



New South Wales

# Child Protection (Working with Children) Amendment (Statutory Review) Bill 2018

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Child Protection (Working with Children) Act 2012* and other legislation as follows:

- (a) to change the definition of *child-related work* (being the work for which a working with children check clearance is required), so that direct contact with children must be a usual part of and more than incidental to the work,
- (b) to make it an offence for an employer to fail to obtain and verify the details of a worker who is employed to work with children, or to keep a record of the details so obtained,
- (c) to require a placement agency to obtain and verify the details of a worker who is employed to work with children, and to keep a record of the details so obtained, if required to do so by the regulations,
- (d) to require a licensing, registration or accreditation authority (a *licensing authority*) to obtain and verify the details of a person to whom a licence, registration, accreditation or other authority is granted or issued, and to keep a record of the details so obtained, if required to do so by the regulations,
- (e) to give discretion to the Children's Guardian to permit a child who turns 18 to continue to reside with an authorised carer despite not holding a working with children check clearance,
- (f) to make further provision for the powers of the Civil and Administrative Tribunal when carrying out reviews under the Act,

- (g) to require persons (as well as government agencies) to provide information relevant to the preparation of submissions to the Civil and Administrative Tribunal or the assessment of the risk posed by a person when directed to do so by the Children’s Guardian,
- (h) to require applicants for a working with children check clearance to notify changes in personal details,
- (i) to permit penalty notices to be issued for offences under the Act,
- (j) to require parent volunteers on overnight camps to have a working with children check clearance,
- (k) to make other miscellaneous changes.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

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

### **Definition of “child-related work”**

Child-related work is work for which a working with children check clearance is required. The Act defines various types of work that is treated as child-related work. In most cases, the work must involve direct contact by the worker with a child or children.

**Schedule 1 [3]** adds an additional requirement that the direct contact concerned must be a usual part of and more than incidental to the work. This change was recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse.

**Schedule 1 [4]** permits regulations to be made that provide for circumstances in which direct contact with a child or children is to be treated as a usual part of, and more than incidental to, work.

### **Verification of working with children check clearance**

At present, it is an offence to employ a person in child-related work unless the person has a working with children check clearance that authorises that work or a current application for such a clearance.

**Schedule 1 [6]**, proposed section 9A, makes it an offence for an employer to fail to obtain and verify a worker’s relevant details (including the person’s working with children check clearance number) and to make a record of those details. An employer verifies the relevant details by checking that those details accord with the details as recorded in the working with children register. The employer must also update the record to ensure that the working with children check clearance has been renewed. This requirement replaces an existing statutory duty that was not an offence.

The mandatory verification requirement will also apply to placement agencies who arrange for the placement of workers in child-related work. **Schedule 1 [5]** is a consequential amendment that will make it an offence for a placement agency to arrange for the employment of a person in child-related work unless the person has a working with children check clearance or a current application for a clearance. These requirements will apply only if the placement agency is declared by the regulations to be a placement agency subject to the new requirement.

**Schedule 1 [6]**, proposed section 9AA, imposes a similar requirement on licensing authorities. The provision requires a licensing authority that issues, grants or renews a relevant licence to obtain and verify the person’s relevant details (including the person’s working with children check clearance number) and to make a record of those details. A *relevant licence* means a licence, registration, accreditation, certificate, permit or other authority of a kind prescribed by the regulations.

Schedule 1 [8], [9], [14] and [15] are consequential amendments.

### **Continuing residence approval**

Schedule 1 [11] permits the Children's Guardian to grant an approval (a *continuing residence approval*) for a person to reside at the same property as an authorised carer, even though the person does not hold a working with children check clearance, if:

- (a) the person is or was, immediately before turning 18 years of age, in the out-of-home care of the authorised carer, and
- (b) the Children's Guardian is satisfied that any risks to the safety of children associated with the person residing at the property have been sufficiently mitigated.

The provision is intended to allow children who reside with authorised carers where other children are present to continue to do so after turning 18 years of age.

Schedule 1 [7] and [10] are consequential amendments.

### **NCAT powers**

Schedule 1 [13] and [19] require the Children's Guardian and the Civil and Administrative Tribunal to consider any order of a court or tribunal in force in relation to a person in exercising its review powers under the Act.

