



New South Wales

# Child Protection (Working with Children) Bill 2012

## 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 require people engaged in paid or unpaid work with children to obtain a working with children check clearance (a *clearance*),
- (b) to prohibit the granting of clearances to persons convicted of, or charged with, the murder of a child, serious sex offences and other specified offences,
- (c) to specify the circumstances in which applicants for or holders of clearances will be subject to detailed risk assessment to determine whether they pose a risk to the safety of children,
- (d) to confer on the Commission for Children and Young People (the *Commission*) functions relating to the granting and refusal of applications for clearances and the assessment of applicants and holders and other related functions,
- (e) to provide for reviews of decisions of the Commission and for applications by disqualified persons who wish to work with children,
- (f) to provide for the establishment of a working with children register and databases by the Commission,

- (g) to provide for the mandatory provision of information to the Commission by employers, the NSW Police Force and others for the purposes of the proposed Act,
- (h) to make consequential amendments to other Acts,
- (i) to enact consequential savings and transitional provisions.

## Outline of provisions

### Part 1 Preliminary

**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 a day or days to be appointed by proclamation.

**Clause 3** sets out the object of the proposed Act.

**Clause 4** provides that the safety, welfare and well-being of children and, in particular, protecting them from child abuse, is the paramount consideration in the operation of the proposed Act.

**Clause 5** defines certain words and expressions used in the proposed Act.

### Part 2 Restrictions on child-related work

#### Division 1 Child-related work

**Clause 6** defines when a worker is taken to be engaged in *child-related work* for the purposes of the proposed Act. A worker is so engaged if engaged in work for, or in connection with, work prescribed by the regulations that is work in education and care services, child care services, mentoring and counselling services for children, child protection services, schools, private tuition, detention centres for children, residential services for children, sporting and other venues used primarily by children, child health services, disability services, transport services for children and religious organisations. Persons employed in specified roles, including approved providers or managers of education and care services, are also classified as being engaged in child-related work.

**Clause 7** also defines a worker as engaging in *child-related work* if the worker's work involves access to confidential records or information about children and the employer requires the worker to obtain a clearance. The requirement may be made or revoked only with the approval of the Commission.

#### Division 2 Mandatory requirements for child-related work

**Clause 8** makes it an offence to engage in child-related work unless the worker holds a clearance or has a current application for a clearance. It will also be an offence for a worker to engage in child-related work at any time while subject to an interim bar.

**Clause 9** makes it an offence for an employer to commence employing or to continue to employ a worker in child-related work if the employer knows or has reasonable cause to believe that the worker is not the holder of a clearance and does not have a current application for a clearance or that the worker is subject to an interim bar.

### **Division 3 Additional persons who must obtain clearances**

**Clause 10** requires an adult who resides for more than 3 weeks at a home where an education and care service is provided, or at the home of an authorised carer, to obtain a clearance. The designated agency that authorises the authorised carer or the approved provider of the education and care service must ensure that the adult complies with the proposed section.

**Clause 11** provides for the screening by the Commission of persons applying to adopt a child as if they were applicants for a clearance.

## **Part 3 Working with children check clearances**

### **Division 1 Classes of clearances**

**Clause 12** provides for volunteer and non-volunteer classes of clearances and provides that the holder of a volunteer clearance may engage in paid work for a transitional period of up to 30 consecutive days.

### **Division 2 Applications for clearances**

**Clause 13** provides for applications for working with children clearances.

### **Division 3 Risk assessment of applicants and holders**

**Clause 14** makes a person subject to an *assessment requirement* if any of the matters specified in proposed Schedule 1 apply to the person.

**Clause 15** requires the Commission to conduct a risk assessment of a person to determine whether the person poses a risk to the safety of children if the person is an applicant for or holder of a clearance who is subject to an assessment requirement. Assessments may also be conducted if the Commission becomes aware that a clearance has been granted on wrong or incomplete information or if the Commission otherwise decides to conduct an assessment. The Commission may consider matters relating to the matters that caused the assessment, including the seriousness of any offences, the age of the person and victim when they occurred and the likelihood of repetition when assessing risk.

**Clause 16** enables the Commission to request applicants for or holders of clearances to provide information related to the application or clearance. The Commission may terminate an application if the applicant fails to provide requested information within 6 months.

**Clause 17** empowers the Commission to impose an interim bar on an applicant for or holder of a clearance if the Commission is of the opinion that it is likely there is a

risk to the safety of children if the applicant or holder continues to engage in child-related work. An interim bar will be in force for 12 months unless earlier revoked or an application for clearance is granted. It will be an offence under proposed section 8 to engage in child-related work while subject to an interim bar.

#### **Division 4 Determination of applications for clearances**

**Clause 18** prohibits the granting of a clearance to a person convicted of or charged with an offence specified in proposed Schedule 2 (a *disqualified person*), if the offence was committed as an adult. The Commission must grant a clearance to a person subject to a risk assessment if satisfied that the person does not pose a risk to the safety of children. The Commission must also grant a clearance to a person who is not a disqualified person and who is not subject to risk assessment.

**Clause 19** requires the Commission to notify applicants (other than disqualified persons) of proposed decisions not to grant clearances and to consider any submissions made by applicants within a period specified for that purpose in the notice.

**Clause 20** provides for written notice to be given of a decision to refuse or grant a clearance. If a clearance is granted, the notice must include the person's working with children check number.

**Clause 21** prohibits an unsuccessful applicant for a clearance from making a further application for a period of 5 years, except where a person is not found guilty of an offence, a finding of guilt or other relevant finding is quashed or set aside or ceases to have effect or the Commission permits an application to be made.

#### **Division 5 Duration and termination of clearances**

**Clause 22** provides that a clearance ceases to have effect 5 years after it is granted unless sooner cancelled or surrendered. A new clearance may be applied for up to 3 months before the expiry of the clearance.

**Clause 23** requires the Commission to cancel a clearance on becoming aware that the holder is a disqualified person or if satisfied that the holder poses a risk to the safety of children. Notice of the cancellation, containing reasons, must be given to the holder.

**Clause 24** provides for the surrender of clearances.

#### **Division 6 Working with children register**

**Clause 25** requires the Commission to establish a working with children register containing particulars of applications for clearances and particulars of holders of clearances (including their working with children check numbers). The register is to be kept in the manner and form approved by the Commission.

## Part 4 Reviews and appeals

**Clause 26** prohibits a person from making an application under the proposed Part if the person has been convicted of the murder of a child or the person's application for a clearance has been refused wholly or partly because the person has been charged with an offence and the proceedings have not been finally determined.

**Clause 27** confers a right to apply to the Administrative Decisions Tribunal (the *Tribunal*) for a review of a decision to refuse or cancel a clearance within 28 days after notice of the decision is given. An application may also be made for a review of a decision to impose an interim bar if the interim bar has been in force for more than 6 months. Any party to the appeal proceedings may appeal to the Supreme Court on a question of law.

**Clause 28** confers on a disqualified person a right to apply to the Tribunal for an order (an *enabling order*) declaring that the person is not to be treated as a disqualified person for the purposes of the proposed Act in respect of a specified offence. It also confers on a person who is ineligible to apply for a clearance (because of a previous refusal) a right to apply to the Tribunal for an order declaring that the person is eligible to apply for a clearance. The Tribunal may also order the Commission to revoke an interim bar or to grant the person a clearance.

**Clause 29** enables the Commission to apply to the Tribunal to revoke or vary an enabling order. On such an application, the Tribunal may revoke or vary an enabling order if satisfied that the person concerned poses a risk to the safety of children.

**Clause 30** provides that in determining an application under the proposed Part, the Tribunal is to consider matters relating to relevant offences or findings, including the seriousness of the matters, the age of the person and victim when they occurred and the likelihood of repetition. It also enables the Tribunal to order a stay of the operation of a determination of the Commission if an appeal or application is made under the proposed Part for an enabling order. It also disapplies appeal provisions under the *Administrative Decisions Tribunal Act 1997*.

## Part 5 Provision of information

**Clause 31** re-enacts, with necessary modifications, a provision of the *Commission for Children and Young People Act 1998* (the *CCYP Act*) to confer power on the Commission to require government agencies and other persons to provide information relevant to an assessment of whether a person poses a risk to the safety of children.

**Clause 32** authorises the Director of Public Prosecutions, on receipt of a notice to provide information under proposed section 31, to disclose documents even if they contain other additional information that may be subject to legal professional privilege or other restrictions on disclosure.

**Clause 33** authorises the Commissioner of Police to disclose to the Commission information relating to matters that may result in an assessment requirement affecting a person, information relating to a person's criminal history and

information relating to the circumstances of an offence. Such information may include information about spent convictions and criminal charges.

**Clause 34** re-enacts a provision of the CCYP Act that enables the disclosure of information about convictions, criminal history, offences and charges by the Commissioner of Police to CrimTrac, police forces of other jurisdictions and interstate screening agencies for the purposes of interstate child-related work screening.

**Clause 35** imposes a duty on a reporting body to notify the Commission of the identity of any child-related worker against whom the body makes a finding that the worker has engaged in conduct specified in proposed Schedule 1 (that is, conduct which makes the worker liable to an assessment requirement). Regulations may be made about the notification and related matters. The bodies that are **reporting bodies** include NSW Government agencies, government Departments or public sector agencies, registration or licensing authorities constituted by an Act and other bodies exempt from requirements under the *Ombudsman Act 1974* relating to the reporting of conduct involving actions against children.

**Clause 36** re-enacts a provision of the CCYP Act providing for the issue of enforcement notices to reporting bodies to require compliance with obligations under proposed section 35.

## **Part 6 Functions of Commission**

**Clause 37** confers on the Commission functions with respect to the establishment and maintenance of databases containing information about Tribunal orders under the proposed Act, findings resulting in assessment requirements, notifications by reporting bodies and employers seeking information about clearances.

**Clause 38** enables the Commission to promote public awareness of and provide advice on requirements for clearances and related matters.

**Clause 39** requires the Commission to monitor and audit compliance with the proposed Act and regulations made under the proposed Act.

**Clause 40** re-enacts a provision of the CCYP Act to confer power on the Commission to issue a notice to compel the provision of information or documents by an officer of a government agency, an employer or an employer body. It will be an offence to fail to comply with such a notice.

## **Part 7 Miscellaneous**

**Clause 41** provides that the proposed Act binds the Crown.

**Clause 42** re-enacts, with necessary modifications, a provision of the CCYP Act to enable an assessment under the proposed Act, or interstate child-related work screening, to be conducted despite any other Act or law. The proposed section also provides that the proposed Act does not affect any statutory right of an employee in relation to employment or termination of employment, though any court exercising jurisdiction over such a right is required to have regard to the results of any

assessment or application for a clearance and the welfare of children in connection with the employment concerned. The provision is subject to proposed section 47.

**Clause 43** re-enacts, with necessary modifications, a provision of the CCYP Act to protect persons carrying out functions relating to assessment and clearances from liability for acts or omissions done in good faith and with reasonable care. Any such person has qualified privilege in proceedings for defamation and is not liable to pay damages or compensation in respect of decisions about applications and clearances.

**Clause 44** provides for the issue by the Commission of evidentiary certificates as to clearances, applications and interim bars.

**Clause 45** re-enacts, with necessary modifications, a provision of the CCYP Act to prohibit the disclosure of information obtained in connection with the exercise of functions under the proposed Act except in specified circumstances.

