



New South Wales

Child Protection (Working with Children) Amendment (Miscellaneous) Regulation 2013

under the

Child Protection (Working with Children) Act 2012

Her Excellency the 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 objects of this Regulation are as follows:

- (a) to amend Schedule 2 to the *Child Protection (Working with Children) Act 2012* to include convictions for former offences relating to carnal knowledge (the relevant provisions were repealed in 1986) as mandatory grounds on which working with children check clearances (*clearances*) must be refused and to make a related transitional regulation,
- (b) to correct a reference to an offence in that Schedule,
- (c) to prescribe school cleaners as persons who are engaged in child-related work and who are required to have clearances and to provide for the staged application of clearance requirements to school cleaners,
- (d) to enable authorised carers, and persons residing with them, who reside in another State or a Territory, and authorised carers, and persons residing with them or at homes where home based education and child care services or family day care services are provided, who have physical difficulties, to provide proof of identity for the purposes of a clearance application in the manner approved by the Children's Guardian rather than in person at a motor vehicle registry or Government Access Centre,
- (e) to make it clear that persons who reside with authorised carers who provide out-of-home care are exempt from the requirement to have a clearance if the authorised carers only provide the care at a place other than the home,
- (f) to exempt birth parents who reside with authorised carers of their children from the requirement to have a clearance,
- (g) to exempt authorised carers who reside outside Australia, and adults who reside with them, from the *Child Protection (Working with Children) Act 2012*, unless they return to Australia for a period of more than 7 days,
- (h) to adjust the periods for compliance by volunteers, existing workers and others with the requirements of the *Child Protection (Working with Children) Act 2012* so that the relevant periods end on 31 March rather than 31 December,

- (i) to enable the Children's Guardian to require any person who is subject to the staged implementation of clearance requirements to comply with those requirements within an earlier specified period.

This Regulation is made under the *Child Protection (Working with Children) Act 2012*, including sections 6 (3) (g), 13 (4) and 52 (the general regulation-making power).

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1 Name of Regulation

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

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

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

[1] Schedule 2 Disqualifying offences

Insert “67, 68, 71, 72,” before “73” in clause 1 (1) (i).

[2] Schedule 2, clause 1 (1) (u)

Omit “270.6”. Insert instead “270.6A”.

Schedule 2 Amendment of Child Protection (Working with Children) Regulation 2013

[1] Clause 3 Definitions

Insert in appropriate order in clause 3 (1):

school cleaner—see clause 16A.

[2] Clause 16A

Insert after clause 16:

16A School cleaners

For the purposes of section 6 (3) of the Act, the role of a cleaner providing cleaning services at a school (a *school cleaner*) is prescribed as a child-related role.

[3] Clause 18 Proof of identity

Insert after clause 18 (2):

- (3) Despite subclauses (1) and (2), the following applicants may provide proof of identity in the manner approved by the Children's Guardian:
 - (a) an authorised carer, or a person who resides at the home of an authorised carer or at a home where a home based education and care service or family day care service is provided, who is not physically capable of attending a motor registry or Government Access Centre for that purpose, if a certificate by a medical practitioner to that effect is provided to the Children's Guardian,
 - (b) an authorised carer who resides in another State or a Territory, and any person who resides at the home of that authorised carer.

[4] Clause 20 Exemption from Act for specified workers and employers

Insert "(other than a school cleaner)" after "worker" in clause 20 (1) (a).

[5] Clauses 22–22B

Omit clause 22. Insert instead:

22 Exemption for certain household members where out-of-home care not provided

An adult person who resides at the home of an authorised carer who provides out-of-home care (within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*) is exempt from the requirements of section 10 of the Act if the authorised carer only provides that care at a place other than the home.

22A Exemption for birth parents resident in households of authorised carers

An adult person who resides at the home of an authorised carer is exempt from the requirements of section 10 of the Act if the person is the birth parent of a child for whom care is provided by the authorised carer at that home.

22B Exemption for authorised carers and adult residents who reside overseas

- (1) An authorised carer who resides outside Australia, and any adult person who resides at the home of that authorised carer, are exempt from the Act.

- (2) This exemption ceases to apply to an authorised carer or adult person during any period that the authorised carer or person remains in Australia for more than 7 consecutive days.

- [6] **Schedule 1 Savings and transitional provisions**
Omit “**31 December 2013**” from the heading to clause 2 (3).
Insert instead “**31 March 2014**”.
- [7] **Schedule 1, clause 2 (3)**
Omit “31 December 2013”. Insert instead “31 March 2014”.
- [8] **Schedule 1, clause 2 (4), heading**
Omit “**1 January 2014 to 31 December 2014**”.
Insert instead “**1 April 2014 to 31 March 2015**”.
- [9] **Schedule 1, clause 2 (4)**
Omit “31 December 2014”. Insert instead “31 March 2015”.
- [10] **Schedule 1, clause 2 (5), heading**
Omit “**1 January 2015 to 31 December 2015**”.
Insert instead “**1 April 2015 to 31 March 2016**”.
- [11] **Schedule 1, clause 2 (5)**
Omit “31 December 2015”. Insert instead “31 March 2016”.
- [12] **Schedule 1, clause 2 (6), heading**
Omit “**1 January 2016 to 31 December 2016**”.
Insert instead “**1 April 2016 to 31 March 2017**”.
- [13] **Schedule 1, clause 2 (6)**
Omit “31 December 2016”. Insert instead “31 March 2017”.
- [14] **Schedule 1, clause 2 (6) (b)**
Insert “or as a school cleaner in a secondary school” after “secondary schools”.
- [15] **Schedule 1, clause 2 (7), heading**
Omit “**1 January 2017 to 31 December 2017**”.
Insert instead “**1 April 2017 to 31 March 2018**”.
- [16] **Schedule 1, clause 2 (7)**
Omit “31 December 2017”. Insert instead “31 March 2018”.
- [17] **Schedule 1, clause 2 (7) (d)**
Insert “or as a school cleaner in an educational institution” after “subclause (6)”.
- [18] **Schedule 1, clause 2 (8)**
Omit “the year concerned”. Insert instead “the period of 12 months preceding that date”.

[19] Schedule 1, clause 2A

Insert after clause 2:

2A School cleaners employed after commencement of Part 2 of the Act and before 31 March 2014

- (1) On and from 31 March 2014, workers engaged as school cleaners by an employer after the commencement of Part 2 of the Act are required to comply with Division 2 of Part 2 of the Act.
- (2) Until 31 March 2014, a worker referred to in subclause (1) is not required to obtain or have a clearance in respect of that work and section 9 of the Act does not apply in respect of an employer of any such person.
- (3) This clause has effect despite any provision of Part 2 of Schedule 3 to the Act.

[20] Schedule 1, clause 5

Omit the clause. Insert instead:

5 Early application of Act

- (1) The Children's Guardian may, by notice in writing to a person to whom clause 2 or 2A applies or an employer, require the person or a specified class of such persons 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 clause must, by notice in writing, inform any person who belongs to the specified class of persons 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) A person who is given a notice under this clause, and any employer of that person:
 - (a) ceases to be subject to clause 2 or 2A 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.

[21] Schedule 1, clause 7 (5) (b)

Omit "31 December 2013". Insert instead "31 March 2014".

[22] Schedule 1, clause 8

Insert after clause 7:

8 Application of change to disqualifying offences

The amendments made by the *Child Protection (Working with Children) Amendment (Miscellaneous) Regulation 2013* to Schedule 2 to the Act do not apply to or in respect of an application for a clearance made by a person before the commencement of that Regulation or to any subsequent application for a further clearance by that person.