

Passed by both Houses



New South Wales

# Child Protection Legislation Amendment (Children's Guardian) Bill 2013

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Child Protection (Working with Children) Act 2012 No 51	3
Schedule 2 Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157	7
Schedule 3 Amendment of other Acts	11

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2013*



New South Wales

## **Child Protection Legislation Amendment (Children's Guardian) Bill 2013**

Act No , 2013

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An Act to amend the *Child Protection (Working with Children) Act 2012* to transfer the functions relating to working with children check clearances to the Children's Guardian; and for other purposes.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Child Protection Legislation Amendment (Children's Guardian) Act 2013*.

**2 Commencement**

This Act commences on the date of assent to this Act, or 15 June 2013, whichever is the later.

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

### **[1] Section 3 Object of Act**

Omit the Note. Insert instead:

**Note.** For other legislation relating to the safety, welfare and well-being of children, and the related functions of the Children's Guardian, see the *Children and Young Persons (Care and Protection) Act 1998*. In particular, see section 181 and Chapter 13 of that Act.

### **[2] Section 5 Definitions**

Insert in alphabetical order in section 5 (1):

**Children's Guardian** means the Children's Guardian appointed under section 178 of the *Children and Young Persons (Care and Protection) Act 1998*.

**family day care service** has the same meaning as it has in the *Children (Education and Care Services) National Law (NSW)*.

**home based education and care service** has the same meaning as it has in the *Children (Education and Care Services) Supplementary Provisions Act 2011*.

### **[3] Section 5 (1), definitions of "Commission" and "Commissioner"**

Omit the definitions.

### **[4] Sections 7 (4), 8 (1) (b), 9, 10 (1), 11, 13, 15–20, 21 (2) (d), 23–25, 27–31, 32 (1), 33 (1), 35–40, 44 and 52 (2) (a)**

Omit "Commission" wherever occurring.

Insert instead "Children's Guardian".

### **[5] Section 10 Adult persons residing with authorised carers or persons providing home care services**

Omit "(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" from section 10 (1).

Insert instead "(other than a person who is required under another provision of this Act to, or is exempt from the requirement to, hold a working with children check clearance) who resides at the home of an authorised carer or at a home where a home based education and care service or family day care service".

**[6] Section 10 (2)**

Omit "education and care service".

Insert instead "home based education and care service or family day care service".

**[7] Section 10 (3)**

Omit "the home of an authorised carer or an approved provider of an education or care service".

Insert instead "a home where care or a service referred to in that subsection was provided".

**[8] Section 17 Interim bars**

Omit "Commissioner" from section 17 (3).

Insert instead "Children's Guardian".

**[9] Sections 20 (1) and 23 (2)**

Omit "Commission's" wherever occurring.

Insert instead "Children's Guardian's".

**[10] Sections 31 and 37**

Omit "Commission" from the headings wherever occurring.

Insert instead "Children's Guardian".

**[11] Part 6**

Omit "Commission" from the heading.

Insert instead "Children's Guardian".

**[12] Section 38 Children's Guardian's public awareness and advice functions**

Insert ", including encouraging organisations to develop their capacity to be safe for children" after "child-related work".

**[13] Section 38, note**

Insert at the end of the section:

**Note.** For the Children's Guardian's other child-related employment functions, see Chapter 13 of the *Children and Young Persons (Care and Protection) Act 1998*.

**[14] Section 39**

Omit “**Commission’s**” from the heading.

Insert instead “**Children’s Guardian’s**”.

**[15] Section 40A**

Insert after section 40:

**40A Power to audit declarations made by exempt workers**

- (1) This section applies to a statutory declaration provided to an employer by an exempt worker that contains information relating to the offences specified in Schedule 2.
- (2) The Children’s Guardian may audit the accuracy of the statutory declaration, or may authorise a person to carry out such an audit.
- (3) The Children’s Guardian may authorise a person under this section only if the Privacy Commissioner advises the Children’s Guardian, in writing, that the Privacy Commissioner is satisfied that the person is able to adequately provide for the security of any information obtained in the exercise of functions pursuant to the authorisation.
- (4) The Commissioner of Police is authorised to disclose (or arrange for a member of the NSW Police Force to disclose) the following information for the purposes of this section:
  - (a) information relating to spent convictions, despite anything to the contrary in the *Criminal Records Act 1991*,
  - (b) information relating to offences, despite anything to the contrary in section 579 of the *Crimes Act 1900*.
- (5) If a person authorised under this section reasonably believes that a statutory declaration is inaccurate, the person must, as soon as practicable, inform the Children’s Guardian and provide any information relevant to that belief to the Children’s Guardian.
- (6) The Children’s Guardian may disclose information obtained under this section to the following persons:
  - (a) the person who made the statutory declaration,
  - (b) the employer of that person,
  - (c) a police officer of the State or of the Commonwealth or another State or Territory,
  - (d) the Ombudsman,
  - (e) any other investigative agency that the Children’s Guardian considers appropriate,