**Clause 46** re-enacts, with necessary modifications, a provision of the CCYP Act to enable access to certain information under the *Government Information (Public Access) Act 2009*. The provision enables access to information about disciplinary findings that give rise to assessment requirements under the proposed Act.

**Clause 47** re-enacts, with necessary modifications, a provision of the CCYP Act to prevent a person from being re-instated contrary to a prohibition on employment under the CCYP Act. It also provides that a court or tribunal does not have jurisdiction under any Act or law to order the re-instatement or re-employment of a person or to order the payment of damages or compensation for removal of employment if the proposed Act prohibits the person from engaging in the employment.

**Clause 48** provides that section 579 of the *Crimes Act 1900*, which requires certain convictions or findings of guilt for offences to be disregarded for all purposes, is not to apply in respect of offences specified by the proposed Act for the purposes of identifying a person as a disqualified person or as a person subject to an assessment requirement.

**Clause 49** enables proceedings for offences under the proposed Act to be dealt with summarily before the Local Court.

**Clause 50** re-enacts a provision of the CCYP Act to make a director or manager of a corporation liable for an offence under the proposed Act or regulations committed by the corporation if the director or manager knowingly authorised or permitted the contravention.

**Clause 51** provides for the service of documents under the proposed Act.

**Clause 52** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 53** provides for the review of the proposed Act in 5 years.

## **Schedule 1 Assessment requirement triggers**

**Schedule 1** specifies the offences, and stage of proceedings for the specified offences, that will make a person liable to an assessment requirement under the proposed Act. It also specifies findings by reporting bodies about sexual misconduct involving a child and the serious physical assault of a child by a person as conduct that will make the person liable to an assessment requirement under the proposed Act.

## **Schedule 2 Disqualifying offences**

**Schedule 2** specifies the offences for which proceedings or a conviction will render a person a disqualified person under the proposed Act.

## **Schedule 3 Savings, transitional and other provisions**

**Schedule 3** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

## **Schedule 4 Amendment of other Acts**

**Schedule 4.1** amends the *Children and Young Persons (Care and Protection) Act 1998* to update references.

**Schedule 4.2** amends the *Commission for Children and Young People Act 1998* to omit provisions relating to employment screening for child-related work and to omit other related provisions now re-enacted in the proposed Act.

**Schedule 4.3** amends the *Criminal Records Act 1991* so as to except applications for clearances from the operation of the provision that excludes spent convictions from being included in legislative references to criminal history or convictions and requirements for disclosure.

**Schedule 4.4** amends the *Education Act 1990* to update references.

**Schedule 4.5** amends the *Education (School Administrative and Support Staff) Act 1987* to:

- (a) enable the Director-General of the Department of Education and Communities to suspend a permanent employee who is subject to an interim bar, has been refused a clearance (if there is an appeal or the time for an appeal has not elapsed) or who is eligible to apply for a clearance but has not so applied, and
- (b) terminate the employment of a permanent employee whose clearance is cancelled or who does not hold a clearance (other than a person whose employment may be suspended) and require any such person to notify the person's status, and



- (c) provide for the re-instatement or re-employment of a person who obtains a clearance after being dismissed, and
- (d) make other amendments consequential on the enactment of the proposed Act.

**Schedule 4.6** amends the *Industrial Relations Act 1996* to remove a reference to proceedings that are no longer dealt with by the Industrial Relations Commission.

**Schedule 4.7** amends the *Institute of Teachers Act 2004* to enable the revocation of the accreditation of a teacher who becomes an unauthorised person under the *Teaching Service Act 1980*.

**Schedule 4.8** amends the *Ombudsman Act 1974* to enable the Ombudsman to disclose certain information to the Commission.

**Schedule 4.9** amends the *Parliamentary Electorates and Elections Act 1912* as a consequence of the amendment of the *Commission for Children and Young People Act 1998* by the proposed Act.

**Schedule 4.10** amends the *Teaching Service Act 1980* to:

- (a) enable the Director-General of the Department of Education and Communities to suspend an officer of the Teaching Service who is subject to an interim bar, has been refused a clearance (if there is an appeal or the time for an appeal has not elapsed) or who is eligible to apply for a clearance but has not so applied, and
- (b) terminate the employment of an officer of the Teaching Service whose clearance is cancelled or who does not hold a clearance (other than a person whose employment may be suspended) and require any such person to notify the person's status, and
- (c) provide for the re-instatement or re-employment of a person who obtains a clearance after being dismissed, and
- (d) make other amendments consequential on the enactment of the proposed Act.

**Schedule 4.11** amends the *Young Offenders Act 1997* to provide that warnings, cautions or conferences under that Act may be disclosed or taken into account for the purposes of an application for a clearance or an assessment of a person or an application for a review or an enabling order under the proposed Act.





New South Wales

# Child Protection (Working with Children) Bill 2012

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New South Wales

# Child Protection (Working with Children) Bill 2012

No. , 2012

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## **A Bill for**

An Act with respect to checks and clearances for the purposes of working with children; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>Part 1 Preliminary</b>	2
<b>1 Name of Act</b>	3
This Act is the <i>Child Protection (Working with Children) Act 2012</i> .	4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6
<b>3 Object of Act</b>	7
The object of this Act is to protect children:	8
(a) by not permitting certain persons to engage in child-related work, and	9 10
(b) by requiring persons engaged in child-related work to have working with children check clearances.	11 12
<b>Note.</b> For other legislation relating to the safety, welfare and well-being of children and the related functions of the Commission, see the <i>Commission for Children and Young People Act 1998</i> . In particular, see sections 10, 11, 14 and 16 of that Act.	13 14 15 16
<b>4 Safety, welfare and well-being of children to be paramount consideration</b>	17
The safety, welfare and well-being of children and, in particular, protecting them from child abuse, is the paramount consideration in the operation of this Act.	18 19 20
<b>5 Definitions</b>	21
(1) In this Act:	22
<b>adult</b> means a person who is 18 years of age or older.	23
<b>approved provider</b> means an approved provider under the <i>Children         (Education and Care Services) National Law (NSW)</i> or the <i>Children         (Education and Care Services) Supplementary Provisions Act 2011</i> .	24 25 26
<b>assessment requirement</b> —see section 14.	27
<b>authorised carer</b> has the same meaning as in the <i>Children and Young         Persons (Care and Protection) Act 1998</i> .	28 29
<b>certified supervisor</b> means a certified supervisor under the <i>Children         (Education and Care Services) National Law (NSW)</i> or the <i>Children         (Education and Care Services) Supplementary Provisions Act 2011</i> .	30 31 32
<b>child-related work</b> —see sections 6 and 7.	33
<b>children</b> means persons under the age of 18 years.	34



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<b>Commission</b> means the Commission for Children and Young People constituted by the <i>Commission for Children and Young People Act 1998</i> .	1 2 3
<b>Commissioner</b> means the Commissioner for the Commission for Children and Young People.	4 5
<b>conviction</b> includes a finding that the charge for an offence is proven, or that a person is guilty of an offence, even though the court does not proceed to a conviction.	6 7 8
<b>current application</b> for a working with children check clearance means an application that has not been finally determined or withdrawn or terminated.	9 10 11
<b>designated agency</b> has the same meaning as in the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	12 13
<b>disqualified person</b> —see section 18 (1).	14
<b>education and care service</b> means an education and care service within the meaning of the <i>Children (Education and Care Services) National Law (NSW)</i> or a State regulated education and care service within the meaning of the <i>Children (Education and Care Services) Supplementary Provisions Act 2011</i> .	15 16 17 18 19
<b>employer</b> includes:	20
(a) a person who, in the course of business, arranges for the placement of a person in employment with others, or	21 22
(b) a person who engages a person under a contract to perform work, or	23 24
(c) a person who engages a worker to perform work as a volunteer for the person under an agreement (whether written or unwritten).	25 26
<b>enabling order</b> —see section 28.	27
<b>exercise</b> a function includes perform a duty.	28
<b>function</b> includes a power, authority or duty.	29
<b>government agency</b> includes any public or local authority.	30
<b>interim bar</b> —see section 17 (1).	31
<b>reporting body</b> —see section 35 (4).	32
<b>Tribunal</b> means the Administrative Decisions Tribunal.	33
<b>worker</b> means any person who is engaged in work in any of the following capacities:	34 35
(a) as an employee,	36
(b) as a self-employed person or as a contractor or subcontractor,	37
(c) as a volunteer,	38

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Clause 5 Child Protection (Working with Children) Bill 2012

Part 1 Preliminary

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- (d) as a person undertaking practical training as part of an educational or vocational course (other than as a school student undertaking work experience), 1  
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3
- (e) as a minister, priest, rabbi, mufti or other like religious leader or spiritual officer of a religion or other member of a religious organisation. 4  
5  
6
- working with children check clearance*** or ***clearance*** means an authorisation that is in force under this Act to engage in child-related work. 7  
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9
- working with children check number*** means the number given for a working with children check clearance under this Act. 10  
11
- (2) Notes included in this Act do not form part of this Act. 12

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<b>Part 2</b>	<b>Restrictions on child-related work</b>	1
<b>Division 1</b>	<b>Child-related work</b>	2
<b>6</b>	<b>Child-related work</b>	3
(1)	A worker is engaged in <i>child-related work</i> for the purposes of this Act if:	4
	(a) the worker is engaged in work referred to in subsection (2) that involves direct contact by the worker with children, or	5
	(b) the worker is engaged in work in a child-related role referred to in subsection (3).	6
(2)	The work referred to is work for, or in connection with, any of the following that is declared by the regulations to be child-related work:	7
	(a) <b>child development</b>	8
	mentoring and counselling services for children,	9
	(b) <b>child protection</b>	10
	child protection services,	11
	(c) <b>children's health services</b>	12
	the provision of health care in wards of hospitals where children are treated and the direct provision of other child health services,	13
	(d) <b>clubs or other bodies providing services for children</b>	14
	clubs, associations, movements, societies or other bodies (including bodies of a cultural, recreational or sporting nature) providing programs or services for children,	15
	(e) <b>disability services</b>	16
	respite care or other support services for children with a disability,	17
	(f) <b>early education and child care</b>	18
	education and care services, child care centres, nanny services and other child care,	19
	(g) <b>education</b>	20
	schools or other educational institutions (other than universities) and private coaching or tuition of children,	21
	(h) <b>entertainment for children</b>	22
	sporting, cultural or other entertainment venues used primarily by children and entertainment services for children,	23
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(i)	<b>justice services</b>	1
	detention centres (within the meaning of the <i>Children (Detention Centres) Act 1987</i> ) and juvenile correctional centres (within the meaning of the <i>Crimes (Administration of Sentences) Act 1999</i> ),	2 3 4
(j)	<b>religious services</b>	5
	any religious organisation,	6
(k)	<b>residential services</b>	7
	refuges used by children, long term home stays for children, boarding houses or other residential services for children and overnight camps for children,	8 9 10
(l)	<b>transport services for children</b>	11
	transport services especially for children, including school bus services and taxi services for children with a disability and supervision of school road crossings,	12 13 14
(m)	<b>other</b>	15
	any other service for children prescribed by the regulations.	16
(3)	The following roles are referred to:	17
(a)	an approved provider or manager of an education and care service,	18 19
(b)	a certified supervisor of an education and care service,	20
(c)	an authorised carer,	21
(d)	an assessment officer (within the meaning of section 27A of the <i>Children and Young Persons (Care and Protection) Act 1998</i> ),	22 23
(e)	the principal officer of a designated agency,	24
(f)	the principal officer of an accredited adoption service provider within the meaning of the <i>Adoption Act 2000</i> ,	25 26
(g)	any other role with respect to children prescribed by the regulations.	27 28
(4)	In this section:	29
	<b>direct contact</b> with children means:	30
(a)	physical contact, or	31
(b)	face to face contact.	32
<b>7</b>	<b>Additional child-related work</b>	33
(1)	A worker is taken to be engaged in <b>child-related work</b> if the worker is engaged, or proposes to engage, in work (other than as a volunteer) that is the subject of a requirement under this section.	34 35 36

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- (2) The employer or proposed employer of a worker engaged in work for which a working with children check clearance is not required that involves access to confidential records or information about children may, by notice in writing to the worker, require the worker to obtain a clearance for the purposes of engaging in the work concerned.
- (3) The employer, or proposed employer, may at any time, by notice in writing given to the worker, revoke a requirement made under this section.
- (4) An employer may make or revoke a requirement under this section only with the approval of the Commission.