Schedule 1 [16] provides that the Civil and Administrative Tribunal must not stay a decision to refuse or cancel a working with children check clearance or to impose an interim bar unless the Tribunal is satisfied that appropriate arrangements are in place for the supervision and enforcement of the conditions (if any) of the proposed stay order by the person's employer.

### **Power to require production of information**

At present, the Children's Guardian can require a government agency to provide information relevant to the assessment of whether a person poses a risk to the safety of children. The Children's Guardian can also request a person other than a government agency to provide such information.

Schedule 1 [20] permits the Children's Guardian to require persons (as well as government agencies) to provide information relevant to the preparation of submissions to the Civil and Administrative Tribunal or the assessment of whether a person poses a risk to the safety of children. If a person fails to comply with a requirement, the Children's Guardian may direct the person to comply with the requirement. It will be an offence to fail to comply with that direction.

### **Duty to keep information up to date**

Schedule 1 [25] requires a person who holds a working with children check clearance, or who has applied for a clearance, to notify the Children's Guardian of any change in the person's personal details (including contact and employment details).

### **Penalty notices**

Schedule 1 [26] enables penalty notices for offences under the Act or the regulations to be issued by authorised officers. Authorised officers are to be appointed by the Children's Guardian.

### **Miscellaneous amendments**

Schedule 1 [2] defines a *risk to the safety of children* as meaning a real and appreciable risk to the safety of children, consistent with *Commission for Children and Young People v V* [2002] NSWSC 949.

The provisions of the Act that require a person's criminal record to be considered in relation to the granting of working with children check clearances are clarified so that it is clear that the whole of a person's criminal history must be considered. Criminal history includes convictions that have been spent, quashed or set aside or for which a pardon has been granted and criminal charges, whether or not proven or dismissed. This accords with the recommendations of the Royal

Commission into Institutional Responses to Child Sexual Abuse. See **Schedule 1 [2], [12], [18] and [21]–[23]**.

**Schedule 1 [17]** clarifies that a working with children check clearance that is granted by the Children’s Guardian in accordance with an order of the Civil and Administrative Tribunal has effect in the same way as other working with children check clearances. That is, it must be renewed every 5 years and it can be cancelled and surrendered similar to other working with children check clearances.

**Schedule 1 [1]** inserts definitions that are related to other amendments described above.

## **Schedule 2     Amendment of other legislation**

### **Child-related work**

**Schedule 2.1 [1]** ensures that any direct contact that a worker has with a child in providing certain health services is taken to be a usual part of, and more than incidental to, the work. Accordingly, the work is child-related work and a clearance is required.

### **Parent volunteers**

**Schedule 2.1 [2]** removes an exemption from the requirement to obtain a working with children check clearance that currently applies to parents or close relatives who voluntarily attend at overnight camps for children. As a result, a clearance will be required.

### **Penalty notices**

**Schedule 2.1 [3]** enables penalty notices to be issued for the new verification offences.

### **Other amendments**

**Schedule 2.2** makes amendments to the *Children and Young Persons (Care and Protection) Regulation 2012* that are consequential on the proposal to permit the Children’s Guardian to grant a continuing residence approval.



New South Wales

# Child Protection (Working with Children) Amendment (Statutory Review) Bill 2018

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New South Wales

# Child Protection (Working with Children) Amendment (Statutory Review) Bill 2018

No , 2018

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## A Bill for

An Act to amend the *Child Protection (Working with Children) Act 2012* to make further provision for checks and clearances for the purposes of working with children; and for related purposes.

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

1

**1 Name of Act**

2

This Act is the *Child Protection (Working with Children) Amendment (Statutory Review) Act 2018*.

3

4

**2 Commencement**

5

This Act commences on a day or days to be appointed by proclamation.

