



New South Wales

Child Protection (Working with Children) Amendment Bill 2022

Explanatory note

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

This Bill is cognate with the *Children's Guardian Amendment Bill 2022*.

Overview of Bill

The object of this Bill is to amend the *Child Protection (Working with Children) Act 2012* (the *principal Act*) as follows—

- (a) to implement National Standard 11 of the *National Standards for Working with Children Checks* endorsed by the Council of Australian Governments on 12 November 2019 by requiring applicants for working with children check clearances and other prescribed persons to disclose their international criminal history,
- (b) to provide for the changes in circumstances that entitle a person to make an early further application for a clearance following a refusal of an application for, or cancellation of, a clearance,
- (c) to provide further grounds on which the Children's Guardian may terminate an application for a clearance,
- (d) to make it clear the offence of common assault of a child operates to trigger a risk assessment of an applicant for, or holder of, a clearance only if committed by an adult,
- (e) to provide that the notification of information about a negative notice by another jurisdiction triggers a risk assessment of an applicant for, or holder of, a clearance,
- (f) to include certain former offences as disqualifying offences under the Act,
- (g) to enable certain clearance information to be exchanged with other jurisdictions,
- (h) to require the Children's Guardian to record certain information on the database known as the National Reference System.

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.

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

Schedule 1 gives effect to the object of the Bill.

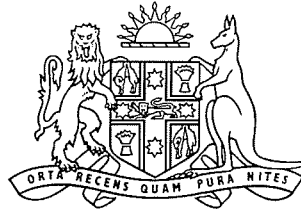


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New South Wales

Child Protection (Working with Children) Amendment Bill 2022

No. , 2022

A Bill for

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

The Legislature of New South Wales enacts—	1
1 Name of Act	2
This Act is the <i>Child Protection (Working with Children) Amendment Act 2022</i> .	3
2 Commencement	4
This Act commences on—	5
(a) for Schedule 1[9] and [10]—a day or days to be declared by proclamation, or	6
(b) otherwise—the date of assent to this Act.	7

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

[1] Section 13(6)–(8)

Omit the subsections.

[2] Sections 13AA and 13AB

Insert after section 13—

13AA Withdrawal of applications for clearances

- (1) An applicant may, with the consent of the Children’s Guardian, withdraw an application for a working with children check clearance at any time.
- (2) The Children’s Guardian must not consent to the withdrawal of an application for a clearance if the Children’s Guardian considers there is a likely risk to the safety of children if the applicant engages in child-related work.
- (3) The Children’s Guardian must, as soon as practicable after an application for a clearance is withdrawn by an applicant, give written notice of the withdrawal to each person the Children’s Guardian reasonably believes to be a notifiable person in relation to the applicant.

13AB Termination of applications for clearances

- (1) The Children’s Guardian may terminate an application for a working with children check clearance if—
 - (a) the applicant fails to provide, or incorrectly provides, the applicant’s—
 - (i) full name, or
 - (ii) former name, or
 - (iii) known aliases, or
 - (b) the application is a duplicate application.
- (2) The Children’s Guardian must terminate an application for a working with children check clearance if notified of the death of the applicant.
- (3) The grounds for terminating an application for a clearance under this section are in addition to other grounds on which the Children’s Guardian may terminate an application under this Act.
- (4) The Children’s Guardian must, as soon as practicable after terminating an application, give written notice of the termination to—
 - (a) for an application terminated under subsection (1)—the applicant, and
 - (b) for an application terminated under subsection (1)(a) or (2)—each person the Children’s Guardian reasonably believes to be a notifiable person in relation to the applicant.
- (5) In this section—
duplicate application means an application made by an applicant for a class of clearance for which the applicant has made a previous application not yet determined.

[3] Section 13A Embargo after refusal of application or cancellation of clearance

Omit section 13A(1)(b). Insert instead—

- (b) unless a further early application is permitted under this section.