## **Division 2      Mandatory requirements for child-related work**

### **8      Restrictions on engaging in child-related work**

- (1) A worker must not engage in child-related work unless:
- (a) the worker holds a working with children check clearance of a class applicable to the work, or
  - (b) there is a current application by the worker to the Commission for a clearance of a class applicable to that work.
- Maximum penalty: 100 penalty units, or imprisonment for 2 years, or both.
- (2) A worker must not engage in child-related work at any time that the worker is subject to an interim bar.
- Maximum penalty: 100 penalty units, or imprisonment for 2 years, or both.
- (3) It is a defence to proceedings for an offence against this section if the accused person establishes that:
- (a) the accused person did not know, at the time the offence was committed, that the work concerned was child-related work, or
  - (b) the accused person was exempted by the regulations from the requirement to hold a clearance.
- Note.** Division 3 also requires adult persons residing with authorised carers or approved providers of education and care services and potential adoptive parents to hold clearances or to have a current application for a clearance.

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<b>9</b>	<b>Employers must require clearance or current application</b>	1
(1)	An employer must not commence employing, or continue to employ, a worker in child-related work if the employer knows or has reasonable cause to believe that:	2
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(a)	the worker is not the holder of a working with children check clearance that authorises that work and that there is no current application by the worker to the Commission for a clearance of a class applicable to that work, or	5
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(b)	the worker is subject to an interim bar.	9
	Maximum penalty: 100 penalty units, in the case of a corporation, and 50 penalty units in any other case.	10
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(2)	It is a defence to proceedings for an offence against this section if the accused person establishes that, at the time the offence was committed:	12
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(a)	the accused person had been advised by the Commission that the worker was the holder of a clearance or that there was a current application by the accused person for a clearance, or	14
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(b)	the accused person was exempted by the regulations from the requirement to hold a clearance.	17
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<b>Division 3</b>	<b>Additional persons who must obtain clearances</b>	19
<b>10</b>	<b>Adult persons residing with authorised carers or approved providers must hold clearances</b>	20
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(1)	An adult person (other than an authorised carer or an approved provider of an education and care service) who resides at the home of an authorised carer or an approved provider of an education and care service where such a service is provided must hold a working with children check clearance (of any class) or have made a current application to the Commission for a clearance.	22
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	Maximum penalty: 100 penalty units, or imprisonment for 2 years, or both.	28
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(2)	The designated agency that authorises the authorised carer in whose home an adult person resides, or the approved provider of the education and care service provided at the home where an adult person resides as referred to in subsection (1), must ensure that the adult person complies with that subsection.	30
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	Maximum penalty: 100 penalty units, in the case of a corporation, and 50 penalty units in any other case.	35
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(3)	It is a defence to proceedings for an offence against subsection (1) if the accused person establishes that the accused person did not know, at the	37
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time the offence was committed, that the home was the home of an authorised carer or an approved provider of an education or care service.	1 2
(4) It is a defence to proceedings for an offence under subsection (1) or (2) if the accused person establishes that:	3 4
(a) at the time of the offence, the adult person had been living at the home on a regular basis for a period of less than 3 weeks, or	5 6
(b) the adult person was exempted by the regulations from the requirement to hold a clearance.	7 8
(5) For the purposes of the application of this Act (other than section 9) to an adult person required by this section to hold a clearance, the designated agency or approved provider referred to in subsection (2) is to be treated as the employer of the adult person.	9 10 11 12
<b>11 Potential adoptive parents</b>	13
(1) This section applies to any person who submits an application under the <i>Adoption Act 2000</i> to adopt a child.	14 15
(2) The person assessing the application under that Act may request a person to whom this section applies to be screened by the Commission as if the person were an applicant for a working with children check clearance of any class.	16 17 18 19
(3) The Commission is to treat such a request as if the person had applied for a clearance for child-related work.	20 21

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<b>Part 3</b>	<b>Working with children check clearances</b>	1
<b>Division 1</b>	<b>Classes of clearances</b>	2
<b>12</b>	<b>Classes of clearances</b>	3
(1)	There are to be the following classes of working with children check clearances:	4
(a)	volunteer—authorising workers to engage in unpaid child-related work,	5
(b)	non-volunteer—authorising workers to engage in paid and unpaid child-related work.	6
(2)	Despite section 8, the holder of a volunteer clearance may engage in paid child-related work if the person has been engaged in that work for a period of 30 consecutive days or less.	7
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<b>Division 2</b>	<b>Applications for clearances</b>	13
<b>13</b>	<b>Applications for clearances</b>	14
(1)	A person may apply to the Commission for a working with children check clearance.	15
(2)	An application must:	16
(a)	be in the form approved by the Commission, and	17
(b)	be accompanied by any other information required by the Commission, and	18
(c)	specify the class of clearance applied for.	19
(3)	The approved form must provide for the authorisation by the applicant of, and the consent by the applicant to, the following in connection with the application or any application under Part 4 and at any time while a clearance is in force:	20
(a)	the conduct of a criminal record check in respect of the applicant,	21
(b)	the disclosure of the applicant’s criminal history,	22
(c)	other inquiries about the applicant relevant to the application or clearance,	23
(d)	without limiting paragraphs (b) and (c), disclosure of information about the applicant relevant to whether the applicant may be subject to an assessment requirement.	24
(4)	The regulations may:	25
(a)	prescribe the fee payable for an application and the manner in which it is to be paid, and	26
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(b)	require proof of identity to be provided by an applicant for a clearance in the manner prescribed by the regulations or approved by the Commission.	1 2 3
(5)	An applicant may, at any time before the final determination of an application (including after receipt of notice of a proposed refusal), withdraw the application by notice in writing to the Commission.	4 5 6
<b>Division 3</b>	<b>Risk assessment of applicants and holders</b>	7
<b>14</b>	<b>Assessment requirements</b>	8
	A person is subject to an <i>assessment requirement</i> under this Act if any of the matters specified in Schedule 1 apply to the person.	9 10
<b>15</b>	<b>Assessment of applicants and holders</b>	11
(1)	The Commission must conduct a risk assessment of an applicant for a working with children check clearance, or the holder of a clearance, to determine whether the applicant or holder poses a risk to the safety of children if the Commission becomes aware that the applicant or holder is subject to an assessment requirement.	12 13 14 15 16
(2)	The Commission may conduct a risk assessment of the holder of a clearance if the Commission becomes aware that the decision to grant the clearance was based on wrong or incomplete information.	17 18 19
(3)	Subsections (1) and (2) do not limit the circumstances in which the Commission may conduct a risk assessment of an applicant or holder.	20 21
(4)	In making an assessment, the Commission may consider the following:	22
(a)	the seriousness of any matters that caused the assessment in relation to the person,	23 24
(b)	the period of time since those matters occurred and the conduct of the person since they occurred,	25 26
(c)	the age of the person at the time the matters occurred,	27
(d)	the age of each victim of any relevant offence or conduct at the time it occurred and any matters relating to the vulnerability of the victim,	28 29 30
(e)	the difference in age between the victim and the person and the relationship (if any) between the victim and the person,	31 32
(f)	whether the person knew, or could reasonably have known, that the victim was a child,	33 34
(g)	the person's present age,	35
(h)	the seriousness of the person's total criminal record and the conduct of the person since the matters occurred,	36 37

(i)	the likelihood of any repetition by the person of the offences or conduct or of any other matters that caused the assessment and the impact on children of any such repetition,	1 2 3
(j)	any information given in, or in relation to, the application,	4
(k)	any other matters that the Commission considers necessary.	5
(5)	The Commission may, but is not required to, notify the holder of a clearance in writing if the Commission decides to conduct a risk assessment of the holder.	6 7 8
<b>16</b>	<b>Request for further information</b>	9
(1)	The Commission may, by notice in writing to an applicant for a working with children check clearance or the holder of a clearance, request the applicant or holder to provide further information about an offence or other matter related to the application or clearance.	10 11 12 13
(2)	The Commission may terminate an application for a clearance if the applicant fails, without reasonable excuse, to provide the further information within 6 months of the request being made and the Commission has not withdrawn the request.	14 15 16 17
<b>17</b>	<b>Interim bars</b>	18
(1)	The Commission may, at any time after receiving an application for a working with children check clearance or commencing an assessment of an applicant for or holder of a clearance, determine that the applicant or holder is subject to an <i>interim bar</i> on engaging in child-related work.	19 20 21 22
(2)	The Commission may make a determination under this section if it is of the opinion that it is likely that there is a risk to the safety of children if the applicant or holder engages in child-related work pending the determination of the application or assessment.	23 24 25 26
(3)	The Commission must, as soon as practicable after imposing an interim bar, notify in writing the applicant or holder, and any employer or proposed employer of the applicant or holder in child-related work (if known to the Commissioner), that the applicant or holder is subject to an interim bar on engaging in child-related work.	27 28 29 30 31
(4)	An interim bar ceases to have effect:	32
(a)	on notification in writing by the Commission to the applicant or holder that the interim bar is revoked, or	33 34
(b)	in the case of an applicant for a clearance, if the applicant is granted a clearance, or	35 36
(c)	12 months after the interim bar takes effect, whichever occurs first.	37 38

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<b>Division 4</b>	<b>Determination of applications for clearances</b>	1
<b>18</b>	<b>Determination of applications for clearances</b>	2
(1)	The Commission must not grant a working with children check clearance to the following persons ( <i>disqualified persons</i> ):	3 4
(a)	a person convicted before, on or after the commencement of this section of an offence specified in Schedule 2, if the offence was committed as an adult,	5 6 7
(b)	a person against whom proceedings for any such offence have been commenced, if the offence was committed as an adult, pending determination of the proceedings for the offence.	8 9 10
(2)	The Commission must grant a clearance to a person who is subject to a risk assessment under Division 3 unless the Commission is satisfied that the person poses a risk to the safety of children.	11 12 13
(3)	The Commission must grant a clearance to a person if it is satisfied that the person is not a disqualified person and the person is not subject to a risk assessment under Division 3.	14 15 16
<b>19</b>	<b>Notice of proposed refusal of application</b>	17
(1)	If the Commission proposes not to grant a working with children check clearance to a person, the Commission must notify the person in writing of the proposed decision and that the person may make a submission to the Commission within the period specified in the notice.	18 19 20 21
(2)	The Commission must consider any submission made by an applicant within that period before finally deciding the application.	22 23
(3)	This section does not apply to an application for a clearance that is made by a disqualified person.	24 25
<b>20</b>	<b>Notice of final decision granting or refusing clearance</b>	26
(1)	The Commission must notify the applicant in writing of the Commission's decision to grant or refuse to grant a working with children check clearance.	27 28 29
(2)	Notice of a decision to grant a clearance must include the working with children check number.	30 31
(3)	Notice of a decision not to grant a clearance must set out the reasons for the refusal and the right to seek a review under Part 4.	32 33
(4)	The Commission must notify the employer or proposed employer of an applicant in writing of the refusal of an application for a clearance, if the employer or proposed employer is known to the Commission.	34 35 36