6

|  |  |    |
|--|--|----|
| <b>Schedule 1</b>  | <b>Amendment of Child Protection (Working with Children) Act 2012 No 51</b>  | 1  |
|  |  | 2  |
| <b>[1] Section 5 Definitions</b>   |  | 3  |
|  | Insert in alphabetical order in section 5 (1):   | 4  |
|  | <i>authorised officer</i> means a person appointed as an authorised officer by the Children’s Guardian under section 50B of this Act.  | 5  |
|  | <i>continuing residence approval</i> means an approval granted by the Children’s Guardian under section 11D that is in force.  | 6  |
|  | <i>criminal history</i> —see section 5C.   | 7  |
|  |  | 8  |
|  |  | 9  |
| <b>[2] Sections 5B and 5C</b>  |  | 10 |
|  | Insert after section 5A:   | 11 |
| <b>5B Meaning of “risk to the safety of children”</b>                        |  | 12 |
|  | A reference in this Act to a <i>risk to the safety of children</i> is a reference to a real and appreciable risk to the safety of children.  | 13 |
|  |  | 14 |
| <b>5C Meaning of “criminal history”</b>                                      |  | 15 |
|  | (1) A person’s <i>criminal history</i> includes:   | 16 |
|  | (a) convictions (including convictions that have been spent, quashed or set aside or for which a pardon has been granted), despite anything to the contrary in the <i>Criminal Records Act 1991</i> , and        | 17 |
|  |  | 18 |
|  |  | 19 |
|  | (b) criminal charges, whether or not heard, proven, dismissed, withdrawn or discharged, and  | 20 |
|  |  | 21 |
|  | (c) convictions or findings to which section 579 of the <i>Crimes Act 1900</i> applies (despite the provisions of that section).   | 22 |
|  |  | 23 |
|  | (2) In this section:   | 24 |
|  | <i>conviction</i> has the same meaning as it has in the <i>Criminal Records Act 1991</i> .   | 25 |
|  |  | 26 |
| <b>[3] Section 6 Child-related work</b>                                      |  | 26 |
|  | Omit section 6 (1) (a). Insert instead:  | 27 |
|  | (a) the worker is engaged in work referred to in subsection (2) that involves direct contact by the worker with a child or children and that contact is a usual part of and more than incidental to the work, or | 28 |
|  |  | 29 |
|  |  | 30 |
| <b>[4] Section 6 (3A)</b>  |  | 31 |
|  | Insert after section 6 (3):  | 32 |
|  | (3A) The regulations may provide for circumstances in which direct contact by a worker with a child or children is taken to be a usual part of and more than incidental to a worker’s work.                      | 33 |
|  |  | 34 |
|  |  | 35 |
| <b>[5] Section 9 Employers must require clearance or current application</b> |  | 36 |
|  | Insert after section 9 (2):  | 37 |
|  | (3) This section extends to an employer who, in the course of business, arranges for the placement of a worker in employment with others (a <i>placement agency</i> ) if:  | 38 |
|  |  | 39 |
|  |  | 40 |
|  | (a) the employment is child-related work, and  | 41 |



|            |  |                      |
|------------|--|----------------------|
| (b)        | the placement agency is a person or a person of a class declared by the regulations to be subject to this section.   | 1<br>2               |
| (4)        | For the purposes of applying this section to a placement agency referred to in subsection (3), the placement agency is taken to employ the worker during any period in which the placement agency arranges for the employment of the worker in child-related work. | 3<br>4<br>5<br>6     |
| <b>[6]</b> | <b>Sections 9A and 9AA</b>   | 7                    |
|            | Omit section 9A. Insert instead:   | 8                    |
| <b>9A</b>  | <b>Employer must verify and record clearance details</b>   | 9                    |
| (1)        | An employer must not commence employing, or continue to employ, a worker in child-related work unless the employer has obtained and verified the worker's relevant details and made a record of those relevant details.  | 10<br>11<br>12       |
| (2)        | The worker's <i>relevant details</i> are the following:  | 13                   |
| (a)        | the worker's full name and date of birth,  | 14                   |
| (b)        | the working with children number of the worker's clearance or the application number of the worker's current application,  | 15<br>16             |
| (c)        | the expiry date for each clearance of the worker, being the date on which the clearance ceases to have effect.   | 17<br>18             |
| (3)        | The worker's relevant details are taken to have been <i>verified</i> only if the relevant details accord with the information relating to the worker recorded in the working with children register as at the date the record is made by the employer.             | 19<br>20<br>21<br>22 |
| (4)        | An employer who employs a worker in child-related work must ensure that the record kept under subsection (1) in relation to a worker is updated no later than 5 working days after the expiry date for each clearance of the worker.                               | 23<br>24<br>25       |
| (5)        | An employer must retain a record made under this section:  | 26                   |
| (a)        | during the period in which the worker carries out child-related work for the employer, and   | 27<br>28             |
| (b)        | for a period of at least 7 years after the worker ceases to carry out child-related work for the employer.   | 29<br>30             |
| (6)        | An employer who, without reasonable excuse, fails to comply with subsection (1), (4) or (5) is guilty of an offence.<br>Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in any other case).                                 | 31<br>32<br>33<br>34 |
| (7)        | This section extends to an employer who, in the course of business, arranges for the placement of a worker in employment with others (a <i>placement agency</i> ) if:  | 35<br>36<br>37       |
| (a)        | the employment is child-related work, and  | 38                   |
| (b)        | the placement agency is a person or a person of a class declared by the regulations to be subject to this section.   | 39<br>40             |
| (8)        | For the purposes of applying this section to a placement agency referred to in subsection (7), the placement agency is taken to employ the worker during any period in which the placement agency arranges for the employment of the worker in child-related work. | 41<br>42<br>43<br>44 |

