



New South Wales

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

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Child Protection (Working with Children) Act 2012* and other legislation as follows:

- (a) to change the definition of *child-related work* (being the work for which a working with children check clearance is required), so that direct contact with children must be a usual part of and more than incidental to the work,
- (b) to make it an offence for an employer to fail to obtain and verify the details of a worker who is employed to work with children, or to keep a record of the details so obtained,
- (c) to require a placement agency to obtain and verify the details of a worker who is employed to work with children, and to keep a record of the details so obtained, if required to do so by the regulations,
- (d) to require a licensing, registration or accreditation authority (a *licensing authority*) to obtain and verify the details of a person to whom a licence, registration, accreditation or other authority is granted or issued, and to keep a record of the details so obtained, if required to do so by the regulations,
- (e) to give discretion to the Children's Guardian to permit a child who turns 18 to continue to reside with an authorised carer despite not holding a working with children check clearance,
- (f) to make further provision for the powers of the Civil and Administrative Tribunal when carrying out reviews under the Act,

- (g) to require persons (as well as government agencies) to provide information relevant to the preparation of submissions to the Civil and Administrative Tribunal or the assessment of the risk posed by a person when directed to do so by the Children’s Guardian,
- (h) to require applicants for a working with children check clearance to notify changes in personal details,
- (i) to permit penalty notices to be issued for offences under the Act,
- (j) to require parent volunteers on overnight camps to have a working with children check clearance,
- (k) to make other miscellaneous changes.

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 a day or days to be appointed by proclamation.

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

Definition of “child-related work”

Child-related work is work for which a working with children check clearance is required. The Act defines various types of work that is treated as child-related work. In most cases, the work must involve direct contact by the worker with a child or children.

Schedule 1 [3] adds an additional requirement that the direct contact concerned must be a usual part of and more than incidental to the work. This change was recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse.

Schedule 1 [4] permits regulations to be made that provide for circumstances in which direct contact with a child or children is to be treated as a usual part of, and more than incidental to, work.

Verification of working with children check clearance

At present, it is an offence to employ a person in child-related work unless the person has a working with children check clearance that authorises that work or a current application for such a clearance.

Schedule 1 [6], proposed section 9A, makes it an offence for an employer to fail to obtain and verify a worker’s relevant details (including the person’s working with children check clearance number) and to make a record of those details. An employer verifies the relevant details by checking that those details accord with the details as recorded in the working with children register. The employer must also update the record to ensure that the working with children check clearance has been renewed. This requirement replaces an existing statutory duty that was not an offence.

The mandatory verification requirement will also apply to placement agencies who arrange for the placement of workers in child-related work. **Schedule 1 [5]** is a consequential amendment that will make it an offence for a placement agency to arrange for the employment of a person in child-related work unless the person has a working with children check clearance or a current application for a clearance. These requirements will apply only if the placement agency is declared by the regulations to be a placement agency subject to the new requirement.

Schedule 1 [6], proposed section 9AA, imposes a similar requirement on licensing authorities. The provision requires a licensing authority that issues, grants or renews a relevant licence to obtain and verify the person’s relevant details (including the person’s working with children check clearance number) and to make a record of those details. A *relevant licence* means a licence, registration, accreditation, certificate, permit or other authority of a kind prescribed by the regulations.

Schedule 1 [8], [9], [14] and [15] are consequential amendments.

Continuing residence approval

Schedule 1 [11] permits the Children's Guardian to grant an approval (a *continuing residence approval*) for a person to reside at 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.

The provision is intended to allow children who reside with authorised carers where other children are present to continue to do so after turning 18 years of age.

Schedule 1 [7] and [10] are consequential amendments.

NCAT powers

Schedule 1 [13] and [19] require the Children's Guardian and the Civil and Administrative Tribunal to consider any order of a court or tribunal in force in relation to a person in exercising its review powers under the Act.

Schedule 1 [16] provides that the Civil and Administrative Tribunal must not stay a decision to refuse or cancel a working with children check clearance or to impose an interim bar unless the Tribunal is satisfied that appropriate arrangements are in place for the supervision and enforcement of the conditions (if any) of the proposed stay order by the person's employer.

Power to require production of information

At present, the Children's Guardian can require a government agency to provide information relevant to the assessment of whether a person poses a risk to the safety of children. The Children's Guardian can also request a person other than a government agency to provide such information.

Schedule 1 [20] permits the Children's Guardian to require persons (as well as government agencies) to provide information relevant to the preparation of submissions to the Civil and Administrative Tribunal or the assessment of whether a person poses a risk to the safety of children. If a person fails to comply with a requirement, the Children's Guardian may direct the person to comply with the requirement. It will be an offence to fail to comply with that direction.

Duty to keep information up to date

Schedule 1 [25] requires a person who holds a working with children check clearance, or who has applied for a clearance, to notify the Children's Guardian of any change in the person's personal details (including contact and employment details).

Penalty notices

Schedule 1 [26] enables penalty notices for offences under the Act or the regulations to be issued by authorised officers. Authorised officers are to be appointed by the Children's Guardian.

Miscellaneous amendments

Schedule 1 [2] defines a *risk to the safety of children* as meaning a real and appreciable risk to the safety of children, consistent with *Commission for Children and Young People v V* [2002] NSWSC 949.

The provisions of the Act that require a person's criminal record to be considered in relation to the granting of working with children check clearances are clarified so that it is clear that the whole of a person's criminal history must be considered. Criminal history includes convictions that have been spent, quashed or set aside or for which a pardon has been granted and criminal charges, whether or not proven or dismissed. This accords with the recommendations of the Royal

Commission into Institutional Responses to Child Sexual Abuse. See **Schedule 1 [2], [12], [18] and [21]–[23]**.

Schedule 1 [17] clarifies that a working with children check clearance that is granted by the Children’s Guardian in accordance with an order of the Civil and Administrative Tribunal has effect in the same way as other working with children check clearances. That is, it must be renewed every 5 years and it can be cancelled and surrendered similar to other working with children check clearances.

Schedule 1 [1] inserts definitions that are related to other amendments described above.

Schedule 2 Amendment of other legislation

Child-related work

Schedule 2.1 [1] ensures that any direct contact that a worker has with a child in providing certain health services is taken to be a usual part of, and more than incidental to, the work. Accordingly, the work is child-related work and a clearance is required.

Parent volunteers

Schedule 2.1 [2] removes an exemption from the requirement to obtain a working with children check clearance that currently applies to parents or close relatives who voluntarily attend at overnight camps for children. As a result, a clearance will be required.

Penalty notices

Schedule 2.1 [3] enables penalty notices to be issued for the new verification offences.

Other amendments

Schedule 2.2 makes amendments to the *Children and Young Persons (Care and Protection) Regulation 2012* that are consequential on the proposal to permit the Children’s Guardian to grant a continuing residence approval.