

CHILD PROTECTION (WORKING WITH CHILDREN) BILL 2012

PROOF

13 June 2012

Bill introduced on motion by Mr Victor Dominello, read a first time and printed.

Second Reading

Mr VICTOR DOMINELLO (Ryde—Minister for Citizenship and Communities, and Minister for Aboriginal Affairs) [4.21 p.m.]: I move:

That this bill be now read a second time.

The purpose of the Child Protection (Working With Children) Bill 2012 is to introduce a new Working With Children Check that will provide greater protection for the children of New South Wales. The new Working With Children Check improves on the current model in four key ways: it provides the same Working With Children Check for all categories of worker, including paid workers, volunteers, self-employed people, authorised carers and adults sharing their homes. It accesses full criminal histories instead of a defined subset of records, and continuously monitors new New South Wales records to manage risks that occur after a person has received a clearance to work with children. It has only two outcomes: a clearance or a bar, so employers can no longer engage a person assessed as a serious risk. It is easier to operate, with streamlined online systems and centralised operations.

The model established through the Child Protection (Working With Children) Bill 2012 is based on recommendations from the 2010 review of the Commission for Children and Young People Act 1998. The Government tabled the report from this review on 2 August 2011. The model proposed in this bill also implements recommendations of the Auditor General's performance audit of the Working With Children Check released on 25 January 2010. The Working With Children Check is an internationally recognised safeguard for protecting children and young people. The Commission for Children and Young People Act 1998 that established the current Working With Children Check, the first such check in Australia, was passed in this Parliament with bipartisan support. Since then, four other Australian jurisdictions have introduced Working With Children Checks and two others are on the verge of doing so. Each has followed the settings in the New South Wales model. However, unlike the current New South Wales model, all interstate models provide workers with a portable and renewable clearance that can be used over a fixed period for any child-related work.

The Government is modernising the Working With Children Check, extending its breadth and depth and making it consistent with those in other States. The changes I now introduce will give New South Wales the most up-to-date Working With Children Check in Australia. I turn now to the changes envisaged in the bill. To reiterate, the key features of the new Working With Children Check will be: the same check for volunteers, paid workers and self-employed people; only two outcomes—a clearance or a bar; a portable and renewable Working With Children Check clearance that lasts for five years; continuous monitoring of new criminal charges and disciplinary reports of clearance holders; cancellation of clearances

where a new record indicates a risk to children; a simple process for employers to verify that workers are allowed to work with children; a stronger education, compliance and audit program to complement the Working With Children check; and programs to help organisations to be child safe and child friendly.

I will now outline the provisions in the bill. The object of the bill as set out in part 1, clause 3 is to protect children by barring certain persons from child-related work and requiring all workers in child-related work to hold a Working With Children Check clearance. Part 2 of the bill defines "child-related work" and the basic obligations of employers and workers. One of the key strengths of the new Working With Children Check is that it applies the same checking program to all types of child-related engagement, whether the worker is a volunteer or a paid employee, and whether the work is in a child care centre or on the sports field. No longer will self-employed people need to get a certificate, nor will volunteers need to sign declarations, while other workers get a position-based Working With Children Check. From this point forward, workers, volunteers and self-employed people will get the same comprehensive Working With Children Check. Wherever child-related work occurs, the same Working With Children Check applies.

As the Working With Children Check imposes statutory obligations on workers and employers, it is essential to establish a clear definition of the services and roles where these obligations are incurred. The Working With Children Check must be used where it is specified in this bill, and the regulations that support it, but not in other situations where it is not specified. Division 1 lists the services that are "child-related" and in which child-related work may occur for the purposes of the Working With Children Check. The services are essentially the same as those in the current Act, and now explicitly include school crossing supervisors. The Government will develop regulations to further explain and define the situations in child-related settings where a Working With Children Check is mandated.