<b>21 Embargo on further applications after refusal</b>	1
(1) A person who is refused a working with children check clearance is not entitled to make a further application for a clearance:	2
(a) until 5 years after the date notice of the refusal was given to the person, or	3
(b) unless there has been a change of circumstances under which a further early application is permitted under this section.	4
(2) A further early application is permitted if any of the following occurs:	5
(a) proceedings that were pending at the date of the refusal are withdrawn or dealt with without the person being found guilty of the offence,	6
(b) a finding of guilt is quashed or set aside after the date of the refusal,	7
(c) a finding the subject of an assessment requirement is quashed or set aside or otherwise expressly or impliedly ceases to have effect after the date of the refusal,	8
(d) the Commission permits a person to make such an application.	9
<b>Division 5 Duration and termination of clearances</b>	10
<b>22 Duration of clearances</b>	11
(1) A working with children check clearance ceases to have effect 5 years after the date it is granted, unless it is sooner cancelled or surrendered.	12
(2) The holder of a clearance may apply for a new clearance at any time within the period beginning 3 months before the expiry of the clearance.	13
<b>23 Cancellation of clearances</b>	14
(1) The Commission must cancel the working with children check clearance of a person if the Commission becomes aware that the person is a disqualified person or the Commission is satisfied that the person poses a risk to the safety of children.	15
(2) The Commission must notify the holder of the clearance in writing of the Commission's decision to cancel the clearance.	16
(3) Notice of a decision to cancel a clearance must set out the reasons for the cancellation and the right to seek a review under Part 4.	17
(4) The Commission must notify the employer of the person in writing of the cancellation of the clearance, if the employer is known to the Commission.	18
<b>Note.</b> The holder of a clearance may also be made subject to an interim bar (see section 17).	19

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<b>24</b>	<b>Surrender of clearances</b>	1
(1)	The holder of a working with children check clearance may, at any time, notify the Commission in writing that the holder wishes to surrender the clearance.	2 3 4
(2)	The Commission must cancel the clearance on receiving the notice.	5
(3)	The Commission must notify the employer of the person concerned in writing of the cancellation of the clearance, if the employer is known to the Commission.	6 7 8
<b>Division 6</b>	<b>Working with children register</b>	9
<b>25</b>	<b>Working with children register</b>	10
(1)	The Commission must establish a working with children register.	11
(2)	The register must contain the following:	12
(a)	particulars of applications for working with children check clearances, including the application number and the status of the applications,	13 14 15
(b)	particulars of persons holding clearances, including the class and expiry date of the clearances and their working with children check numbers.	16 17 18
(3)	The register is to be maintained in the manner and form approved by the Commission.	19 20
(4)	The Commission must ensure that information kept on the register is accurate and up-to-date.	21 22
(5)	The regulations may provide for information on the register to be made publicly available in accordance with the regulations.	23 24

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<b>Part 4</b>	<b>Reviews and appeals</b>	1
<b>26</b>	<b>No appeal in certain cases</b>	2
	A person may not make an application under this Part:	3
	(a) if the person has been convicted of the murder of a child, or	4
	(b) if the person's application for a working with children check clearance has been refused wholly or partly on the grounds that the person has been charged with an offence and proceedings related to that offence have not been finally determined.	5 6 7 8
<b>27</b>	<b>Applications to Administrative Decisions Tribunal for reviews of clearance decisions</b>	9 10
(1)	A person who has been refused a working with children check clearance by the Commission may apply to the Tribunal for a review of the decision within 28 days after notice of the decision was given to the person.	11 12 13 14
(2)	A person whose clearance is cancelled by the Commission may apply to the Tribunal for a review of the decision within 28 days after notice of the decision was given to the person.	15 16 17
(3)	A person who is subject to an interim bar imposed by the Commission may apply to the Tribunal for a review of the decision, but only if the interim bar has been in force for more than 6 months.	18 19 20
(4)	An applicant must fully disclose to the Tribunal any matters relevant to the application.	21 22
(5)	The Tribunal may not award costs.	23
(6)	An appeal lies on a question of law to the Supreme Court by any party to the proceedings.	24 25
(7)	Section 53 of the <i>Administrative Decisions Tribunal Act 1997</i> does not apply to a decision that may be reviewed by the Tribunal under this section.	26 27 28
<b>28</b>	<b>Orders relating to disqualified and ineligible persons</b>	29
(1)	The Tribunal may, on the application of a disqualified person, make an order declaring that the person is not to be treated as a disqualified person for the purposes of this Act in respect of an offence specified in the order (an <i>enabling order</i> ). Any such order has effect according to its tenor.	30 31 32 33 34
(2)	The Tribunal may, on the application of a person who is not eligible to apply for a clearance because the person has been previously refused a clearance, make an order declaring that the person is to be treated as a	35 36 37

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person who is eligible to apply for a clearance (an <i>enabling order</i> ). Any such order has effect according to its tenor.	1 2
(3) A disqualified person may make an application under this section only if:	3 4
(a) the person has been refused a working with children check clearance, or	5 6
(b) the person's clearance has been cancelled, because the person is a disqualified person.	7 8
(4) The Commission is to be a party to any proceedings for an order under this section and may make submissions in opposition to or support of the making of the order.	9 10 11
(5) An applicant must fully disclose to the Tribunal any matters relevant to the application.	12 13
(6) If the Tribunal makes an enabling order, the Tribunal may order the Commission to revoke an interim bar or to grant the person a clearance.	14 15
(7) In any proceedings where an enabling order is sought, it is to be presumed, unless the applicant proves to the contrary, that the applicant poses a risk to the safety of children.	16 17 18
(8) An enabling order may not be made subject to conditions.	19
(9) An appeal lies on a question of law to the Supreme Court by any party to the proceedings.	20 21
<b>29 Further review of persons who obtain enabling orders</b>	22
(1) The Commission may apply to the Tribunal to revoke or vary an enabling order made by the Tribunal.	23 24
(2) The Tribunal may:	25
(a) revoke an enabling order, if it is satisfied, on the basis of fresh evidence provided by the Commission, that the person the subject of the order poses a risk to the safety of children, or	26 27 28
(b) confirm an enabling order, if it is satisfied that the person is not likely to pose such a risk.	29 30
(3) The Tribunal may consider fresh evidence provided by the Commission.	31 32
(4) An appeal lies to the Supreme Court by any party to the proceedings.	33

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<b>30 Determination of applications and other matters</b>	1
(1) The Tribunal must consider the following in determining an application under this Part:	2
(a) the seriousness of the offences with respect to which the person is a disqualified person or any matters that caused a refusal of a clearance or imposition of an interim bar,	3
(b) the period of time since those offences or matters occurred and the conduct of the person since they occurred,	4
(c) the age of the person at the time the offences or matters occurred,	5
(d) the age of each victim of any relevant offence or conduct at the time they occurred and any matters relating to the vulnerability of the victim,	6
(e) the difference in age between the victim and the person and the relationship (if any) between the victim and the person,	7
(f) whether the person knew, or could reasonably have known, that the victim was a child,	8
(g) the person's present age,	9
(h) the seriousness of the person's total criminal record and the conduct of the person since the offences occurred,	10
(i) the likelihood of any repetition by the person of the offences or conduct and the impact on children of any such repetition,	11
(j) any information given by the applicant in, or in relation to, the application,	12
(k) any other matters that the Commission considers necessary.	13
(2) On an application under section 28 or 29, the Tribunal may, by order, stay the operation of a determination by the Commission under this Act relating to the applicant pending the determination of the matter.	14
<b>Note.</b> Division 2 of Part 3 of Chapter 5 of the <i>Administrative Decisions Tribunal Act 1997</i> enables a decision the subject of an application under section 27 of this Act to be stayed by the Tribunal.	15
(3) Part 1 of Chapter 7 of the <i>Administrative Decisions Tribunal Act 1997</i> does not apply in respect of a decision of the Tribunal under this Part.	16



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## Part 5 Provision of information

### 31 Powers of Commission to compel production of information

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| <b>31 Powers of Commission to compel production of information</b>  | <b>2</b>                   |
| (1) The Commission may, by notice in writing, require any government agency to provide the Commission with information (including documents) relevant to an assessment of whether a person poses a risk to the safety of children.  | 3<br>4<br>5<br>6           |
| (2) A notice under subsection (1) may be given for the purposes of:   | 7                          |
| (a) preparing submissions to the Tribunal under this Act or section 16 of the <i>Child Protection (Offenders Registration) Act 2000</i> , or  | 8<br>9<br>10               |
| (b) determining an application for a working with children check clearance or an assessment of an applicant or the holder of a clearance.   | 11<br>12<br>13             |
| (3) A government agency to which any such notice is given is by this section authorised and required to provide the Commission with the information sought by the notice.   | 14<br>15<br>16             |
| (4) The Commission may, by notice in writing, request a person other than a government agency to provide the Commission with a statement setting out information specified by the notice relevant to an assessment of whether a person poses a risk to the safety of children for the purposes of this Act. | 17<br>18<br>19<br>20<br>21 |
| (5) A person other than a government agency to whom any such request is given is by this section authorised to provide the Commission with the information requested.   | 22<br>23<br>24             |
| (6) A notice under this section may specify a day on or before which the notice is to be complied with.   | 25<br>26                   |
| (7) If documents are given to the Commission under this section, the Commission:  | 27<br>28                   |
| (a) may take possession of, and make copies of or take extracts from, the documents, and  | 29<br>30                   |
| (b) may keep possession of the documents for such period as is necessary for the purposes of preparing the submission or considering an application, and  | 31<br>32<br>33             |
| (c) during that period must permit them to be inspected at all reasonable times by the persons who would be entitled to inspect them if they were not in the possession of the Commission.  | 34<br>35<br>36             |

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<b>32</b>	<b>Incidental disclosure of information by DPP authorised</b>	1
(1)	The Director of Public Prosecutions is, on receipt of a notice under section 31, authorised to disclose to the Commission information or other documents that may contain information in addition to the information required by the notice, whether or not that information or those documents are subject to legal professional privilege or other restrictions on disclosure.	2 3 4 5 6 7
(2)	This section has effect despite any other Act or law.	8
<b>33</b>	<b>Notification of offences and other information</b>	9
(1)	The Commissioner of Police is authorised at any time, in accordance with this Part and the regulations, to disclose (or arrange for a member of the NSW Police Force to disclose) to the Commission the following information:	10 11 12 13
(a)	information relating to any matter that may cause a person to be a disqualified person or result in an assessment requirement affecting a person,	14 15 16
(b)	information relating to the criminal history of a person, including (but not limited to) information about offences that cause or may cause the person to be a disqualified person or result in an assessment requirement affecting the person,	17 18 19 20
(c)	without limiting paragraph (a) or (b), information relating to the circumstances of an offence or other matter disclosed under this section.	21 22 23
(2)	Information that may be disclosed under this section includes:	24
(a)	information relating to spent convictions, despite anything to the contrary in the <i>Criminal Records Act 1991</i> , and	25 26
(b)	information relating to criminal charges, whether or not heard, proven, dismissed, withdrawn or discharged, and	27 28
(c)	information relating to offences, despite anything to the contrary in section 579 of the <i>Crimes Act 1900</i> .	29 30
(3)	This section does not limit the persons to whom, or the circumstances in which, information relating to the criminal history, including the criminal record, of persons may be disclosed apart from this Act.	31 32 33
(4)	Information about a person's criminal history may be disclosed under this Act whether or not the information relates to events that occurred when the person was under the age of 18 years.	34 35 36

