



New South Wales

Child Protection Legislation Amendment (Children's Guardian) Bill 2013

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to transfer the functions relating to working with children check clearances (a *clearance*) required under the *Child Protection (Working with Children) Act 2012* (the *Working with Children Act*) from the Commission for Children and Young People (the *Commission*) to the Children's Guardian (the *Guardian*),
- (b) to transfer the function of encouraging organisations to develop their capacity to be safe for children from the Commission to the Guardian under the Working with Children Act,
- (c) to provide that the Parliamentary Joint Committee on Children and Young People is to monitor and review the exercise by the Guardian of functions under the Working with Children Act,
- (d) to transfer the functions relating to the employment of children under Chapter 13 of the *Children and Young Persons (Care and Protection) Act 1998* (the *Care and Protection Act*), including the making and revocation of exemptions from the requirement to hold an employer's authority, from the Minister for Family and Community Services (the *Minister*) and the

- Director-General of the Department of Family and Community Services to the Guardian,
- (e) to transfer the functions of the development and administration of voluntary accreditation schemes for programs for, and for persons working with, persons who have committed sexual offences against children from the Commission to the Guardian,
 - (f) to transfer the function of appearing as a party to Administrative Decisions Tribunal proceedings relating to the exemption of a person from compliance with reporting obligations under the *Child Protection (Offenders Registration) Act 2000* from the Commission to the Guardian,
 - (g) to transfer the functions relating to the audit of the accuracy of child-related conduct declarations that are required to accompany the nomination paper of a candidate for election to the Legislative Assembly or the Legislative Council under the *Parliamentary Electorates and Elections Act 1912* from the Commission to the Guardian,
 - (h) to provide that the Guardian may audit, or may authorise a person to audit, the accuracy of a statutory declaration outlining information on whether a worker who is exempt from the requirement to hold a clearance has been convicted of certain offences,
 - (i) to provide that the Guardian is to establish a register for the purpose of the authorisation of individuals as authorised carers, and to maintain that register, in accordance with the regulations,
 - (j) to amend the *Child Protection (Offenders Registration) Act 2000* to adopt the definitions of *employer* and *worker*, as defined in the Working with Children Act, which will extend the reporting requirements under the *Child Protection (Offenders Registration) Act 2000* to volunteering arrangements,
 - (k) to make consequential amendments.

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 or 15 June 2013, whichever is the later.

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

Transfer of functions

The Working with Children Act requires a person engaged in child-related work to have a working with children check clearance (a *clearance*) and does not permit certain persons to be granted a clearance to engage in child-related work.

Schedule 1 [4] transfers the functions provided by that Act from the Commission to the Guardian.

Schedule 1 [12] makes it clear that the function of encouraging organisations to develop their capacity to be safe for children is transferred from the Commission to the Guardian and is to be exercised under the Working with Children Act.

Schedules 1 [1], [3], [8]–[11] and [14], 3.5 [1] and 3.8 [1] make amendments consequent on the transfer of those functions. **Schedules 1 [2] and 3.2 [6]** insert a definition of *Children's Guardian*.

Adults who reside at homes where care is provided

Schedule 1 [6] and [7] correct incorrect references to education and care services in section 10 of the Act, which was intended by Parliament to require adults who reside in private homes where family day care services and other child care services regulated by State legislation are provided to obtain clearances. Currently, the provision incorrectly refers to bodies that manage the provision of such services rather than the individual providers of the services. **Schedule 3.4** makes a consequential amendment.

Schedule 1 [5] replaces the requirement for an adult who resides at the home of an approved provider under the *Children (Education and Care Services) National Law (NSW)* to hold a clearance with a requirement for an adult who resides at a home where a home based education and care service or a family day care service is provided to hold such a clearance. The requirement will not apply to an adult who resides at such a home and who is otherwise required to hold a clearance such as a person who is providing the care services at the home.

Schedule 1 [2] inserts definitions of *family day care service* and *home based education and care service*.

Audit of statutory declarations of volunteers

Schedule 1 [15] inserts proposed section 40A, which provides that the Guardian may audit the accuracy of a statutory declaration made by a worker who is exempted by the regulations from the requirement to hold a clearance. The Guardian may authorise another person to carry out such an audit, if the Guardian is advised, in writing, that the Privacy Commissioner is satisfied that the person is able to adequately provide for the security of any information obtained in the exercise of functions pursuant to the authorisation. The provision applies to a statutory declaration that contains information relating to the offences specified in Schedule 2 to the Act. For the purposes of carrying out such audits, the Commissioner of Police is authorised to disclose information relating to spent convictions and offences. If a person authorised under the proposed section reasonably believes that a statutory declaration is inaccurate, the person must inform the Guardian as soon as practicable and provide any information relevant to that belief to the Guardian. The provision also specifies the persons and bodies to whom the Guardian may disclose information obtained under the section. The Minister may give the Guardian a

written direction on the exercise of functions under the proposed section and the Guardian must comply with the direction.