Child-related work in defined child related services is work that requires direct contact with children as an essential element of the role, whether or not that work is supervised. Direct contact is physical or face-to-face contact, as it is in our current Working With Children Check. Most people in our community have direct contact with children in their daily lives. They do not all need a Working With Children Check. The Working With Children Check is reserved for people whose work is focussed on children and whose work requires ongoing role-oriented contact with children. For example a school teacher cannot teach without direct and ongoing contact with children, whereas a ward clerk in a hospital may see children in the ward, but have no working relationship with them. The teacher is in child-related employment and the ward clerk is not.

The Working With Children Check has never been intended for people who, as a normal part of their working day, may see a child or be in a place with a child but who do not work with the children. In the same vein, the Working With Children Check does not apply to services and roles where a child is a co-worker or a co-member of an organisation. Some examples of child-related work are: teachers and teachers' assistants in schools; other school staff having

regular direct contact with children; tutors and coaches in children's dance, music, sport and art; childcare workers; refuge workers, where children may be living at the refuge; foster carers and the adults living in their homes; religious camp leaders; youth group leaders; clinical staff in hospital wards; clinicians treating children without parental supervision; sports trainers and coaches; respite carers for children; and school bus drivers.

A workplace does not become a child-related service by virtue of having young workers or providing work experience placements. Similarly clubs and community groups do not become child-related services simply by allowing people under 18 to become members. As in the current Act, regulations will further define, extend or limit the ambit of child-related work. This flexibility allows the Government to fine-tune the application of the Working With Children Check in line with emerging knowledge. The bill defines child-related roles that are subject to the Working with Children Check. Clause 6 includes a list of roles that are of themselves child-related work in whatever setting or service they may occur. These roles are essentially roles already defined as child-related in the Act. They include work as an authorised carer, as a certified supervisor of an education and care service, formerly known as a childcare centre or preschool, and several other roles. People who work in these roles will be subject to exactly the same Working with Children Check as those working directly with children in a child-related service.

Clause 7 provides a further opportunity to protect children by allowing the Commission for Children and Young People to determine that certain additional paid roles may be considered a child-related role. These are roles in a child-related service where the worker does not have direct contact with children but has access to confidential records or information about children. To have a role deemed as child related, employers will need to identify the relevant roles and propose to the commission the reasons that these roles should be deemed as child related. If the commission deems a role as child related, all the obligations and penalties in the bill then apply with regard to that role. The commission may withdraw its deeming on application by the employer or on its own initiative if the work is no longer considered to present risks to children. Employers need the commission's approval to undeem a role that has been deemed child related.

A further group of roles subject to the Working with Children Check cannot be easily defined as work. The bill lists these roles separately in clauses 10 and 11. They are adults who share the home of an authorised carer or home-based carer and applicants for adopting a child. People in these roles are also covered by the universal Working with Children Check. While being a resident in a carer's house or becoming an adoptive parent is not considered to be work, they are both roles that carry considerable risk to children. This is why such people are required to have a Working with Children Check. The agencies that oversight care or parent placement are responsible for ensuring that the Working with Children Check is undertaken. They are also responsible for ensuring that people who are barred from working with children do not reside with carers or adopted children.

There are penalties both for the carer or adoptive parent and for the agency if they do not comply with these obligations. Clause 52 (2) (b) provides that regulations can exempt classes of child-related workers from any or all of the provisions of the legislation. The existing categories of child-related work are closely aligned with definitions of child-related work in interstate Working with Children Checks. The proposed exemptions will also align closely with interstate exemptions and are outlined in the bill. There will also be an exemption relating to emergency appointments that will allow a person to be in child-related work for up to a week before having a valid Working with Children Check application or a clearance. Employers will need to access this provision in circumstances in which it is not possible for a worker to complete the application process before starting work with children.