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<b>34</b>	<b>Notification of information relating to criminal history for interstate child-related work screening</b>	1
		2
(1)	The Commissioner of Police may disclose (or arrange for a member of the NSW Police Force to disclose) information relating to any criminal history of persons to the following persons for the purposes of interstate child-related work screening:	3
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	(a) CrimTrac,	7
	(b) a police force or service of the Commonwealth or another State or Territory,	8
		9
	(c) an approved interstate screening agency.	10
(2)	A person to whom information is disclosed may disclose that information to an approved interstate screening agency for the purposes of interstate child-related work screening undertaken by the agency.	11
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(3)	The Commissioner of Police may disclose (or arrange for a member of the NSW Police Force to disclose) to an approved interstate screening agency, at the request of the agency, information relating to the circumstances of an offence or alleged offence disclosed under this section for the purposes of interstate child-related work screening.	14
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(4)	Information that may be disclosed under this section includes:	19
	(a) information relating to convictions, including spent convictions, quashed convictions and offences for which a pardon has been given, despite anything to the contrary in the <i>Criminal Records Act 1991</i> ,	20
		21
		22
		23
	(b) information relating to criminal charges, whether heard or not heard, proven, dismissed, withdrawn or discharged,	24
		25
	(c) information relating to offences, despite anything to the contrary in section 579 of the <i>Crimes Act 1900</i> .	26
		27
(5)	This section does not limit the persons to whom, or the circumstances in which, information relating to the criminal history, including the criminal record of, persons may be disclosed apart from this Act.	28
		29
		30
(6)	In this section:	31
	<b><i>approved interstate screening agency</i></b> means:	32
	(a) a person or body prescribed by the regulations, or	33
	(b) a body that is authorised under a law of the Commonwealth, another State or a Territory to conduct interstate child-related work screening and is approved by the Minister for the purposes of this section.	34
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*interstate child-related work screening* means using information about persons who work, or seek to work, with children in a way that is authorised or required under a law of the Commonwealth, another State or a Territory, for the purpose of estimating the risk to the safety of children posed by any such person if working with children.

**35 Notification by reporting bodies of conduct constituting assessment requirement trigger**

- (1) It is the duty of a reporting body to notify the Commission of the name and other identifying particulars of any child-related worker against whom the reporting body has made a finding that the worker has engaged in conduct specified in clause 2 of Schedule 1.
- (2) Notification under this section extends to findings made before the commencement of this section.
- (3) The regulations may make provision for or with respect to the following:
  - (a) the form of any such notification,
  - (b) the provision by reporting bodies of further particulars of any such matter, or any potential such matter, if requested by the Commission,
  - (c) the keeping of records by reporting bodies of information about such matters or potential such matters supplied to the Commission,
  - (d) the amendment or withdrawal of a notification by a reporting body.
- (4) In this section:

*reporting body* means the following:

  - (a) a NSW Government agency,
  - (b) a Department or public sector agency within the meaning of the *Public Sector Employment and Management Act 2002*,
  - (c) a registration or other licensing authority constituted under an Act,
  - (d) a designated government agency or designated non-government agency within the meaning of Part 3A of the *Ombudsman Act 1974* that has been granted an exemption under section 25CA of that Act,
  - (e) any other employer or professional or other body that supervises the conduct of an employee prescribed by the regulations for the purposes of this section.

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<b>36 Enforcement notices</b>	1
(1) The Commission may, by notice in writing served on a reporting body or an officer of a reporting body, require the reporting body to comply with obligations of the reporting body under section 35 within the period specified in the notice.	2 3 4 5
(2) The Commission may serve a notice under this section if it is of the opinion that the reporting body has failed to comply with any provision of section 35.	6 7 8
(3) The notice must set out the reasons for the notice being given.	9
(4) The period specified in a notice is to be not less than 28 days.	10
(5) The Commission may revoke a notice at any time.	11
(6) A person who fails, without reasonable excuse, to comply with a notice in force under this section is guilty of an offence.	12 13
Maximum penalty: 100 penalty units, in the case of a corporation, or 50 penalty units in any other case.	14 15
(7) In any proceedings for an offence against this section, the onus of proving that a person had a reasonable excuse lies with the defendant.	16 17
(8) Nothing in this section prevents the Commission from contacting reporting bodies for the purpose of informing them of their obligations under this Act or requesting any information that reporting bodies are required to provide to the Commission under this Act.	18 19 20 21

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<b>Part 6</b>	<b>Functions of Commission</b>	1
<b>37</b>	<b>Database functions of Commission</b>	2
	The Commission may exercise the following functions:	3
	(a) collecting and maintaining a database of orders by the Tribunal under this Act, and other orders and proceedings completed against a person that result in assessment requirements, including updating, correcting and removing entries on the database,	4 5 6 7
	(b) collecting and maintaining a database of notifications to the Commission of matters that constitute or might constitute the basis of an assessment requirement, including updating, correcting and removing entries on the database,	8 9 10 11
	(c) collecting and maintaining a database of employers who seek information about working with children check clearances for child-related work purposes, including updating, correcting and removing entries on the database.	12 13 14 15
<b>38</b>	<b>Commission's public awareness and advice functions</b>	16
	The Commission may promote public awareness of and provide advice on requirements for working with children check clearances and related matters concerning child-related work.	17 18 19
<b>39</b>	<b>Commission's monitoring and auditing functions</b>	20
	(1) The Commission is to monitor and audit compliance with the requirements of this Act and the regulations.	21 22
	(2) The Minister may give the Commission a written direction on the exercise of its functions under this section, and the Commission is to comply with the direction.	23 24 25
<b>40</b>	<b>Power to compel production of information for monitoring or auditing purposes</b>	26 27
	(1) For the purposes of exercising its monitoring or auditing functions under this Act, the Commission may, by notice in writing, require an officer of a government agency, an employer or a body that supervises, represents or has other functions with respect to an employer to do any one or more of the following:	28 29 30 31 32
	(a) to provide to the Commission, on or before a day specified in the notice, a statement setting out such information as is so specified relating to the matters being monitored or audited,	33 34 35
	(b) to provide to the Commission, on or before a day specified in the notice, such documents as are so specified relating to the matters being monitored or audited.	36 37 38

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| (2) | A person who:  | 1              |
|     | (a) fails, without reasonable excuse, to comply with a requirement of a notice under this section, or  | 2<br>3         |
|     | (b) provides the Commission with information that the person knows is false or misleading in a material particular,  | 4<br>5         |
|     | is guilty of an offence.   | 6              |
|     | Maximum penalty: 100 penalty units, in the case of a corporation, and 50 penalty units in any other case.  | 7<br>8         |
| (3) | A notice may specify the manner in which a statement or documents may be given to the Commission.  | 9<br>10        |
| (4) | If documents are given to the Commission under this section, the Commission:   | 11<br>12       |
|     | (a) may take possession of, and make copies of or take extracts from, the documents, and   | 13<br>14       |
|     | (b) may keep possession of the documents for such period as is necessary for the purposes of exercising its monitoring or auditing functions, and  | 15<br>16<br>17 |
|     | (c) during that period must permit them to be inspected at all reasonable times by the persons who would be entitled to inspect them if they were not in the possession of the Commission. | 18<br>19<br>20 |
| (5) | In any proceedings for an offence against this section, the onus of proving that a person had a reasonable excuse lies with the defendant.   | 21<br>22       |

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<b>Part 7</b>	<b>Miscellaneous</b>	1
<b>41</b>	<b>Act to bind Crown</b>	2
	This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.	3 4 5
<b>42</b>	<b>Effect of Act on other rights and procedures</b>	6
(1)	An assessment under this Act or interstate child-related work screening (as referred to in section 34) may be conducted, and information disclosed or obtained, in accordance with this Act despite any other Act or law to the contrary.	7 8 9 10
(2)	Nothing in this Act affects any statutory right that an employee may have in relation to employment or termination of employment.	11 12
(3)	However, any court or tribunal exercising jurisdiction with respect to any such right must have regard to the results of any determination of an application for a working with children check clearance or assessment carried out under this Act in connection with the work concerned and the welfare of children as the paramount consideration in that determination or assessment.	13 14 15 16 17 18
(4)	Nothing in this Act affects the operation of Part 2 of Chapter 9 of the <i>Health Services Act 1997</i> .	19 20
(5)	This section is subject to section 47.	21
<b>43</b>	<b>Protection of persons relating to child-related work</b>	22
(1)	Anything done or omitted to be done by a person in good faith and with reasonable care:	23 24
(a)	for the purpose of the determination of an application for a working with children check clearance or an assessment of the holder of a clearance, or	25 26 27
(b)	for the purpose of exercising a function under this Act, does not subject the person to any action, liability, claim or demand.	28 29
(2)	Without limiting subsection (1):	30
(a)	a person has qualified privilege in proceedings for defamation in respect of anything done or omitted to be done by the person for the purposes of the determination of an application for a clearance or an assessment or otherwise exercising a function under this Act, and	31 32 33 34 35
(b)	damages or compensation (whether for breach of contract or otherwise) are not payable in respect of a decision not to grant a	36 37



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	clearance or to cancel a clearance, or to impose an interim bar, as a result of an assessment carried out in good faith and with reasonable care for the purposes of this Act or a review application.	1 2 3 4
(3)	This section does not limit or affect any other right, privilege or immunity that a person has as a defendant in any proceedings.	5 6
<b>44</b>	<b>Evidentiary certificate</b>	7
	A certificate issued by the Commission that states that, on a specified date or during a specified period:	8 9
(a)	a specified person was or was not the holder of a working with children check clearance, or	10 11
(b)	a specified person had or had not made an application for a clearance, or	12 13
(c)	a clearance was or was not in force, or	14
(d)	a specified person was or was not subject to an interim bar, is admissible in legal proceedings as evidence of the matters so stated.	15 16
<b>45</b>	<b>Unauthorised disclosure or dishonest collection of information</b>	17
(1)	A person who discloses any information obtained by the person in connection with the exercise of functions under this Act or the regulations is guilty of an offence unless the disclosure:	18 19 20
(a)	is made in good faith for the purposes of the exercise of a function under this Act or the regulations, or	21 22
(b)	is made with the consent of the person to whom the information relates, or	23 24
(c)	is ordered by a court, or any other body or person exercising judicial functions, for the purposes of the hearing or determination by the court, body or person of any matter, or	25 26 27
(d)	is made with other lawful excuse.	28
(2)	A person who dishonestly obtains confidential information relating to the exercise of functions under this Act or the regulations is guilty of an offence.	29 30 31
	Maximum penalty: 50 penalty units, or imprisonment for 6 months, or both.	32 33
<b>46</b>	<b>Obtaining information on disciplinary matters under Government Information (Public Access) Act 2009</b>	34 35
(1)	A person against whom a finding referred to in clause 2 of Schedule 1 has been made is, subject to this section, entitled to apply for access	36 37