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| (9)        | This section does not apply:  | 1                          |
| (a)        | in respect of an employer if the employer is an individual who is the parent of, or has the care of, a child or young person and the child-related work relates to that child or young person, or   | 2<br>3<br>4                |
| (b)        | in respect of a worker who is exempted by the regulations from the requirement to hold a clearance, or  | 5<br>6                     |
| (c)        | in respect of an employer who is exempted by the regulations from this section.   | 7<br>8                     |
| <b>9AA</b> | <b>Licensing authorities must verify and record clearance details</b>   | 9                          |
| (1)        | A licensing authority must not issue a relevant licence to a person unless the licensing authority has obtained and verified the person's relevant details and made a record of those relevant details.   | 10<br>11<br>12             |
| (2)        | The person's <i>relevant details</i> are the following:   | 13                         |
| (a)        | the person's full name and date of birth,   | 14                         |
| (b)        | the working with children number of the person's clearance or the application number of the person's current application,   | 15<br>16                   |
| (c)        | the expiry date for each clearance of the person, being the date on which the clearance ceases to have effect.  | 17<br>18                   |
| (3)        | The person's relevant details are taken to have been <i>verified</i> only if the relevant details accord with the information relating to the person recorded in the working with children register as at the date the record is made by the licensing authority.             | 19<br>20<br>21<br>22       |
| (4)        | A licensing authority must ensure that the record kept under subsection (1) in relation to a person who is the holder of a relevant licence issued by the licensing authority is updated no later than 5 working days after the expiry date for each clearance of the person. | 23<br>24<br>25<br>26       |
| (5)        | A licensing authority must retain a record made under this section:   | 27                         |
| (a)        | during the period in which the person holds a relevant licence issued by the licensing authority, and   | 28<br>29                   |
| (b)        | for a period of at least 7 years after the person ceases to hold a relevant licence issued by the licensing authority.  | 30<br>31                   |
| (6)        | A licensing authority that, without reasonable excuse, fails to comply with subsection (1), (4) or (5) is guilty of an offence.<br>Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in any other case).                                 | 32<br>33<br>34<br>35       |
| (7)        | This section does not apply:  | 36                         |
| (a)        | in respect of a licensing authority that is exempted by the regulations from this section, or   | 37<br>38                   |
| (b)        | in respect of the issue of a licence to a person who is exempted by the regulations from the requirement to hold a clearance.   | 39<br>40                   |
| (8)        | In this section:<br><i>issue</i> includes grant or renew.<br><i>licence</i> means a licence, registration, accreditation, certificate, permit or any other authority.<br><i>licensing authority</i> means a person or body responsible for issuing a licence.                 | 41<br>42<br>43<br>44<br>45 |