Examples of such emergencies would be emergency child protection placements in the evening or at the weekend, emergency staffing at hospitals where children would be at risk if the service were not immediately staffed and emergency staffing of educational services where children would be at risk if the service were not immediately staffed. The exemptions proposed for parent volunteers recognise that parents already have relationships with children in teams, clubs and schools that their children attend and in the local community. The Government values the great contribution that volunteering parents make to the community and to their children's development. The Government will not create artificial barriers that limit this part of a parent's role. The exemption proposed for short-term interstate visitors will be a standard exemption that will be introduced around Australia this year for all Working with Children Checks. This promotes national consistency in interstate activities.

Clauses 8 and 9 in division 2 of the bill set out the mandatory provisions applying to child-related work. The Working with Children Check will now provide a universal and clearly recognisable standard for workers and employers. A Working with Children Check application can produce two outcomes: a clearance for all child-related work or a bar from all child-related work. A person must not engage in child-related work without a Working with Children Check clearance or a current Working with Children Check application. A person who has been barred cannot meet either of these standards and so must not engage in child-related work. It is an offence to breach this rule. A person has a current application if he or she has completed the application form successfully, verified his or her identity and paid any required application fee. As long as the commission has not issued a bar or terminated the application, a person awaiting the outcome of a current application may work with children. The commission's capacity to issue interim bars when there are demonstrated serious risks will continue to keep children safe while these risks are being assessed.

Any applicants whose records indicate a serious concern about the safety of children will be identified very early by their criminal and disciplinary records. The Commission for Children and Young People will be able to protect children in these cases by issuing an interim bar immediately pending the finalisation of its risk assessment. The power to issue an interim bar protects children from serious risks while maintaining a fair process for the applicant. While the interim bar is in place, the commission will complete a thorough risk assessment. If the commission has not completed its assessment within six months, the applicant may apply to

the Administrative Decisions Tribunal for a review of the decision to issue an interim bar. The commission completes virtually all risk assessments under the current model of the Working with Children Check in less than six months. Therefore, it is not expected that there will be many appeals against interim bars.

The clear intention of this legislation is for the commission to complete risk assessments within this six-month period where it has issued an interim bar. Clause 12 establishes that there will be two classes of Working with Children Checks. One will allow the holder to work in both paid and volunteer roles and the other will allow the holder to work only in volunteer roles. The following groups may use the volunteer clearance: authorised carers and the adults who share their houses; students on unpaid professional work placements; and volunteers and adoptive parents. A volunteer check is free while the non-volunteer check involves a fee of \$80. This approach and fee level is consistent with Working with Children Checks in most of the other States. The new Working with Children Check will provide for a fair transition from a volunteer to a non-volunteer clearance. A person who holds a volunteer clearance will be able to work in a paid role for up to 30 consecutive days before upgrading to non-volunteer status.

This provision will allow new entrants into the paid workforce an opportunity to start earning before paying their Working with Children Check fee. Every upgrade will involve a new national criminal records check and a new start to the standard five-year clearance period. Employers will be required to establish whether a person has a Working with Children Check clearance or a current Working with Children Check application before engaging that person in a child-related role. They will do this by registering with the Commission for Children and Young People as a child-related employer. Once registered, employers will have direct access to the commission's Working with Children Check register. They will enter the Working with Children Check number provided by the applicant and the register will provide the full name of the person concerned and the current status of his or her Working with Children Check.

The register will advise the employer as to whether that person may work with children. A private individual engaging a person for child-related work—for example, engaging a nanny or a tutor—may also verify the Working with Children Check status by entering the holder's Working with Children Check number into the database. The holder of a clearance may also verify his or her own status. It will be an offence to engage a child-related worker without verifying that the worker has a Working with Children Check clearance or current Working with Children Check application. Employers will not be committing an offence if they can demonstrate that the commission had advised that the person was able work with children or that the person was exempt from the Working with Children Check.