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	under the <i>Government Information (Public Access) Act 2009</i> to any information about the finding. That Act applies to the determination of any such application for access.	1 2 3
(2)	Any provision of that Act relating to fees or charges payable by applicants does not apply to such an application for access.	4 5
(3)	The provisions of the <i>Government Information (Public Access) Act 2009</i> apply for the purposes of this section whether or not the agency is an agency to which those provisions apply.	6 7 8
(4)	The regulations under this Act may modify any provisions of that Act in its application under this section.	9 10
<b>47</b>	<b>Relationship with other Acts and laws</b>	11
(1)	A prohibition on employment under this Act prevails to the extent of any inconsistency between it and any other Act or law.	12 13
(2)	The Industrial Relations Commission or any other court or tribunal does not have jurisdiction under any Act or law to order the re-instatement or re-employment of a person or worker contrary to a prohibition on employment imposed by this Act, or to order the payment of damages or compensation for any removal from employment of a person from employment prohibited under this Act.	14 15 16 17 18 19
<b>48</b>	<b>Information about old offences may be given</b>	20
	For the purposes of this Act, section 579 of the <i>Crimes Act 1900</i> does not apply to or in respect of an offence referred to in Schedule 1 or 2.	21 22
<b>49</b>	<b>Nature of proceedings for offences</b>	23
	Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.	24 25
<b>50</b>	<b>Offences by corporations</b>	26
(1)	If a corporation contravenes, whether by act or omission, any provision of this Act, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.	27 28 29 30 31
(2)	Subsection (1) does not apply in respect of a contravention of a provision of the regulations that is declared by the regulations to be an excluded provision for the purposes of this section.	32 33 34
(3)	A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.	35 36 37

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(4)	Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act.	1 2
(5)	This section applies only to offences against Part 2.	3
<b>51</b>	<b>Service of documents</b>	4
(1)	A document that is authorised or required by this Act or the regulations to be given to any person may be given by:	5 6
(a)	in the case of a natural person:	7
(i)	delivering it to the person personally, or	8
(ii)	sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or	9 10 11 12 13
(iii)	sending it by facsimile transmission to the facsimile number of the person or by email to the email address of the person, or	14 15 16
(b)	in the case of a body corporate:	17
(i)	leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or	18 19 20 21 22
(ii)	sending it by facsimile transmission to the facsimile number of the body corporate or by email to the email address of the body corporate.	23 24 25
(2)	Notice of a working with children check number may be given to a person by sending it by SMS message to the person's last known mobile telephone number.	26 27 28
(3)	Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.	29 30 31
<b>52</b>	<b>Regulations</b>	32
(1)	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	33 34 35 36

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(2)	In particular, the regulations may make provision for or with respect to the following:	1
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(a)	the information to be provided by the Commission to applicants for or holders of working with children check clearances,	3
		4
(b)	the exemption of persons or classes of persons from all or any requirements of this Act, unconditionally or subject to conditions.	5
		6
		7
(3)	The regulations may amend Schedule 1 or Schedule 2.	8
(4)	The regulations may create offences punishable by a penalty not exceeding 20 penalty units.	9
		10
<b>53</b>	<b>Review of Act</b>	11
(1)	The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	12
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(2)	The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.	15
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(3)	A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.	17
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<b>Schedule 1</b>	<b>Assessment requirement triggers</b>	1
<b>1</b>	<b>Offences</b>	2
(1)	Proceedings have been commenced against a person:	3
(a)	for an offence specified in clause 1 of Schedule 2, if the offence was committed as a child (whatever the outcome of the proceedings), or	4 5 6
(b)	for an offence specified in clause 1 of Schedule 2, if the offence was committed as an adult, and the person is not because of those proceedings a disqualified person.	7 8 9
(2)	Proceedings have been commenced against a person for any of the following offences (whatever the outcome of those proceedings):	10 11
(a)	an offence involving intentional wounding of or causing bodily harm to a child by an adult (other than an offence specified in clause 1 of Schedule 2),	12 13 14
(b)	any sexual offence committed against, with or in the presence of a child, other than an offence specified in clause 1 of Schedule 2,	15 16
(c)	an offence under section 38 or 38A of the <i>Crimes Act 1900</i> committed against a child,	17 18
(d)	an offence under section 45 of the <i>Crimes Act 1900</i> committed against a child,	19 20
(e)	an offence under section 60E of the <i>Crimes Act 1900</i> ,	21
(f)	an offence under section 13 of the <i>Crimes (Domestic and Personal Violence) Act 2007</i> committed against a child,	22 23
(g)	an offence under section 6 of the <i>Prevention of Cruelty to Animals Act 1979</i> .	24 25
(3)	Proceedings have been commenced against a person for any of the following offences (other than where a person has been found not guilty of the offence concerned):	26 27 28
(a)	an offence under section 43A of the <i>Crimes Act 1900</i> ,	29
(b)	an offence under section 44 of the <i>Crimes Act 1900</i> committed against a child,	30 31
(c)	an offence under section 227, 228 or 231 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> ,	32 33
(d)	an offence under section 530 of the <i>Crimes Act 1900</i> ,	34
(e)	an offence under section 23A, 24 (1A) or (2A) or 25 (1A) of the <i>Drug Misuse and Trafficking Act 1985</i> ,	35 36

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(f)	any other offence, whether under the law of New South Wales or elsewhere, prescribed by the regulations for the purposes of this subclause.	1 2 3
(4)	A person has been convicted of an offence under section 61 of the <i>Crimes Act 1900</i> committed against a child.	4 5
(5)	Subclauses (1), (2), (3) and (4) apply to:	6
(a)	an offence an element of which is an intention to commit an offence of a kind listed in those subclauses, and	7 8
(b)	an offence under a law other than a law of New South Wales that is an offence similar to an offence listed in those subclauses, and	9 10
(c)	an offence of attempting, or of conspiracy or incitement, to commit an offence listed in those subclauses,	11 12
	in the same way that they apply to the offences listed in those subclauses.	13 14
(6)	A person has been convicted of, or proceedings have been commenced against a person for, offences involving violence or sexual misconduct (whether or not listed in this Schedule or Schedule 2) sufficient to indicate a pattern of behaviour that warrants investigation as to whether it may cause a risk to the safety of children.	15 16 17 18 19
(7)	An offence is not specified for the purposes of this clause if it was an offence specified in this clause at the time of its commission and the conduct has ceased to be an offence in New South Wales.	20 21 22
<b>2</b>	<b>Findings of misconduct involving children</b>	23
	A person has been the subject of a finding by a reporting body that the person engaged in the following conduct:	24 25
(a)	sexual misconduct committed against, with or in the presence of a child, including grooming of a child,	26 27
(b)	any serious physical assault of a child.	28
<b>3</b>	<b>Application of Schedule</b>	29
	This Schedule applies to offences and other matters whether occurring before, on or after the commencement of this Schedule.	30 31

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## Schedule 2 Disqualifying offences

### 1 Specified offences

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| (1) The following offences are specified:   | 1  |
| (a) murder of a child,  | 2  |
| (b) manslaughter of a child (other than as a result of a motor vehicle accident),   | 3  |
| (c) an offence involving intentional wounding or causing grievous bodily harm to a child by an adult who is more than 3 years older than the victim,  | 4  |
| (d) an offence under section 61B, 61C, 61D, 61E or 61F of the <i>Crimes Act 1900</i> ,  | 5  |
| (e) an offence under section 61I, 61J, 61JA, 61K, 61L, 61M, 61N, 61O or 61P of the <i>Crimes Act 1900</i> ,   | 6  |
| (f) the common law offence of rape or attempted rape,   | 7  |
| (g) an offence under section 65A or 66 of the <i>Crimes Act 1900</i> ,  | 8  |
| (h) an offence under section 66A, 66B, 66C, 66D, 66EA, 66EB, 66F or 73 of the <i>Crimes Act 1900</i> ,  | 9  |
| (i) an offence under section 73 (before its substitution by the <i>Crimes Amendment (Sexual Offences) Act 2003</i> ), 74 or 76 of the <i>Crimes Act 1900</i> ,  | 10 |
| (j) an offence under section 78A, 78B or 79 of the <i>Crimes Act 1900</i> ,   | 11 |
| (k) an offence under section 78H, 78I, 78K, 78L, 78N, 78O, 78Q or 81 of the <i>Crimes Act 1900</i> ,  | 12 |
| (l) an offence under section 80A, 80D or 80E of the <i>Crimes Act 1900</i> ,  | 13 |
| (m) an offence under section 86 of the <i>Crimes Act 1900</i> where the person against whom the offence is committed is a child, except where the person found guilty of the offence was, when the offence was committed or at some earlier time, a parent or carer of the child, | 14 |
| (n) an offence under section 91D, 91E, 91F, 91G or 91H of the <i>Crimes Act 1900</i> (other than an offence committed by a child prostitute),   | 15 |
| (o) an offence under section 42 or 43 of the <i>Crimes Act 1900</i> ,   | 16 |
| (p) an offence under section 91J, 91K or 91L of the <i>Crimes Act 1900</i> ,  | 17 |
| (q) an offence under section 21G of the <i>Summary Offences Act 1988</i> or section 91M of the <i>Crimes Act 1900</i> where the person intended to be observed or filmed was a child,   | 18 |
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- (r) an offence against section 272.8, 272.10 (if it relates to an underlying offence against section 272.8) or 272.11 of the *Criminal Code* of the Commonwealth,

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  - (s) an offence against section 272.9, 272.10 (if it relates to an underlying offence against section 272.9), 272.14 or 272.15 of the *Criminal Code* of the Commonwealth,

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  - (t) an offence against section 272.18, 272.19 or 272.20 of the *Criminal Code* of the Commonwealth if it relates to another offence listed in this Schedule,

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  - (u) an offence against section 270.6 or 270.7 of the *Criminal Code* of the Commonwealth where the person against whom the offence is committed is a child,

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  - (v) an offence against section 233BAB of the *Customs Act 1901* of the Commonwealth involving items of child pornography or of child abuse material,

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  - (w) an offence against section 471.16, 471.17, 471.19, 471.20 or 471.22 of the *Criminal Code* of the Commonwealth,

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  - (x) an offence against section 471.24, 471.25 or 471.26 of the *Criminal Code* of the Commonwealth,

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  - (y) an offence under section 91H, 578B or 578C (2A) of the *Crimes Act 1900*,

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  - (z) an offence under a law other than a law of New South Wales that, if committed in New South Wales, would be an offence listed in this clause,

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  - (aa) an offence an element of which is an intention to commit an offence of a kind listed in this clause,

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  - (ab) an offence of attempting, or of conspiracy or incitement, to commit an offence of a kind listed in this clause.

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  - (2) This clause applies to convictions or proceedings for offences whether occurring before, on or after the commencement of this clause.

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**2 Excluded offences**

An offence is not specified for the purposes of this Schedule if it was an offence specified in this Schedule at the time of its commission and the conduct has ceased to be an offence in New South Wales.