Children at risk reports

Schedule 1 [16] provides that the Guardian may use information obtained in the course of exercising functions under the Working with Children Act for the purposes of making a report to the Director-General of the Department of Family and Community Services under section 24 (Report concerning child or young person at risk of significant harm) or 27 (Mandatory reporting) of the Care and Protection Act. A report referred to in section 29 (Protection of persons who make reports or provide certain information) of that Act may be provided to the Guardian in accordance with a requirement under the Working with Children Act.

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

Schedule 2 [2] substitutes the requirement that, as a condition of an authorised carer's authorisation, the carer notify the designated agency if any person (other than the carer) who is of or above the age of 18 years is residing at the carer's home on a regular basis and has been doing so for a period of at least 3 months. Instead, an authorised carer must notify the designated agency, as soon as practicable, if such a person commences to reside at the carer's home and will continue to do so on a regular basis. The requirement to notify the designated agency also applies when a minor residing at the carer's home attains the age of 18 years.

Chapter 10 of the Care and Protection Act provides for the establishment and principal functions of the statutory office of the Guardian. **Schedule 2 [3]** amends section 181 to include the descriptions of the functions transferred from the Commission to the Guardian, being the exercise of functions relating to persons engaged in child-related work, including clearances, and the development and administration of voluntary accreditation schemes for programs for, and for persons working with, persons who have committed sexual offences against children. It also includes a description of the functions transferred from the Minister to the Guardian, which relate to the employment of children, including the making and revocation of exemptions from the requirement to hold an employer's authority. The proposed amendment also provides that the Guardian is to establish a register for the purpose of the authorisation of individuals as authorised carers, and to maintain that register, in accordance with the regulations.

Schedule 2 [4] inserts proposed section 183, which enables the Guardian to appoint such advisory committees as the Guardian considers appropriate in the exercise of the Guardian's functions.

Schedule 2 [5] inserts proposed sections 186A and 186B, which specify the organisations to which the Guardian may refer information and provide protection

from liability for the Guardian, a member of an advisory committee of the Guardian and any person acting under the direction of the Guardian or such an advisory committee. Under proposed section 186A, the Guardian may refer information relating to a possible criminal offence that is obtained in the course of exercising functions to the Commissioner of Police, the Ombudsman, the Director-General of the Department of Family and Community Services or any other investigative or government agency that the Guardian considers appropriate.

Schedule 2 [6] and [7] transfer functions relating to child-related employment from the Minister to the Guardian. Those functions include the granting, refusal and revocation of employers' authorities, which authorise employers to employ persons under the age of 15 years in prescribed employment and persons under the age of 16 years as models, subject to certain conditions. **Schedules 1 [13] and 2 [8], [9], [11] and [12]** make consequential amendments.

Schedule 2 [10] reduces the period within which the Guardian must determine an application for an employer's authority from 28 days to 14 days.

Schedule 3 Amendment of other Acts

Consequential amendments

Schedule 3.1, 3.3, 3.6 and 3.7 make amendments consequent on the repeal of Part 7 of the *Commission for Children and Young People Act 1998*.

Child Protection (Offenders Registration) Act 2000

Schedule 3.2 [2] inserts the definitions of *employer* and *worker*, as defined in the Working with Children Act, which will extend the reporting requirements under the *Child Protection (Offenders Registration) Act 2000* to volunteering arrangements. **Schedule 3.2 [1]** makes a consequential amendment.

Schedule 3.2 [3]–[5] transfer the function of appearing as a party to Administrative Decisions Tribunal proceedings relating to the exemption of a person from compliance with reporting obligations under the *Child Protection (Offenders Registration) Act 2000* from the Commission to the Guardian.

Commission for Children and Young People Act 1998

Schedule 3.5 [2] updates an obsolete reference.

Schedule 3.5 [3] provides that the Parliamentary Joint Committee on Children and Young People is to monitor and review the exercise by the Guardian of functions under the Working with Children Act.

Schedule 3.5 [4] provides that the Committee may report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the exercise of the Guardian's functions under the Working with Children Act to which, in the opinion of the Committee, the attention of Parliament should be directed.

Ombudsman Act 1974

Schedule 3.8 [2] makes it clear that proposed section 25DA of the *Ombudsman Act 1974* (to be inserted by the Working with Children Act) does not limit the information that the Ombudsman may otherwise disclose to the Guardian under that Act, or any other Act or law. Proposed section 25DA provides that the Ombudsman may disclose certain information to the Guardian for the purpose of the exercise of functions under the Working with Children Act.

Parliamentary Electorates and Elections Act 1912

Schedule 3.9 [2]–[6] amend the *Parliamentary Electorates and Elections Act 1912* to transfer the functions of the Commission relating to the audit of child-related conduct declarations that are required to accompany the nomination paper of a candidate for election to the Legislative Assembly or the Legislative Council under that Act to the Guardian.

Schedule 3.9 [1] omits the definition of *CYP Commission* and inserts a definition of *Children's Guardian*.