The new Working with Children Check protects children by identifying people whose records indicate a possible risk to children and by assessing the actual risk. The outcome of an application can only be a clearance or a bar. This provides clarity and certainty for both workers and employers. The processes established through this bill are designed to provide a consistent and fair outcome for applicants. Part 3 of the bill details the requirements for a

Working with Children Check clearance. Clause 13 provides that the commission will determine how applications are made and the identity documents that are needed to support them. This information consists of complete national criminal records, disciplinary matters provided to the commission in accordance with this bill and the supporting information from police, courts and other government agencies that contextualise these records and their outcomes.

Applicants also consent to the NSW Police Force releasing records to the commission over the five-year life of a Working with Children Check. Its continuous monitoring of criminal history provides protection from new and emerging risks. In practice, all applicants will complete an online application form. Applicants unable to do this will be able to phone the commission's helpline and officers will complete the online forms for them. Applicants will all need to visit a motor registry with specified documents that verify their identity. The commission will publish a list of documents that are acceptable for this purpose. Identity verification is essential if we are to be sure that the Working with Children Check finds records that legitimately belong to the applicant. At the motor registry, applicants for the non-volunteer Working with Children Check will also pay the required fee. Applicants may withdraw an application if they no longer want to pursue a Working with Children Check. There is no refund of application fees in this situation.

The new Working with Children Check will receive an applicant's full national criminal records and the disciplinary matters reported under clause 35. The outcome of the assessment will be a clearance or a bar, an outcome that protects children and leaves no uncertainty for employers and workers. The centralisation of expertise from the four current screening agencies into the Commission for Children and Young People will provide for high-quality decision-making and consistent practice. Division 3 of part 3 explains how risk is assessed in the Working with Children Check. A risk assessment must be conducted if an applicant is found to have an assessment trigger. Schedule 1 lists specific criminal records and disciplinary matters as assessment triggers. If an applicant has one or more of these records, the commission must assess the risk that the applicant presents to children. On rare occasions a record may come to light that was not disclosed at the time of the applicant's application. In such cases, the commission may conduct a risk assessment, even if the applicant had previously been cleared, just as it would if a new record was revealed through the continuous monitoring of records by the NSW Police Force. If this new assessment indicates that the applicant presents a serious risk to children, the commission will cancel his or her clearance by issuing a bar from child-related work.

Clause 15 specifies the factors the commission may consider in a risk assessment. Essentially, the commission will consider factors about the record and about the offender. In relation to the record, the commission will consider the seriousness of the conduct and the likelihood of its repetition, how long ago it occurred, how the offender got access to the victim and the age difference between the offender and the victims. In relation to the offender, the commission will consider how old he or she was at the time and how old he or she is now; his or her criminal history, and his or her conduct since the offence took place.

These are largely the same considerations as those currently used effectively by the commission and the Administrative Decisions Tribunal to assess applications for a review of prohibited status under the current Act.

The commission may ask agencies and employers for information to supplement its knowledge about these risk factors. It may ask the applicant to provide information that is essential for commencing a risk assessment. If the applicant fails to respond to such a request within six months, the commission can terminate the application. The point of this is to make sure that an application is properly and fully dealt with within a reasonable time. If the applicant does not provide the required information within this time frame and it therefore becomes impossible for the commission to assess the applicant's risk to children, the commission will terminate the application. When this happens the applicant no longer has a current application for a Working with Children Check. This will mean that the applicant cannot engage in child-related work.

Of course, an applicant presenting serious risks will already have received an interim bar. The commission will advise any employers who have verified the applicant's Working with Children Check status on the Working with Children Check register that the applicant may not engage in any child-related work. An applicant whose application has been terminated in this way may make a new application at any point. If the commission identifies a serious potential risk to children partway through the assessment of an application, it will issue an interim bar. The applicant can seek a review of an interim bar by the Administrative Decisions Tribunal after six months. An interim bar may not remain in place for more than 12 months. The commission must make a decision whether to bar or to clear the applicant within 12 months of issuing an interim bar. An interim bar has the same impact as any other type of bar, except that it is limited to time.