- (f) the Department of Family and Community Services,
  - (g) the Director of Public Prosecutions,
  - (h) a court or tribunal,
  - (i) an approved interstate screening agency,
  - (j) the Minister,
  - (k) the Privacy Commissioner,
  - (l) any other person approved by the Privacy Commissioner and prescribed in the regulations.
- (7) The Minister may give the Children's Guardian a written direction on the exercise of functions under this section and the Children's Guardian is to comply with the direction.
- (8) In this section, *exempt worker* means a worker who is exempted by the regulations from the requirement to hold a clearance.

**[16] Section 48A**

Insert after section 48:

**48A Reports under Children and Young Persons (Care and Protection) Act 1998**

- (1) Any information obtained by the Children's Guardian in the course of exercising functions under this Act may be used for the purposes of making a report to the Director-General of the Department of Family and Community Services under section 24 (Report concerning child or young person at risk of significant harm) or 27 (Mandatory reporting) of the *Children and Young Persons (Care and Protection) Act 1998*.
- (2) A report referred to in section 29 of the *Children and Young Persons (Care and Protection) Act 1998* may be provided to the Children's Guardian for the purpose of the exercise of the Children's Guardian's functions under this Act. Any such report may not be subsequently dealt with by the Children's Guardian in a manner that contravenes that section, except to the extent that it is necessary for the Children's Guardian to do so in the exercise of functions under this Act.

## **Schedule 2      Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157**

### **[1] Section 3 Definitions**

Omit "Minister" from the definition of *employer's authority*.

Insert instead "Children's Guardian".

### **[2] Section 137 Authorised carers**

Omit section 137 (3) and (4). Insert instead:

- (3) In the case of an authorised carer who is authorised by a designated agency, it is a condition of the authorisation that the carer must, as soon as practicable, notify the designated agency if any person (other than the carer) who is of or above the age of 18 years commences to reside at the carer's home and will continue to do so on a regular basis.

**Note.** See section 10 of the *Child Protection (Working with Children) Act 2012* which requires that an adult person residing at the home of an authorised carer hold a working with children check clearance.

- (4) Without limiting subsection (3), the requirement to notify the designated agency also applies when a minor residing at the carer's home attains the age of 18 years.

### **[3] Section 181 Principal functions of Children's Guardian**

Omit section 181 (1). Insert instead:

- (1) The principal functions of the Children's Guardian are as follows:
- (a) to exercise functions relating to persons engaged in child-related work, including working with children check clearances, under the *Child Protection (Working with Children) Act 2012*,
  - (b) to promote the best interests of all children and young persons in out-of-home care,
  - (c) to ensure that the rights of all children and young persons in out-of-home care are safeguarded and promoted,
  - (d) to establish a register for the purpose of the authorisation of individuals as authorised carers, and to maintain that register, in accordance with the regulations,
  - (e) to accredit designated agencies and to monitor their responsibilities under this Act and the regulations,

- (f) to register organisations that provide or arrange voluntary out-of-home care and to monitor their responsibilities under this Act and the regulations,
- (g) to exercise functions relating to the employment of children, including the making and revocation of exemptions from the requirement to hold an employer's authority,
- (h) to develop and administer a voluntary accreditation scheme for persons working with persons who have committed sexual offences against children,
- (i) to develop and administer a voluntary accreditation scheme for programs for persons who have committed sexual offences against children,
- (j) to encourage organisations to develop their capacity to be safe for children as referred to in section 38 of the *Child Protection (Working with Children) Act 2012*.

