personal details* are as follows:
 - (a) the person's name,
 - (b) the person's address,
 - (c) the person's contact details,
 - (d) the person's employer or proposed employer,
 - (e) any other information of a kind prescribed by the regulations.

- (4) A person who, without reasonable excuse, fails to comply with this section is guilty of an offence.
Maximum penalty: 5 penalty units.

[26] Sections 50A and 50B

Insert after section 50:

50A Penalty notices

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.
Note. The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

50B Authorised officers

- (1) The Children's Guardian may appoint any person employed in the Office of the Children's Guardian (or any class of persons so employed) as an authorised officer for the purposes of this Act.
- (2) The Children's Guardian may revoke or amend an appointment at any time.
- (3) Every authorised officer is to be provided with identification as an authorised officer.
- (4) In the course of exercising the functions of an authorised officer under this Act, the officer must, if requested to do so by any person affected by the exercise of any such function, produce to the person the officer's identification as an authorised officer.

Schedule 2 Amendment of other legislation

2.1 Child Protection (Working with Children) Regulation 2013

[1] Clause 6 Children's health services

Insert after clause 6 (3):

- (3A) For the purposes of section 6 (3A) of the Act, any direct contact that a worker has with a child or children when engaged in work referred to in subclause (1), (2) or (3) is taken to be a usual part of and more than incidental to the work.

Note. A worker who is found to be engaged in child-related work may still be exempt from the requirement to obtain a working with children check clearance if the worker is exempted by a provision of Part 4 of this Regulation.

[2] Clause 20 Exemption from Act for specified workers and employers

Insert after clause 20 (2) (b):

- (c) attending at an overnight camp for children.

[3] Schedule 2

Insert after Schedule 1:

Schedule 2 Penalty notice offences

For the purposes of section 50A of the Act:

- (a) each offence specified in Column 1 of this Schedule is an offence for which a penalty notice may be issued, and
- (b) the amount payable under any such penalty notice is the amount specified for the offence in Column 2 of this Schedule (in respect of a corporation) or in Column 3 of this Schedule (in respect of an individual).

Column 1	Column 2	Column 3
Offence	Penalty—corporation	Penalty—individual
Offences under the Act		
Section 9A (6)	\$1,000	\$500
Section 9AA (6)	\$1,000	\$500

2.2 Children and Young Persons (Care and Protection) Regulation 2012

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

continuing residence approval has the same meaning as it has in the *Child Protection (Working with Children) Act 2012*.

[2] Clause 42D Automatic suspension of authorisation

Omit “or a current working with children application” from paragraph (a) of the definition of *inappropriate resident* in clause 42D (1).

Insert instead “, a current working with children application or a continuing residence approval”.

[3] Clause 86A Definitions

Insert after paragraph (b) of the definition of *working with children clearance information*:

- (b1) whether the person has a continuing residence approval,