The new Working with Children Check will identify and bar applicants who present a serious risk from all child-related work. There are, in effect, three ways to be barred in the new Working with Children Check. Firstly, a person will be automatically barred if he or she has a conviction or pending charge for serious nominated offences, committed as an adult. These offences are listed in schedule 2 and are generally the same as the offences that currently cause a person to be prohibited from child-related employment. Secondly, a person may be barred because of risks identified after assessment of a schedule 1 record and, thirdly, a person may be interim barred pending the completion of an assessment.

Any person convicted of an offence listed in schedule 2 to the bill, or with a pending charge for such an offence, will automatically be barred from working with children, if the offence was committed while the person was an adult. These offences are: serious sex offences, serious violence against a child and kidnapping of a child other than one's own. A person barred by this means is also defined as a disqualified person. The commission will automatically refuse a clearance to a person who is automatically barred, without undertaking a risk assessment. The commission will issue a bar if continuous monitoring identifies any new schedule 2 records. Any persons with a record listed in schedule 1 to the bill will be

subject to assessment as to whether they present a serious risk to children. If they are assessed as presenting a serious risk they will be barred from child-related work. The commission will conduct an assessment if continuous monitoring identifies any further assessment triggers in schedule 1.

Where the commission proposes to issue a bar following assessment of a schedule 1 record, it must advise the applicant of its intention to do so. The commission must invite the applicant to provide submissions about the proposed bar. If the applicant makes any submissions the commission must take them into account in making its final decision.

This is a fair process and will result in effective decision making. If the commission determines after this process to issue a bar, it must advise the applicant in writing and notify the newly barred person of his or her appeal rights. Any person who is barred or who is not authorised to work with children by this legislation and its regulations may not engage in child-related work and may be suspended or dismissed from a child-related role by his or her employer. As well as notifying the applicant that he or she has been barred, the commission will notify any employer that it is aware of that has engaged the applicant in child-related work or the roles defined in clauses 10 and 11. Employers and applicants will receive details of the obligations and rights resulting from the bar. This will keep children safe by making sure that employers take appropriate action to remove barred people from child-related work.

There are penalties for employers who retain a person who is either barred or not authorised to work with children in a child-related role. Penalties do not apply for roles exempted from the Working with Children Check. The commission will actively follow up employers to ensure that they do not put children at risk by employing barred people. A barred person who does not exercise his or her rights to seek a review of the bar in the Administrative Decisions Tribunal may not make a new Working with Children Check application for five years, unless there is a change in circumstances. Such a change would be withdrawal or dismissal of a pending charge against the person, a finding that the person was not guilty of the charge laid against him or her, a previous finding of guilt is quashed or set aside, and if the commission grants the person the right to an early application. A person may surrender a Working with Children Check clearance at any time and this will result in the commission cancelling the clearance. There is no refund of the application fee when a person surrenders clearance.

The parameters for reviews and appeals are set out in part 4. Apart from three exceptions, every barred person may seek a review of the bar by the Administrative Decisions Tribunal. The three situations in which a person may not seek a review are: people who have been barred for child murder, people whose barring offence is a pending charge that has not yet been heard, and people with an interim bar issued within the last six months. An application for a review must be made within 28 days of the notice that a Working with Children Check clearance has been refused—that is, the notice that the applicant is barred from child-related work. Those seeking a review of an interim bar may apply for a review once the stipulated six-month period is over. As in the current appeals process, the tribunal may order a stay on

the operation of a bar, the tribunal may not award costs, appeals from the tribunal decisions lie to the Supreme Court, the onus rests on the applicant to demonstrate that he or she does not present a risk to children, and the commission is a party to all proceedings.