**[4] Section 183**

Insert after section 182:

**183 Appointment of advisory committees**

- (1) The Children's Guardian may appoint such advisory committees as the Children's Guardian considers appropriate to assist the Children's Guardian in the exercise of the Children's Guardian's functions. The Children's Guardian may disband any such advisory committee at any time.
- (2) The procedure of such an advisory committee is to be determined by the Children's Guardian or (subject to any determination of the Children's Guardian) by the committee.
- (3) A member of such an advisory committee is entitled to such allowances in connection with the work of the committee as the Minister approves in respect of the member.

**[5] Sections 186A and 186B**

Insert after section 186:

**186A Referral of matters to police and other investigative agencies**

- (1) This section applies to any information obtained by the Children's Guardian in the course of exercising any functions (other than information obtained in the course of exercising functions under section 40A of the *Child Protection (Working with Children) Act 2012*), being information relating to a possible

criminal offence under any law or to grounds for possible disciplinary action under any law.

- (2) The Children's Guardian may refer any such information to the Commissioner of Police, the Ombudsman, the Director-General of the Department of Family and Community Services or any other investigative or government agency that the Children's Guardian considers appropriate.
- (3) Nothing in this section limits or affects the operation of Chapter 16A.

**186B Protection from liability**

A matter or thing done or omitted to be done by the Children's Guardian, an advisory committee of the Children's Guardian, a member of any such advisory committee or any person acting under the direction of the Children's Guardian or the advisory committee does not, if the matter or thing was done or omitted in good faith for the purposes of executing this or any other Act, subject the Children's Guardian, member of the advisory committee or a person so acting personally to any action, liability, claim or demand.

- [6] **Sections 221 (2) (b), 224 (other than section 224 (5) (a)) and 245 (1) (d)–(f)**  
Omit "Minister" wherever occurring. Insert instead "Children's Guardian".
- [7] **Section 236 Entry without warrant into premises—places of employment**  
Omit "Director-General" from section 236 (1).  
Insert instead "Children's Guardian".
- [8] **Section 245 Decisions that are reviewable by Administrative Decisions Tribunal**  
Insert ", the Children's Guardian" after "the Minister" in section 245 (1) (g).
- [9] **Schedule 2 Provisions relating to employers' authorities**  
Omit "Minister" wherever occurring in clauses 1 (1), 2 (b), 5 (b), 6 (1) and 7.  
Insert instead "Children's Guardian".
- [10] **Schedule 2, clause 2 Grant or refusal of authority**  
Insert at the end of the clause:
  - (2) When a person applies to the Children's Guardian for an employer's authority, the Children's Guardian must within 14 days:

Child Protection Legislation Amendment (Children's Guardian) Bill 2013

Schedule 2      Amendment of Children and Young Persons (Care and Protection) Act 1998  
No 157

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- (a) grant the authority to the applicant, or
  - (b) refuse the authority and cause to be served on the applicant a notice stating the ground on which the authority has been refused.
- (3) The period of 14 days referred to in this clause may be varied or waived by agreement between the Children's Guardian and the applicant.

**[11] Schedule 2, clause 3**

Omit the clause.

**[12] Schedule 2, clause 7 (3)**

Omit "Minister's". Insert instead "Children's Guardian's".

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## **Schedule 3      Amendment of other Acts**

### **3.1    Administrative Decisions Tribunal Act 1997 No 76**

#### **Schedule 2 Composition and functions of Divisions**

Omit "*Commission for Children and Young People Act 1998*" from clause 2 of Part 1.

Insert in alphabetical order "*Child Protection (Working with Children) Act 2012*".

### **3.2    Child Protection (Offenders Registration) Act 2000 No 42**

#### **[1]    Section 9 Relevant personal information to be reported**

Omit section 9 (1) (f). Insert instead:

- (f) if the person is a worker:
  - (i) the nature of the person's work, and
  - (ii) the name of the person's employer (if any), and
  - (iii) the address of each of the premises at which the person generally works or, if the person does not generally work at any particular premises, the name of each of the localities in which the person generally works,

#### **[2]    Section 9 (3)**

Omit the subsection. Insert instead:

- (3) In this section, *employer* and *worker* have the same meanings as they have in the *Child Protection (Working with Children) Act 2012*.

#### **[3]    Section 16 ADT may exempt persons from compliance with reporting obligations**

Omit "The Commission for Children and Young People" from section 16 (6).