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<b>Schedule 3</b>	<b>Savings, transitional and other provisions</b>	1
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<b>Part 1</b>	<b>General</b>	3
<b>1</b>	<b>Regulations</b>	4
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	5 6 7
(2)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	8 9
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:	10 11 12
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	13 14 15
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	16 17 18
<b>Part 2</b>	<b>Provisions consequent on enactment of this Act</b>	19 20
<b>2</b>	<b>Definitions</b>	21
	In this Part:	22
	<i>existing child-related worker</i> means a worker who was engaged in child-related work immediately before the commencement of Part 2 of this Act.	23 24 25
	<i>existing employer</i> means the employer of an existing child-related worker immediately before the commencement of Part 2 of this Act.	26 27
	<i>existing resident</i> means an adult who was residing at the home of an authorised carer or a provider of an education and care service where foster care or an education and care service was provided immediately before the commencement of Part 2 of this Act.	28 29 30 31
	<i>former provisions</i> means Part 7 of the <i>Commission for Children and Young People Act 1998</i> , as in force immediately before its repeal by this Act.	32 33 34

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<b>3 Existing employees and residents</b>	1
(1) 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.	2 3 4
<b>Note.</b> Regulations under clause 5 may provide for the application of the requirements under this Act to existing child-related workers and existing residents.	5 6 7
(2) For the purposes of this clause, a person in the Government Service or the NSW Health 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.	8 9 10 11
(3) An existing resident is not required to obtain or have a clearance while the resident continues to reside in the place where the resident resided immediately before the commencement of Part 2 of this Act.	12 13 14
(4) 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.	15 16 17
(5) This clause does not apply to a person in respect of work carried out by the person as a self-employed person.	18 19
<b>4 Application of Act to existing self-employed persons</b>	20
(1) This clause applies to a person:	21
(a) who was engaged in child-related work as a self-employed person immediately before the commencement of Part 2 of this Act, and	22 23 24
(b) who was, immediately before the commencement of this clause, required to hold a child-related employment certificate.	25 26
(2) A person to whom this clause applies who held a child-related employment certificate immediately before the commencement of this clause is not, until the expiry date of the person's certificate, required to comply with Division 2 of Part 2 of this Act in respect of child-related work undertaken by the person as a self-employed person.	27 28 29 30 31
(3) A person to whom this clause applies who did not hold a child-related employment certificate on the commencement of this clause is not required to comply with Division 2 of Part 2 of this Act in respect of child-related work undertaken by the person as a self-employed person until the day prescribed by the regulations for the purposes of this clause.	32 33 34 35 36 37
(4) This clause does not apply to a person who was a disqualified person on the commencement of this clause or who subsequently becomes a disqualified person.	38 39 40

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(5)	In this clause:	1
	<i>child-related employment certificate</i> means a certificate issued under	2
	Part 2 of the <i>Commission for Children and Young People Regulation</i>	3
	<i>2009</i> to a self-employed person in which the Commission certified that	4
	the person was not a prohibited person (within the meaning of Part 7 of	5
	the <i>Commission for Children and Young People Act 1998</i> ).	6
<b>5</b>	<b>Staged implementation of new scheme</b>	7
	The regulations may make provision for or with respect to the	8
	following:	9
(a)	the application of this Act (or provisions of this Act) to classes of	10
	existing child-related workers or existing residents, and other	11
	persons who become child-related workers or residents subject to	12
	section 10 on or after the commencement of Part 2 of this Act, on	13
	and from a specified date or dates,	14
(b)	the obligations of persons who are child-related workers or such	15
	residents pending the application of this Act to those persons,	16
(c)	the exemption from this Act (or provisions of this Act) of, or the	17
	application of provisions of this Act to, classes of persons who	18
	are existing child-related workers or existing residents,	19
(d)	the application of the former provisions to existing child-related	20
	workers or existing residents, and other persons, pending the	21
	application of provisions of this Act to those persons.	22
<b>6</b>	<b>Existing prohibited persons declarations</b>	23
(1)	This clause applies to a person who is the subject of an order containing	24
	a declaration (in force immediately before the repeal of the former	25
	provisions) by a tribunal under section 33H of the former provisions	26
	that Division 2 of those provisions is not to apply to the person in	27
	respect of a specified offence (an <i>existing declaration</i> ).	28
(2)	On the application of this Act to a person to whom this clause applies:	29
(a)	a person who is the subject of an unconditional existing	30
	declaration is taken to be the subject of an order under Part 4 of	31
	this Act declaring that the person concerned is not to be treated as	32
	a disqualified person in respect of the offence, and	33
(b)	any other person to whom this clause applies is to be treated as a	34
	disqualified person for the purposes of this Act.	35
<b>7</b>	<b>Part subject to regulations</b>	36
	This Part is subject to the regulations.	37

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<b>Schedule 4</b>	<b>Amendment of other Acts</b>	1
<b>4.1</b>	<b>Children and Young Persons (Care and Protection) Act 1998 No 157</b>	2
		3
<b>[1]</b>	<b>Section 29 Protection of persons who make reports or provide certain information</b>	4
		5
	Omit paragraph (a) of the definition of <i>reportable conduct</i> in section 29 (6).	6
	Insert instead:	7
	(a) reportable conduct within the meaning of Part 3A of the <i>Ombudsman Act 1974</i> or conduct referred to in clause 2 of Schedule 1 to the <i>Child Protection (Working with Children) Act 2012</i> , or	8
		9
		10
		11
<b>[2]</b>	<b>Section 137 (3), note</b>	12
	Omit the note. Insert instead:	13
	<b>Note.</b> See section 10 of the <i>Child Protection (Working with Children) Act 2012</i> which requires adult household members of authorised carers to hold authorisations required for child-related work.	14
		15
		16
<b>4.2</b>	<b>Commission for Children and Young People Act 1998 No 146</b>	17
<b>[1]</b>	<b>Long title</b>	18
	Omit “; to provide for safeguards and impose prohibitions relating to child-related employment”.	19
		20
<b>[2]</b>	<b>Section 3 Definitions</b>	21
	Omit the definitions of <i>background checking</i> and <i>review application</i> from section 3 (1).	22
		23
<b>[3]</b>	<b>Section 11 Principal functions of Commission</b>	24
	Omit section 11 (h1) and (i). Insert instead:	25
	(i) to exercise functions relating to persons engaged in child-related work, including checking, clearance and other functions, under the <i>Child Protection (Working with Children) Act 2012</i> ,	26
		27
		28
		29
<b>[4]</b>	<b>Section 14A Powers of Commission for Children and Young People to compel production of information</b>	30
		31
	Omit the section.	32

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<b>[5] Section 15B Power to compel production of information for monitoring or auditing purposes</b>	1 2
Omit the section.	3
<b>[6] Part 7 Child-related employment</b>	4
Omit the Part.	5
<b>[7] Section 48A Protection of persons relating to child-related employment</b>	6
Omit the section.	7
<b>[8] Section 48B Unauthorised disclosure or dishonest collection of information</b>	8 9
Omit the section.	10
<b>[9] Section 50 Offences by corporations</b>	11
Omit the section.	12
<b>[10] Section 52 Relationship with other Acts and laws</b>	13
Omit the section.	14
<b>[11] Schedule 3 Savings, transitional and other provisions</b>	15
Insert at the end of clause 1 (1):	16
any other Act that amends this Act.	17
<b>4.3 Criminal Records Act 1991 No 8</b>	18
<b>Section 15 Employment in certain occupations</b>	19
Omit section 15 (1A). Insert instead:	20
(1A) Section 12 does not apply in relation to an application by a person for a working with children check clearance under the <i>Child Protection (Working with Children) Act 2012</i> , or to the assessment of the holder of a clearance under that Act.	21 22 23 24
<b>4.4 Education Act 1990 No 8</b>	25
<b>[1] Section 47 Registration requirements for non-government schools</b>	26
Omit “Division 2 of Part 7 of the <i>Commission for Children and Young People Act 1998</i> ” from section 47 (g) (ii).	27 28
Insert instead “Part 2 of the <i>Child Protection (Working with Children) Act 2012</i> ”.	29 30

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<b>[2] Section 47 (g) (iii)</b>	1
Omit “Part 7 of the <i>Commission for Children and Young People Act 1998</i> ”.	2
Insert instead “the <i>Child Protection (Working with Children) Act 2012</i> ”.	3
<b>4.5 Education (School Administrative and Support Staff) Act 1987 No 240</b>	4
	5
<b>[1] Section 32D Suspension of permanent employees from duty pending certain decisions or on lapsing of clearance</b>	6
	7
Omit section 32D (2). Insert instead:	8
(2) If a permanent employee:	9
(a) is charged with an offence referred to in section 32C, or	10
(b) is the subject of an interim bar, or	11
(c) is refused a working with children check clearance and the period for an application under Part 4 of the <i>Child Protection (Working with Children) Act 2012</i> has not elapsed or an application has been made under that Part and has not been determined, or	12
	13
	14
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	16
(d) is not the holder of a clearance and is eligible to apply, but has not applied, for a clearance,	17
	18
the Director-General may suspend the employee from duty until the employee is notified by the Director-General that the suspension has been lifted.	19
	20
	21
<b>[2] Section 32D (5)</b>	22
Insert after section 32D (4):	23
(5) Words and expressions used in this section have the same meaning as they have in the <i>Child Protection (Working with Children) Act 2012</i> .	24
	25
	26
<b>[3] Part 6A, heading</b>	27
Omit “ <b>prohibited persons</b> ”.	28
Insert instead “ <b>persons barred from working with children</b> ”.	29

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<b>[4] Section 32I Definitions</b>	1
Omit the definitions of <i>child-related employment</i> , <i>Commission</i> and <i>prohibited person</i> and the note to the section. Insert instead:	2
<i>unauthorised person</i> means:	3
(a) a person whose working with children check clearance is cancelled, or	4
(b) any other person who is required to hold a clearance but is not the holder of a clearance, other than a person referred to in section 32D (2) (b)–(d) or a person who is exempt from the requirement to hold a clearance.	5
	6
	7
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	10
<b>[5] Section 32I (2)</b>	11
Insert at the end of section 32I:	12
(2) Words and expressions used in this Part have the same meaning as they have in the <i>Child Protection (Working with Children) Act 2012</i> .	13
	14
	15
<b>[6] Section 32J Operation of this Part</b>	16
Omit “a prohibited person” from section 32J (2).	17
Insert instead “an unauthorised person”.	18
<b>[7] Section 32K Termination of employment of unauthorised persons</b>	19
Omit “a prohibited person” from section 32K (1) and where firstly occurring in section 32K (2) (a) and (c) and (4).	20
	21
Insert instead “an unauthorised person”.	22
<b>[8] Section 32K (1) and (4)</b>	23
Omit “child-related employment” wherever occurring.	24
Insert instead “child-related work”.	25
<b>[9] Section 32K (2) (a) and (c) and (4)</b>	26
Omit “a prohibited person” where secondly occurring.	27
Insert instead “a person”.	28
<b>[10] Section 32K (2) (b)</b>	29
Omit the paragraph.	30