Matters may be re-heard if the commission has new evidence. The Administrative Decisions Tribunal must consider the same issues that the commission considers in an assessment. It may determine that the person remains barred or it may order the commission to issue a clearance. The Administrative Decisions Tribunal may not issue any order with conditions. This is an important clarification of the current process where orders have, on occasion, been issued with conditions. The difficulty with conditions is that they need to be monitored and neither the commission nor any other body has statutory powers or resources for this purpose. The new Working with Children Check operates on a very simple assumption: A person is allowed to work with children or is not allowed to work with children.

The Administrative Decisions Tribunal will now need to determine whether an applicant presents a serious risk to children in the whole range of child-related work and the child-related activities as defined in clauses 10 and 11. If the tribunal cannot be sure that the applicant does not present a serious risk it will not be able to order that the applicant be granted a clearance. The commission may appeal to the Administrative Decisions Tribunal to revoke an order and the tribunal may either revoke the order or confirm it. The way risk is understood will be critical to the considerations of both the commission and the Administrative Decisions Tribunal. All adults can present a risk to children. The bill does not propose that all adults be barred from working with children because of a hidden potential for risk. Rather, the bill proposes that to bar a person from working with children the risk must be significant.

While the bill sets out the factors to be considered in an assessment and a review, the weighting given to these factors is not prescribed and is a matter of expert judgement. Expert judgement will consider the significance of the harm having been realised, whether the behaviour was beyond reasonable community norms, whether the behaviour was planned, whether the behaviour is part of a pattern of ongoing or escalating events, whether the behaviour is recent, and whether the behaviour, if repeated, would do significant harm. Expert judgement will be applied to mitigating factors such as significant and sustained positive socialisation since the behaviour occurred, recurrence or cessation of concerning behaviours over a significant period, and genuine and sustained effort to remedy the conduct and past behaviour. Remorse on its own is not considered to be a factor that mitigates risk.

Part 5 details employer and agency obligations to provide information to the commission in relation to the Working with Children Check. Government agencies hold information that is critical for assessing risk. The information they hold will detail the age of victims, the circumstances surrounding the offending conduct and how the offender has been managed by government authorities since the offence or offences occurred. Without this information the commission cannot make an informed decision about the level of risk the applicant presents. The bill sets an obligation on government agencies to provide information about applicants

being assessed for a Working with Children Check clearance. Employers and non-government agencies also hold information that will help the commission to determine risk. They have information about aspects of the applicant's life, including work, training and development, which can mitigate risks. The commission may request information from non-government agencies but is not able to compel its production.

The bill contains a new provision that allows the Director of Public Prosecutions to release information more easily. The Director of Public Prosecutions is the key source of information about why a prosecution did not proceed. This information is critically important in assessing risk, particularly where the case could not proceed because a victim was too young to give evidence or was too distressed to give evidence of a child sexual assault. Clause 34 allows the Director of Public Prosecutions to disclose this information by means of allowing risk assessors from the commission to access prosecution files to identify the relevant information. Information that is not relevant to the risk assessment may be seen in those files but may not be formally released to the commission. It will not be used to assess risk. This is an efficient process that releases the Director of Public Prosecutions from the work of identifying the required documents individually and speeds up assessments.

Part 5 allows the NSW Police Force to release criminal history information to the commission, both in initial record searches and in continuous monitoring. This will ensure that the Working with Children Check can continue to access spent convictions, charges and juvenile records as it currently does. Part 5 also provides for nominated employers to notify disciplinary matters to the commission for use as assessment triggers. The review of the commission's Act in 2010 recommended that the settings for "relevant employment proceedings" be overhauled. The review found that the broad definitions of these proceedings had led to the reporting of many low-level, minor or poorly investigated employment proceedings. The definition currently in use requires the reporting of proceedings even where a finding against the employee has not been sustained. This current definition of "reportable conduct" is aligned with the definition of "reportable conduct" in part 3A of the Ombudsman Act 1974.

