



New South Wales

Child Protection (Working with Children) Amendment Regulation 2013

under the

Child Protection (Working with Children) Act 2012

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Child Protection (Working with Children) Act 2012*.

PRU GOWARD, MP
Minister for Family and Community Services

Explanatory note

The object of this Regulation is to amend the *Child Protection (Working with Children) Regulation 2013* to make amendments consequential on the commencement of the *Child Protection Legislation Amendment (Children's Guardian) Act 2013*.

The Regulation also makes the following amendments:

- (a) provides that the Children's Guardian may, by notice in writing to an employer, require a specified class of existing workers engaged by the employer to comply with the mandatory requirements for child-related work in the *Child Protection (Working with Children) Act 2012* before those workers would otherwise be required to comply with those requirements,
- (b) provides that an employer who is given such a notice must, by notice in writing, inform any existing worker who belongs to the specified class of existing workers of the requirement to comply with the mandatory requirements for child-related work in the *Child Protection (Working with Children) Act 2012* within the period specified by the Children's Guardian,
- (c) clarifies that a person employed in the NSW Health Service is taken to have ceased to be employed by an existing employer if the person ceases to be employed in the NSW Health Service,
- (d) provides that an existing resident who resides at the home of an authorised carer is not required to obtain or have a working with children check clearance (a *clearance*) until the authorised carer is required to obtain or have a clearance,

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- (e) provides that an existing resident who resides at a home where a home based education and care service or family day care service is provided is not required to obtain or have a clearance until the person who provides the service at that home is required to obtain or have a clearance or 31 December 2013, whichever occurs first.

This Regulation is made under the *Child Protection (Working with Children) Act 2012*, including section 52 (the general regulation-making power) and clauses 1, 5 and 7 of Schedule 3 to that Act.

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under the

Child Protection (Working with Children) Act 2012

1 Name of Regulation

This Regulation is the *Child Protection (Working with Children) Amendment Regulation 2013*.

2 Commencement

This Regulation commences on 15 June 2013 and is required to be published on the NSW legislation website.

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Schedule 1 Amendment of Child Protection (Working with Children) Regulation 2013

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[1] Clause 6 Children’s health services

Omit “provided to children in wards of hospitals, or in connection with other child health services,” from clause 6 (3).

[2] Clauses 19, 23 and 24 and Schedule 1, clauses 2 (8), 3 (3) and 6 (2) and Schedule 2

Omit “Commission” wherever occurring.

Insert instead “Children’s Guardian”.

[3] Clause 22

Omit the clause. Insert instead:

22 Exemption of certain household members

An adult person who resides at the home of an authorised carer referred to in section 137 (1) (a) of the *Children and Young Persons (Care and Protection) Act 1998* is exempt from the requirements of section 10 of the Act.

[4] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1:

(2) In Part 2 of Schedule 3 to the Act:

existing resident means an adult who was, immediately before the commencement of Part 2 of the Act, residing at the home of an authorised carer (other than an authorised carer referred to in section 137 (1) (a) of the *Children and Young Persons (Care and Protection) Act 1998*) or at a home where a home based education and care service or family day care service was provided.

[5] Schedule 1, clause 2 (1) (c)

Omit the paragraph. Insert instead:

(c) existing residents who continue to reside at the home of the same authorised carer or at the same home where a home based education and care service or family day care service was provided immediately before the commencement of Part 2 of the Act, and where that care or service continues to be provided,

[6] Schedule 1, clause 2 (2) (b)

Insert “or the applicable approved provider” after “designated agency”.

[7] Schedule 1, clause 2 (3), heading

Omit “April”. Insert instead “June”.

[8] Schedule 1, clause 2 (3)

Omit “all workers engaged in the following categories of child-related work, and existing residents,”.

Insert instead “existing residents and all workers engaged in the following categories of child-related work”.

[9] Schedule 1, clause 5

Omit the clause. Insert instead:

5 Early application of Act to certain existing workers

- (1) The Children’s Guardian may, by notice in writing to an existing worker or an employer, require the existing worker or a specified class of existing workers engaged by the employer to comply with Division 2 of Part 2 of the Act.
- (2) An employer who is given a notice under this section must, by notice in writing, inform any existing worker who belongs to the specified class of existing workers of the requirement to comply with Division 2 of Part 2 of the Act within the period specified by the Children’s Guardian in the notice to the employer.
- (3) An existing worker who is given a notice under this clause, and any employer of that worker:
 - (a) ceases to be subject to clause 2 of this Schedule, and
 - (b) is required to comply with Division 2 of Part 2 of the Act within the period specified in the notice.

[10] Schedule 1, clause 6 (1)

Omit “section” where firstly occurring. Insert instead “clause”.

[11] Schedule 1, clause 6 (2)

Insert after the subclause:

Note. Part 7 of the *Commission for Children and Young People Act 1998* was repealed by the Act. The Children’s Guardian will, instead of the Commission, hear applications that were made, but not finally determined, before the repeal of that Part in accordance with the repealed provisions.

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Schedule 1 Amendment of Child Protection (Working with Children) Regulation 2013

[12] Schedule 1, clause 7

Omit the clause. Insert instead:

7 Existing employees and residents

- (1) This clause applies instead of clause 3 of Schedule 3 to the Act.
- (2) An existing child-related worker is not required to obtain or have a working with children check clearance while the worker continues in the employment of an existing employer.
- (3) For the purposes of this clause:
 - (a) a person in the Government Service is taken to have ceased to be employed by an existing employer if the person becomes a member of staff of a Government Department or agency that has a different ABN by way of an employee-initiated transfer, and
 - (b) a person employed in the NSW Health Service is taken to have ceased to be employed by an existing employer if the person ceases to be employed in the NSW Health Service.
- (4) An existing resident who resides at the home of an authorised carer is not required to obtain or have a clearance until the authorised carer is required to obtain or have a clearance.
- (5) An existing resident who resides at a home where a home based education and care service or family day care service is provided is not required to obtain or have a clearance until:
 - (a) the person who provides the education and care service or family day care service at that home is required to obtain or have a clearance, or
 - (b) 31 December 2013,whichever occurs first.
- (6) This clause does not apply to an existing child-related worker or an existing resident who was a disqualified person on the commencement of this clause or who subsequently becomes a disqualified person.
- (7) This clause does not apply to a person in respect of work carried out by the person as a self-employed person.