|      |   |                      |
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|      | <i>relevant licence</i> means a licence, or a licence of a class, declared by the regulations to be a relevant licence.   | 1<br>2               |
| [7]  | <b>Section 10 Adult persons residing with authorised carers or persons providing certain services</b>   | 3<br>4               |
|      | Insert at the end of section 10 (5) (b) (ii):   | 5                    |
|      | , or  | 6                    |
|      | (c) the adult person is the holder of a continuing residence approval granted by the Children’s Guardian.   | 7<br>8               |
| [8]  | <b>Section 10 (6)</b>   | 9                    |
|      | Omit “section 9”. Insert instead “sections 9 and 9A”.   | 10                   |
| [9]  | <b>Section 11A Prospective guardians and adults residing with them</b>  | 11                   |
|      | Omit “section 9” from section 11A (3). Insert instead “sections 9 and 9A”.  | 12                   |
| [10] | <b>Section 11B Responsible agency must verify person has clearance or current application</b>   | 13<br>14             |
|      | Insert after section 11B (5):   | 15                   |
|      | (6) In relation to the residency of an adult person on the same property as an authorised carer, a requirement to verify that the person is the holder of a working with children check clearance is satisfied if the responsible agency verifies that the adult person is the holder of a continuing residence approval.   | 16<br>17<br>18<br>19 |
|      | (7) For the purposes of subsection (6):   | 20                   |
|      | (a) a reference to the working with children number of the person includes a reference to the particulars of the continuing residence approval, and   | 21<br>22             |
|      | (b) a reference to the expiry date of a clearance, or the date on which it ceases to have effect, includes a reference to the date on which a continuing residence approval ceases to have effect.  | 23<br>24<br>25       |
| [11] | <b>Section 11D</b>  | 26                   |
|      | Insert at the end of Division 3 of Part 2:  | 27                   |
|      | <b>11D Continuing residence approval</b>  | 28                   |
|      | (1) The Children’s Guardian may, by notice in writing given to a person, grant an approval (a <i>continuing residence approval</i> ) to the person to reside on the same property as an authorised carer, even though the person does not hold a working with children check clearance, if:                                 | 29<br>30<br>31<br>32 |
|      | (a) the person is or was, immediately before turning 18 years of age, in the out-of-home care of the authorised carer, and  | 33<br>34             |
|      | (b) the Children’s Guardian is satisfied that any risks to the safety of children associated with the person residing at the property have been sufficiently mitigated.   | 35<br>36<br>37       |
|      | <b>Note.</b> A continuing residence approval is sufficient authority for a person who is or was in the out-of-home care of an authorised carer before turning 18 years of age to continue to reside at the residence of the authorised carer, even though the person does not hold a working with children check clearance. | 38<br>39<br>40<br>41 |
|      | (2) A continuing residence approval has effect for 5 years after the date it is granted or, if a shorter period is specified by the Children’s Guardian, that period.   | 42<br>43<br>44       |