This bill responds to those identified problems by redefining the definition of matters to be reported. The new disciplinary matters use a new definition. This definition is no longer identical to the definition of "reportable conduct" in part 3A of the Ombudsman Act 1974. The definition in the Ombudsman Act allows him to identify a broad range of relevant allegations made to employers, keeping children safe by ensuring appropriate management of these allegations. In accordance with the findings of the review of the Commission for Children and Young People Act 1998, the most serious workplace conduct is targeted for use in determining whether a person may work with children. The commission and the Ombudsman will continue to work closely together to protect children.

Any assessment trigger, whether a criminal matter or a disciplinary matter, must be able to sustain an appealable bar against working with children. There are two conditions that need to be met to achieve this. First, the investigation of the conduct must be sound and must have

taken into account the principles of natural justice; and, second, the conduct must be of a serious nature and must have actually occurred. Unsustainable allegations will not sustain an appealable bar. Only employers whose investigation practice meets the first condition will be reporting bodies that report disciplinary matters. They will be obliged to do so by law.

The bill nominates five categories of agency that will be required to report disciplinary matters: New South Wales government agencies, as they are obliged to follow statutory processes for investigating allegations which take into account the principles of natural justice; a department or agency covered by the Public Sector Employment Management Act 2002; a registration or licensing authority constituted under an Act; an agency with whom the Ombudsman has entered into a class or kind agreement under section 25CA of the Ombudsman Act—these agreements reflect the Ombudsman's assessment that the agencies have achieved a high standard in their investigative practice—and other employers prescribed by regulation. The commission will continue to work with the Ombudsman and other authorities to ensure that employers in high-risk sectors reach the standards required to become a reporting body.

Only sexual assaults, sexual misconduct and serious physical assaults have been identified to date as meeting the second part of this requirement. The range of matters to be reported may be extended by regulation. It is envisaged that the Ombudsman will be empowered to notify additional serious conduct against children that would not otherwise be notified as a disciplinary matter. All reporting bodies will be required to report findings that sexual assault of a child or sexual misconduct with a child, including grooming a child, occurred or that serious physical violence against a child occurred. Part 6 sets out some specific functions of the commission not separately referenced in the other parts of the bill. The commission is given statutory power to retain information relating to the Working with Children Check functions: managing databases relating to reviews and appeals, employer reports of disciplinary matters and employer verifications of Working with Children Check clearances. These powers are similar to those the commission already has.

The commission will be responsible for promoting community awareness of the Working with Children Check. It will have the power to monitor and audit compliance with the requirements of the bill and the regulations, the importance of which was underlined by the Auditor General's 2010 Performance Audit of the Working with Children Check. The commission will have the power to compel the production of information for monitoring and auditing compliance to ensure that the Working with Children Check is used in accordance with the law by child-related employers and workers. Part 7 brings together the remaining powers and authorities required to make the Working with Children Check effective and efficient. Most of these provisions are simply transferred from the current legislation and protect the privacy and work of officers.

As I noted before, the new Working with Children Check provides two outcomes from a Working with Children Check application: the applicant is cleared or the applicant is barred. Employers have indicated that they must be free to suspend or dismiss workers from child-

related roles if the worker becomes barred or is not authorised to work with children under this legislation and its regulations. Clause 47 provides that a person suspended or dismissed as a result of being barred or not having the required authority to work with children may not be reinstated or re-employed, or given damages or compensation for this by any court or tribunal. This allows employers to carry out the intention of this bill to protect children without being caught by industrial rulings.

This does not mean that all applicants with an interim bar, or an appeal in progress, or a bar resulting from a pending charge, automatically will be dismissed by their employers. The Administrative Decisions Tribunal has the power to issue a stay of the bar so that the person may continue to work with children while a review of the bar is in progress. Employers with the capacity to do so may suspend a barred worker or redeploy such a worker to a non child-related role. Nevertheless, under clause 47, employers retain the right to dismiss a child-related worker who may not work with children as a result of being barred or not holding a clearance or a current application for a Working with Children Check.