Insert instead "The Children's Guardian".

#### **[4]    Section 16 (6)**

Omit "The Commission". Insert instead "The Children's Guardian".

**[5] Section 16 (7)**

Omit “the Commissioner for the Commission for Children and Young People”.

Insert instead “the Children’s Guardian”.

**[6] Section 16 (12)**

Insert after section 16 (11):

(12) In this section, *Children’s Guardian* means the Children’s Guardian appointed under section 178 of the *Children and Young Persons (Care and Protection) Act 1998*.

**3.3 Children (Education and Care Services National Law Application) Act 2010 No 104**

**Section 15 Working with children law**

Omit “the *Commission for Children and Young People Act 1998*”.

Insert instead “the *Child Protection (Working with Children) Act 2012*”.

**3.4 Children (Education and Care Services) Supplementary Provisions Act 2011 No 70**

**Section 34 Home based education and care services—adult residents**

Omit the Note to section 34 (1). Insert instead:

**Note.** See section 10 of the *Child Protection (Working with Children) Act 2012* which requires that an adult person residing at a home where a home based education and care service is provided hold a working with children check clearance.

**3.5 Commission for Children and Young People Act 1998 No 146**

**[1] Section 11 Principal functions of Commission**

Omit section 11 (i), (j), (l) and (m).

**[2] Section 15 Referral of matters to police and other investigative agencies**

Omit “Department of Human Services” from section 15 (2).

Insert instead “Department of Family and Community Services”.

**[3] Section 28 Functions of Committee**

Insert after section 28 (1) (a):

- (a1) to monitor and review the exercise by the Children's Guardian of functions under the *Child Protection (Working with Children) Act 2012*,

**[4] Section 28 (1) (b)**

Insert “, or on any matter appertaining to the exercise of the Children's Guardian's functions under the *Child Protection (Working with Children) Act 2012*,” after “functions”.

**3.6 Crimes (Sentencing Procedure) Act 1999 No 92**

**Section 24A Mandatory requirements for supervision and other prohibitions to be disregarded in sentencing**

Omit section 24A (1) (c). Insert instead:

- (c) as a consequence of being convicted of the offence, has become a disqualified person within the meaning of the *Child Protection (Working with Children) Act 2012*, or

**3.7 Criminal Records Act 1991 No 8**

**Section 13 Unlawful disclosure of information concerning spent convictions**

Omit “section 38 or 38A of the *Commission for Children and Young People Act 1998*” from section 13 (4A).

Insert instead “section 33, 34 or 40A of the *Child Protection (Working with Children) Act 2012*”.

**3.8 Ombudsman Act 1974 No 68**

**[1] Section 25DA Disclosures to Children's Guardian**

Omit “Commission for Children and Young People”.

Insert instead “Children's Guardian for the purpose of the exercise of functions under the *Child Protection (Working with Children) Act 2012*”.

**[2] Section 25DA (2)**

Insert at the end of the section:

- (2) Nothing in this section limits the information that the Ombudsman may otherwise disclose to the Children's Guardian under this or any other Act or law.

**3.9 Parliamentary Electorates and Elections Act 1912 No 41**

**[1] Section 81K Definitions**

Omit the definition of *CYP Commission* from section 81K (1).

Insert in alphabetical order:

*Children's Guardian* means the Children's Guardian appointed under section 178 of the *Children and Young Persons (Care and Protection) Act 1998*.

**[2] Section 81M Duties of Electoral Commissioner with respect to child-related conduct declarations**

Omit "Commission for Children and Young People (the *CYP Commission*)" from section 81M (2).

Insert instead "Children's Guardian".

**[3] Section 81N Duties of Children's Guardian with respect to child-related conduct declarations**

Omit "CYP Commission" wherever occurring.

Insert instead "Children's Guardian".

**[4] Section 81N (2) (b), (3) and (5)**

Omit "the Commission" wherever occurring.

Insert instead "the Children's Guardian".

**[5] Section 81NA Duty of persons to assist the Children's Guardian**

Omit "CYP Commission" wherever occurring in section 81NA (1) and (3).

Insert instead "Children's Guardian".

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**[6] Section 81P Reports presented to Presiding Officer of House of Parliament**

Omit "CYP Commission" from section 81P (1).

Insert instead "Children's Guardian".