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| (3)         | A continuing residence approval may be renewed by the Children’s Guardian.   | 1  |
| (4)         | The Children’s Guardian may, by notice in writing served on a person, cancel a continuing residence approval granted to the person if:   | 2  |
|             | (a) the Children’s Guardian is no longer satisfied that any risks to the safety of children associated with the person residing at the property have been sufficiently mitigated, or   | 3  |
|             | (b) a change of circumstances occurs that, in the opinion of the Children’s Guardian, makes it no longer appropriate to continue the approval.   | 4  |
| (5)         | A continuing residence approval ceases to have effect if it is cancelled by the Children’s Guardian.   | 5  |
| (6)         | The Children’s Guardian must advise the designated agency that authorised the authorised carer of a decision to grant, refuse, renew or cancel a continuing residence approval as soon as practicable after the decision is made.  | 6  |
| (7)         | In this section:   | 7  |
|             | <i>out-of-home care</i> has the same meaning as it has in the <i>Children and Young Persons (Care and Protection) Act 1998</i> .   | 8  |
| <b>[12]</b> | <b>Section 15 Assessment of applicants and holders</b>   | 9  |
|             | Omit section 15 (4) (h). Insert instead:   | 10 |
|             | (h) the seriousness of the person’s criminal history and the conduct of the person since the matters occurred,   | 11 |
| <b>[13]</b> | <b>Section 15 (4) (i1)</b>   | 12 |
|             | Insert after section 15 (4) (i):   | 13 |
|             | (i1) any order of a court or tribunal that is in force in relation to the person,  | 14 |
| <b>[14]</b> | <b>Section 25 Working with children register</b>   | 15 |
|             | Insert “, licensing authority” after “employer” wherever occurring in section 25 (5).  | 16 |
| <b>[15]</b> | <b>Section 25 (5)</b>  | 17 |
|             | Insert “, 9AA” after “section 9A”.   | 18 |
| <b>[16]</b> | <b>Section 27 Applications to Civil and Administrative Tribunal for administrative reviews of clearance decisions</b>  | 19 |
|             | Insert after section 27 (7):   | 20 |
|             | (8) The Tribunal must not, on a review of a decision under this section, make a stay order in respect of the decision unless the Tribunal is satisfied that there are appropriate arrangements in place for the supervision and enforcement of the conditions (if any) of the stay order by the person’s employer. | 21 |
|             | (9) A <i>stay order</i> is an order under section 60 of the <i>Administrative Decisions Review Act 1997</i> that stays or otherwise affects the operation of a decision that is subject to review by the Tribunal under this section.  | 22 |
|             | (10) This section does not otherwise affect the operation of Division 2 of Part 3 of Chapter 3 of the <i>Administrative Decisions Review Act 1997</i> .  | 23 |

|             |   |                      |
|-------------|---|----------------------|
| <b>[17]</b> | <b>Section 28 Orders relating to disqualified and ineligible persons</b>  | 1                    |
|             | Insert after section 28 (6):  | 2                    |
|             | (6A) To avoid doubt, Division 5 of Part 3 applies to any clearance granted by the Children’s Guardian in accordance with the Tribunal’s order.  | 3<br>4               |
| <b>[18]</b> | <b>Section 30 Determination of applications and other matters</b>   | 5                    |
|             | Omit section 30 (1) (h). Insert instead:  | 6                    |
|             | (h) the seriousness of the person’s criminal history and the conduct of the person since the matters occurred,  | 7<br>8               |
| <b>[19]</b> | <b>Section 30 (1) (i1)</b>  | 9                    |
|             | Insert after section 30 (1) (i):  | 10                   |
|             | (i1) any order of a court or tribunal that is in force in relation to the person,   | 11                   |
| <b>[20]</b> | <b>Section 31</b>   | 12                   |
|             | Omit the section. Insert instead:   | 13                   |
|             | <b>31 Powers of Children’s Guardian to require production of information</b>  | 14                   |
|             | (1) The Children’s Guardian may, by notice in writing (an <i>assessment notice</i> ), require any person to provide the Children’s Guardian with a statement or information relevant to an assessment of whether a person poses a risk to the safety of children.                                     | 15<br>16<br>17<br>18 |
|             | (2) A requirement may be made for the purposes of:  | 19                   |
|             | (a) preparing submissions to the Tribunal under this Act or section 16 of the <i>Child Protection (Offenders Registration) Act 2000</i> , or  | 20<br>21             |
|             | (b) determining an application for a working with children check clearance or an assessment of an applicant or the holder of a clearance, or  | 22<br>23             |
|             | (c) determining whether to grant a continuing residence approval.   | 24                   |
|             | (3) A person to whom an assessment notice is given is authorised and required to comply with the notice.  | 25<br>26             |
|             | (4) An assessment notice may specify a day on or before which the notice is to be complied with.  | 27<br>28             |
|             | (5) If a person fails to comply with an assessment notice, the Children’s Guardian may, by further notice in writing served on the person (an <i>enforcement notice</i> ), direct the person to comply with the assessment notice within a period specified in the notice (of not less than 28 days). | 29<br>30<br>31<br>32 |
|             | (6) The enforcement notice must warn the person that a failure to comply with the notice is an offence.   | 33<br>34             |
|             | (7) The Children’s Guardian may revoke an enforcement notice at any time.   | 35                   |
|             | (8) A person who fails, without reasonable excuse, to comply with an enforcement notice in force under this section is guilty of an offence.<br>Maximum penalty: 5 penalty units.   | 36<br>37<br>38       |
|             | (9) In any proceedings for an offence against this section, the onus of proving that a person had a reasonable excuse lies with the defendant.  | 39<br>40             |
|             | (10) If documents are given to the Children’s Guardian under this section, the Children’s Guardian:   | 41<br>42             |