Clause 52 provides the Governor with the power to make regulations to support the Act. Specifically, the Governor may regulate the information to be provided to applicants or holders of Working with Children Check clearances, the exemption of people or classes of people from the requirements of the Act, the amendment of schedules 1 and 2, where disqualifying offences and assessment requirement triggers are listed. This regulation-making power allows the Working with Children Check the flexibility to respond to emerging knowledge about risks to children. Schedule 1 lists the records that will trigger an assessment of risk. The schedule includes both criminal records and disciplinary matters.

The list of criminal records is closely modelled on the records defined in the current Working with Children Check as relevant criminal records, with minor adjustments to reflect the knowledge of risk factors developed over the 12 years of operating the current Working with Children Check. The list of disciplinary records is a focused subset of the relevant employment proceedings defined for the current Working with Children Check. The commission will provide further guidance to reporting bodies that clarifies what matters need to be reported. At present the list of disciplinary matters covers records that reporting bodies will be required to report. The Government is aware that the Ombudsman, through his role in part 3A of the Ombudsman Act 1974, will be able to provide some additional information critical to identifying risk in applicants.

The Government intends that a regulation will specify additional schedule 2 records to ensure that the Ombudsman is able to refer additional assessment triggers to the commission. Clause 37 allows more bodies to be named as reporting bodies by regulation. The commission is working with the Ombudsman to prepare this regulation. Schedule 2 lists the records that will lead to an automatic bar from working with children. The current Act includes a reference to people registered under the Child Protection (Offender Registration) Act 2000. This reference has been found to be unnecessary as all the offences that lead to registration under that Act are now individually listed in schedule 2. People who are awaiting trial for an offence listed

on schedule 2 are automatically barred from working with children. These people have been charged with serious offences that are clear indicators of risk to children.

Schedule 3 to the bill provides for the transitional arrangements from the current Working with Children Check to the new Working with Children Check. The new Working with Children Check will apply immediately on commencement to all people entering a new paid child-related position. The key transitional arrangements are for people who remain in their current child-related positions. They will not immediately be required to have a Working with Children Check clearance if staying in the same position. All child-related workers, including volunteers, will need to hold a clearance within five years of the commencement of the new Working with Children Check. A regulation will establish a timetable that brings child-related sectors and workers on board in a planned way. The regulation will set out year by year which sectors, roles and types of worker will come on board.

The Commission for Children and Young People will establish this timetable after extensive consultation with peak bodies and employers in child-related sectors and an assessment of risk factors in each setting.

People who hold a Certificate for Self Employed People will be able to use the certificate until its expiry but will then need a new Working With Children Check to work with children. Schedule 4 amends a variety of Acts that reference the Working With Children Check or particular features of the Working With Children Check. The new Working With Children Check will provide a fast and efficient service to the child-related community. For people with no criminal or disciplinary records, clearances will frequently be provided on the same day as the motor registry verifies applicant identity. The Commission for Children and Young People anticipates that only a small proportion of applicants will need to wait more than two weeks for their clearances. The new Working With Children Check will be operated by the Commission for Children and Young People rather than by four separate screening agencies. For the first time all the expertise on the Working With Children Check will be in one agency.

To ensure that we have the detailed settings right, the Government has committed to a two-year review of this new Working With Children Check. This review will be informed by data about the actual use of the Working With Children Check, identified risks and case reviews. The review will be supported through ongoing consultation with key stakeholders. The Government is delivering the upgrade that the community has sought. This Working With Children Check is a state-of-the-art service that puts New South Wales at the cutting edge of working with children checks around Australia. I bring this bill forward confident of the strong protection it gives to children and the clear benefits it provides to both employers and workers. This is a bill that will benefit the whole community. I particularly thank the Commissioner for Children and Young People, Megan Mitchell, Virginia Neighbour and their team on demonstrating public sector excellence in the development of this bill. It is an outstanding piece of work. I commend the bill to the House.

Debate adjourned on motion by Dr Andrew McDonald and set down as an order of the day for a future day.