



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.



New South Wales

Child Protection (Working with Children) Amendment Bill 2022

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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—

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1 Name of Act

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This Act is the *Child Protection (Working with Children) Amendment Act 2022*.

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2 Commencement

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This Act commences on—

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(a) for Schedule 1[9] and [10]—a day or days to be declared by proclamation, or

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(b) otherwise—the date of assent to this Act.

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| Schedule 1 | Amendment of Child Protection (Working with Children) Act 2012 No 51 | 1 |
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| [1] Section 13(6)–(8) | | 3 |
| Omit the subsections. | | 4 |
| [2] Sections 13AA and 13AB | | 5 |
| Insert after section 13— | | 6 |
| 13AA Withdrawal of applications for clearances | | 7 |
| (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. | | 8 9 |
| (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. | | 10 11 12 |
| (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. | | 13 14 15 16 |
| 13AB Termination of applications for clearances | | 17 |
| (1) The Children’s Guardian may terminate an application for a working with children check clearance if— | | 18 19 |
| (a) the applicant fails to provide, or incorrectly provides, the applicant’s— | | 20 |
| (i) full name, or | | 21 |
| (ii) former name, or | | 22 |
| (iii) known aliases, or | | 23 |
| (b) the application is a duplicate application. | | 24 |
| (2) The Children’s Guardian must terminate an application for a working with children check clearance if notified of the death of the applicant. | | 25 26 |
| (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. | | 27 28 29 |
| (4) The Children’s Guardian must, as soon as practicable after terminating an application, give written notice of the termination to— | | 30 31 |
| (a) for an application terminated under subsection (1)—the applicant, and | | 32 |
| (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. | | 33 34 35 |
| (5) In this section— | | 36 |
| <i>duplicate application</i> means an application made by an applicant for a class of clearance for which the applicant has made a previous application not yet determined. | | 37 38 39 |
| [3] Section 13A Embargo after refusal of application or cancellation of clearance | | 40 |
| Omit section 13A(1)(b). Insert instead— | | 41 |
| (b) unless a further early application is permitted under this section. | | 42 |

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| [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 |
| [5] Section 15 Assessment of applicants and holders | 11 |
| Omit section 15(4A). Insert instead— | 12 |
| (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— | 13 |
| (a) a reasonable person would allow the person’s child to have direct contact with the applicant or holder— | 14 |
| (i) while not directly supervised by another person, and | 15 |
| (ii) while the applicant or holder was engaged in child-related work, and | 16 |
| (b) the making of the determination is in the public interest. | 17 |
| [6] Section 24, heading | 18 |
| Insert “or death of holder” after “clearances”. | 19 |
| [7] Section 24(4) | 20 |
| Insert after section 24(3)— | 21 |
| (4) The Children’s Guardian must terminate the working with children check clearance of a holder if notified of the holder’s death. | 22 |
| [8] Section 30 Determination of applications and other matters | 23 |
| Omit “28 or” from section 30(2). | 24 |
| [9] Section 36A | 25 |
| Omit the section. Insert instead— | 26 |
| 36A Information-sharing | 27 |
| (1) The Children’s Guardian may exchange working with children check information with an interstate screening agency. | 28 |
| (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. | 29 |
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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 |

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| 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 |

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| [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 |