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<b>[11]</b>	<b>Section 32L Unauthorised person status to be notified to Director-General</b>	1 2
	Omit section 32L (1). Insert instead:	3
	(1) A permanent or temporary employee who becomes an unauthorised person must immediately report that fact to the Director-General.	4 5 6
<b>[12]</b>	<b>Section 32L (2)</b>	7
	Omit “has been charged with an offence referred to in subsection (1), or is a prohibited person”.	8 9
	Insert instead “has become an unauthorised person”.	10
<b>[13]</b>	<b>Section 32L (4)</b>	11
	Omit the subsection.	12
<b>[14]</b>	<b>Section 32M</b>	13
	Omit the section. Insert instead:	14
	<b>32M Review of failure to obtain authorisation or of unauthorised status</b>	15
	(1) If an application is made by a person under Part 4 of the <i>Child Protection (Working with Children) Act 2012</i> , the Administrative Decisions Tribunal is to notify the Director-General of the application if it appears to the Tribunal that the person is a member (or former member) of the school administrative and support staff.	16 17 18 19 20 21
	(2) The Director-General is entitled to appear and be represented at any proceedings arising out of any such application.	22 23
<b>[15]</b>	<b>Section 32N Effect of person obtaining working with children check clearance</b>	24 25
	Omit section 32N (1) and the note to the subsection. Insert instead:	26
	(1) This section applies to a person who is dismissed under section 32K and who subsequently obtains a working with children check clearance.	27 28 29
<b>[16]</b>	<b>Section 32N (2)</b>	30
	Omit “ceases to be a prohibited person because the conviction for the offence in respect of which the person is a prohibited person is overturned by a court on appeal”.	31 32 33
	Insert instead “is granted a clearance (other than as referred to in subsection (3))”.	34 35



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<b>[17] Section 32N (3) (a)</b>	1
Omit the paragraph. Insert instead:	2
(a) the person is granted a clearance after an order under Part 4	3
of the <i>Child Protection (Working with Children) Act 2012</i> ,	4
and	5
<b>[18] Section 32N (7)</b>	6
Omit the subsection.	7
<b>[19] Section 32O Disciplinary action may be taken against person who ceases to be an unauthorised person</b>	8
Omit “a prohibited person” wherever occurring.	9
Insert instead “an unauthorised person”.	10
<b>[20] Section 32R Protection for exercise of functions in connection with Part</b>	11
Omit “ <i>Commission for Children and Young People Act 1998</i> ” from	12
section 32R (6).	13
Insert instead “ <i>Child Protection (Working with Children) Act 2012</i> ”.	14
<b>[21] Section 32S Transitional provision</b>	15
Omit the section.	16
<b>[22] Schedule 1 Savings, transitional and other provisions</b>	17
Insert at the end of clause 1 (1):	18
any other Act that amends this Act.	19
<b>4.6 Industrial Relations Act 1996 No 17</b>	20
<b>Section 164A Powers of Commission as to disclosure of matters before the Commission</b>	21
Omit section 164A (3). Insert instead:	22
(3) The Commission (other than in Court Session) may make any	23
non-disclosure order if it is satisfied that it is necessary to do so	24
in the interests of justice.	25
	26
	27

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<b>4.7 Institute of Teachers Act 2004 No 65</b>	1
<b>Section 24 General grounds for revocation of accreditation</b>	2
Omit section 24 (2) (a). Insert instead:	3
(a) the authority is satisfied that the person is an unauthorised person within the meaning of section 93R of the <i>Teaching Service Act 1980</i> ,	4 5 6
<b>4.8 Ombudsman Act 1974 No 68</b>	7
<b>Section 25DA</b>	8
Insert after section 25D:	9
<b>25DA Disclosures to CCYP</b>	10
The Ombudsman may disclose the following information to the Commission for Children and Young People:	11 12
(a) information about an employee of a designated government or non-government agency that the Ombudsman believes may cause that employee to be a disqualified person under the <i>Child Protection (Working with Children) Act 2012</i> , or to be subject to an assessment requirement under that Act,	13 14 15 16 17 18
(b) information about exemptions under section 25CA,	19
(c) information about reports of investigations into reportable conduct by the Ombudsman or a designated government or non-government agency.	20 21 22
<b>4.9 Parliamentary Electorates and Elections Act 1912 No 41</b>	23
<b>[1] Section 81K Definitions</b>	24
Omit the definition of <i>relevant apprehended violence order</i> from section 81K (1). Insert instead:	25 26
<i>relevant apprehended violence order</i> means (subject to subsection (5)) a final apprehended violence order made under the <i>Crimes (Domestic and Personal Violence) Act 2007</i> , or a final order made under Part 15A of the <i>Crimes Act 1900</i> before its repeal, being an order made on the application of a police officer or other public official for the protection of a child from sexual activity or acts of indecency.	27 28 29 30 31 32 33

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<b>[2] Section 81K (5)</b>	1
Insert after section 81K (4):	2
(5) The following are not relevant apprehended violence orders:	3
(a) an apprehended violence order made by a court before	4
3 July 1995 under Part 15A of the <i>Crimes Act 1900</i> ,	5
(b) an external protection order (within the meaning of	6
section 562RA of the <i>Crimes Act 1900</i> ) made before 3 July	7
1995,	8
(c) an external protection order (within the meaning of Part 13	9
of the <i>Crimes (Domestic and Personal Violence) Act 2007</i> )	10
that is not registered under that Part.	11
<b>[3] Section 81N Duties of CYP Commission with respect to child-related</b>	12
<b>conduct declarations</b>	13
Omit section 81N (2) (a). Insert instead:	14
(a) may exercise any of the functions it has under the <i>Child</i>	15
<i>Protection (Working with Children) Act 2012</i> , and	16
<b>[4] Section 81N (2) (b)</b>	17
Omit “by that Act”.	18
<b>[5] Section 81N (2) (b)</b>	19
Omit “Part”. Insert instead “Act”.	20
<b>4.10 Teaching Service Act 1980 No 23</b>	21
<b>[1] Section 93L Suspension of officers from duty pending certain decisions</b>	22
<b>or on lapsing of working with children check clearance</b>	23
Omit section 93L (2). Insert instead:	24
(2) If an officer:	25
(a) is charged with an offence referred to in section 93K, or	26
(b) is the subject of an interim bar, or	27
(c) is refused a working with children check clearance and the	28
period for an application under Part 4 of the <i>Child</i>	29
<i>Protection (Working with Children) Act 2012</i> has not	30
elapsed or an application has been made under that Part	31
and has not been determined, or	32

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	(d) is not the holder of a clearance and is eligible to apply, but has not applied, for a clearance,	1
		2
	the Director-General may suspend the officer from duty until the officer is notified by the Director-General that the suspension has been lifted.	3
		4
		5
<b>[2]</b>	<b>Section 93L (5)</b>	6
	Insert after section 93L (4):	7
	(5) Words and expressions used in this section have the same meaning as they have in the <i>Child Protection (Working with Children) Act 2012</i> .	8
		9
		10
<b>[3]</b>	<b>Part 4B, heading</b>	11
	Omit “prohibited persons”.	12
	Insert instead “persons barred from working with children”.	13
<b>[4]</b>	<b>Section 93R Definitions</b>	14
	Omit the definitions of <i>child-related employment</i> , <i>Commission</i> and <i>prohibited person</i> and the note to the section. Insert instead:	15
		16
	<i>unauthorised person</i> means:	17
	(a) a person whose working with children check clearance is cancelled, or	18
		19
	(b) any other person who is required to hold but is not the holder of a clearance, other than a person referred to in section 93L (2) (b)–(d) or a person who is exempt from the requirement to hold a clearance.	20
		21
		22
		23
<b>[5]</b>	<b>Section 93R (2)</b>	24
	Insert at the end of section 93R:	25
	(2) Words and expressions used in this Part have the same meaning as they have in the <i>Child Protection (Working with Children) Act 2012</i> .	26
		27
		28
<b>[6]</b>	<b>Section 93S Operation of this Part</b>	29
	Omit “a prohibited person” from section 93S (2).	30
	Insert instead “an unauthorised person”.	31

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<b>[7] Section 93T Termination of employment of unauthorised persons</b>	1
Omit “a prohibited person” from section 93T (1) and where firstly occurring in section 93T (2) (a) and (c) and (4).	2 3
Insert instead “an unauthorised person”.	4
<b>[8] Section 93T (1) and (4)</b>	5
Omit “child-related employment” wherever occurring.	6
Insert instead “child-related work”.	7
<b>[9] Section 93T (2) (a) and (c) and (4)</b>	8
Omit “a prohibited person” where secondly occurring.	9
Insert instead “a person”.	10
<b>[10] Section 93T (2) (b)</b>	11
Omit the paragraph.	12
<b>[11] Section 93U Unauthorised person status to be notified to Director-General</b>	13 14
Omit section 93U (1). Insert instead:	15
(1) An officer or temporary employee who becomes an unauthorised person must immediately report that fact to the Director-General.	16 17
<b>[12] Section 93U (2)</b>	18
Omit “has been charged with an offence referred to in subsection (1), or is a prohibited person”.	19 20
Insert instead “has become an unauthorised person”.	21
<b>[13] Section 93U (4)</b>	22
Omit the subsection.	23
<b>[14] Section 93V</b>	24
Omit the section. Insert instead:	25
<b>93V Review of failure to obtain authorisation or of unauthorised status</b>	26
(1) If an application is made by a person under Part 4 of the <i>Child Protection (Working with Children) Act 2012</i> , the Administrative Decisions Tribunal is to notify the Director-General of the application if it appears to the Tribunal that the person is an officer or temporary employee or former officer or temporary employee.	27 28 29 30 31 32

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	(2) The Director-General is entitled to appear and be represented at any proceedings arising out of any such application.	1 2
<b>[15]</b>	<b>Section 93W Effect of person obtaining working with children check clearance</b>	3 4
	Omit section 93W (1) and the note to that subsection. Insert instead:	5
	(1) This section applies to a person who is dismissed under section 93T and who subsequently obtains a working with children check clearance.	6 7 8
<b>[16]</b>	<b>Section 93W (2)</b>	9
	Omit “ceases to be a prohibited person because the conviction for the offence in respect of which the person is a prohibited person is overturned by a court on appeal”.	10 11 12
	Insert instead “is granted a clearance (other than as referred to in subsection (3))”.	13 14
<b>[17]</b>	<b>Section 93W (3) (a)</b>	15
	Omit the paragraph. Insert instead:	16
	(a) the person is granted a clearance after an order under Part 4 of the <i>Child Protection (Working with Children) Act 2012</i> , and	17 18 19
<b>[18]</b>	<b>Section 93W (7)</b>	20
	Omit the subsection.	21
<b>[19]</b>	<b>Section 93X Disciplinary action may be taken against person who ceases to be unauthorised person</b>	22 23
	Omit “a prohibited person” wherever occurring.	24
	Insert instead “an unauthorised person”.	25
<b>[20]</b>	<b>Section 93ZA Protection for exercise of functions in connection with Part</b>	26 27
	Omit “ <i>Commission for Children and Young People Act 1998</i> ” from section 93ZA (6).	28 29
	Insert instead “ <i>Child Protection (Working with Children) Act 2012</i> ”.	30
<b>[21]</b>	<b>Section 93ZB Transitional provision</b>	31
	Omit the section.	32

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<b>[22] Schedule 3 Savings and transitional provisions</b>	1
Insert at the end of clause 2 (1):	2
any other Act that amends this Act.	3
<b>4.11 Young Offenders Act 1997 No 54</b>	4
<b>Section 68 Interventions not to be disclosed as criminal history</b>	5
Omit section 68 (2) (d). Insert instead:	6
(d) an application by a person for a working with children check clearance, the assessment of a person or an application under Part 4 of the <i>Child Protection (Working             with Children) Act 2012</i> .	7 8 9 10