[4] Section 13A(2)–(3)	1
Omit section 13A(2). Insert instead—	2
(2) A further early application is permitted if, after the date of the refusal or cancellation—	3
(a) relevant proceedings pending at the date of the refusal or cancellation are withdrawn or dealt with without the person being found guilty of the offence, or	4
(b) a relevant finding of guilt is quashed or set aside, or	5
(c) a relevant finding the subject of an assessment requirement—	6
(i) is quashed or set aside, or	7
(ii) otherwise expressly or impliedly ceases to have effect.	8
(3) In this section—	9
<i>relevant</i> , in relation to proceedings or a finding, means relevant to the refusal or cancellation.	10
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[5] Section 15 Assessment of applicants and holders	12
Omit section 15(4A). Insert instead—	13
(4A) The Children’s Guardian may determine an applicant or holder does not pose a risk to the safety of children only if the Children’s Guardian is satisfied—	14
(a) a reasonable person would allow the person’s child to have direct contact with the applicant or holder—	15
(i) while not directly supervised by another person, and	16
(ii) while the applicant or holder was engaged in child-related work, and	17
(b) the making of the determination is in the public interest.	18
[6] Section 24, heading	19
Insert “or death of holder” after “clearances”.	20
[7] Section 24(4)	21
Insert after section 24(3)—	22
(4) The Children’s Guardian must terminate the working with children check clearance of a holder if notified of the holder’s death.	23
[8] Section 30 Determination of applications and other matters	24
Omit “28 or” from section 30(2).	25
[9] Section 36A	26
Omit the section. Insert instead—	27
36A Information-sharing	28
(1) The Children’s Guardian may exchange working with children check information with an interstate screening agency.	29
(2) If a person, acting in good faith, exchanges information in accordance with this section, the person is not liable to civil or criminal action, or disciplinary action, for exchanging the information.	30
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(3)	Nothing in this section limits an exchange of working with children check information otherwise permitted under this Act or another Act or law.	1 2
(4)	In this section—	3
	<i>interstate screening agency</i> means a body authorised under a law of the Commonwealth, another State or a Territory to conduct interstate child-related work screening, within the meaning of section 36.	4 5 6
	<i>personal information</i> has the same meaning as in the <i>Privacy and Personal Information Protection Act 1998</i> .	7 8
	<i>working with children check information</i> means—	9
(a)	information relevant to determining whether to grant or cancel a working with children check clearance, or its equivalent in another jurisdiction, to a particular person, and	10 11 12
(b)	personal information about the holder of a clearance, and	13
(c)	information about whether a person has been cleared to engage in child-related work, and	14 15
(d)	information recorded on the NRS database, within the meaning of section 36D.	16 17
[10]	Sections 36C and 36D	18
	Insert after section 36B—	19
36C	Duty to disclose if convicted or found guilty of offence outside Australia	20
(1)	A relevant person must notify the Children’s Guardian of the commencement of proceedings, a conviction or a finding of guilt against the relevant person of a criminal offence outside Australia—	21 22 23
(a)	when an application for a working with children check clearance is made by the person, and	24 25
(b)	within 10 business days after the person becomes aware of the commencement, conviction or finding.	26 27
(2)	Subsection (1) applies to a commencement of proceedings, conviction or finding of guilt, regardless of whether the proceedings commence or the conviction or finding of guilt occurs before or after the commencement of this section.	28 29 30 31
(3)	Nothing in this section requires a person to notify the Children’s Guardian of the same commencement of proceedings, conviction or finding of guilt more than once.	32 33 34
(4)	The notice must be given in the form approved by the Children’s Guardian.	35
(5)	A person who, without reasonable excuse, fails to comply with this section is guilty of an offence. Maximum penalty—5 penalty units.	36 37 38
(6)	In this section—	39
	<i>prescribed criminal offence</i> means an offence equivalent to an offence—	40
(a)	specified in Schedule 1 or 2, or	41
(b)	prescribed by the regulations.	42
	<i>relevant person</i> means—	43
(a)	an applicant for a working with children check clearance, and	44
(b)	a person prescribed by the regulations.	45

36D National Reference System database	1
(1) The Children's Guardian must record on the NRS database the following information in relation to a negative notice—	2
(a) the name and date of birth of the person issued with the negative notice,	3
(b) the type of negative notice,	4
(c) a change in the status of the negative notice.	5
(2) If the Children's Guardian records a change in the status of a negative notice on the NRS database, the Children's Guardian must, as soon as reasonably practicable after recording the change, notify each relevant interstate screening agency of the change.	6
(3) In this section—	7
<i>interstate screening agency</i> —see section 36A.	8
<i>negative notice</i> means a notice issued, whether before or after the commencement of this section, to a person in relation to the following—	9
(a) an interim bar, including interim bars that have ceased to have effect,	10
(b) a disqualification,	11
(c) the refusal of an application for a clearance,	12
(d) the cancellation of a clearance.	13
<i>NRS database</i> means the database known as the National Reference System database.	14
<i>relevant interstate screening agency</i> means an interstate screening agency that has accessed the record in relation to which the change is recorded on the NRS database.	15
[11] Section 45 Unauthorised disclosure or dishonest collection of information	16
Omit "Secretary" from section 45(3). Insert instead "head".	17
[12] Schedule 1 Assessment requirement triggers	18
Insert ", including a jurisdiction outside Australia" after "elsewhere" in clause 1(3)(f).	19
[13] Schedule 1, clause 1(4)(c)	20
Insert "while the person was an adult" after "child".	21
[14] Schedule 1, clause 1(5)(b)	22
Omit "other than a law of New South Wales".	23
Insert instead "of another State or Territory, the Commonwealth or a jurisdiction outside Australia".	24
[15] Schedule 1, clause 2B	25
Insert after clause 2A—	26
2B Notification in relation to negative notices in other jurisdictions	27
(1) The Children's Guardian is made aware that a person has been issued with a negative notice.	28
(2) In this clause—	29
<i>negative notice</i> —see section 36D.	30

[16] Schedule 2 Disqualifying offences	1
Insert “, 72A” after “68” in clause 1(1)(i).	2
[17] Schedule 2, clause 1(1)(k)	3
Insert “, 78M” after “78L”.	4