|             |   |                      |
|-------------|---|----------------------|
|             | (a) may take possession of, and make copies of or take extracts from, the documents, and  | 1<br>2               |
|             | (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  | 3<br>4<br>5          |
|             | (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 Children’s Guardian.   | 6<br>7<br>8          |
| (11)        | In this section:<br><i>information</i> includes documents.<br><i>person</i> includes a government agency.   | 9<br>10<br>11        |
| <b>[21]</b> | <b>Section 33 Notification of offences and other information</b>  | 12                   |
|             | Omit section 33 (1) (b). Insert instead:  | 13                   |
|             | (b) information relating to the criminal history of a person,   | 14                   |
| <b>[22]</b> | <b>Section 33 (2)</b>   | 15                   |
|             | Omit the subsection.  | 16                   |
| <b>[23]</b> | <b>Section 33 (4)</b>   | 17                   |
|             | Omit the subsection. Insert instead:  | 18                   |
|             | (4) Information about a person’s criminal history may be disclosed under this Act:  | 19                   |
|             | (a) whether or not the information relates to events that occurred when the person was under the age of 18 years, and   | 20<br>21             |
|             | (b) whether or not the information relates to offences that cause or may cause the person to be a disqualified person or result in an assessment requirement affecting the person.  | 22<br>23<br>24       |
| <b>[24]</b> | <b>Section 34 Notification of information relating to criminal history for interstate child-related work screening</b>  | 25<br>26             |
|             | Omit section 34 (4).  | 27                   |
| <b>[25]</b> | <b>Section 36B</b>  | 28                   |
|             | Insert after section 36A:   | 29                   |
| <b>36B</b>  | <b>Duty to keep information up to date</b>  | 30                   |
|             | (1) A person who holds a working with children check clearance or who has made a current application to the Children’s Guardian for a working with children check clearance must notify the Children’s Guardian of any change to the person’s personal details within 3 months of the change occurring. | 31<br>32<br>33<br>34 |
|             | (2) The notice must be given in a form approved by the Children’s Guardian.   | 35                   |
|             | (3) A person’s <i>personal details</i> are as follows:  | 36                   |
|             | (a) the person’s name,  | 37                   |
|             | (b) the person’s address,   | 38                   |
|             | (c) the person’s contact details,   | 39                   |
|             | (d) the person’s employer or proposed employer,   | 40                   |
|             | (e) any other information of a kind prescribed by the regulations.  | 41                   |

|             |  |    |
|-------------|--|----|
| (4)         | A person who, without reasonable excuse, fails to comply with this section is guilty of an offence.  | 1  |
|             | Maximum penalty: 5 penalty units.  | 2  |
|             |  | 3  |
| <b>[26]</b> | <b>Sections 50A and 50B</b>  | 4  |
|             | Insert after section 50:   | 5  |
| <b>50A</b>  | <b>Penalty notices</b>   | 6  |
| (1)         | An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.  | 7  |
|             |  | 8  |
| (2)         | A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.  | 9  |
|             |  | 10 |
| (3)         | The <i>Fines Act 1996</i> applies to a penalty notice issued under this section.   | 11 |
|             | <b>Note.</b> The <i>Fines Act 1996</i> provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence. | 12 |
|             |  | 13 |
|             |  | 14 |
|             |  | 15 |
| (4)         | The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).  | 16 |
|             |  | 17 |
|             |  | 18 |
|             |  | 19 |
| (5)         | This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.  | 20 |
|             |  | 21 |
|             |  | 22 |
| <b>50B</b>  | <b>Authorised officers</b>   | 23 |
| (1)         | The Children’s Guardian may appoint any person employed in the Office of the Children’s Guardian (or any class of persons so employed) as an authorised officer for the purposes of this Act.  | 24 |
|             |  | 25 |
|             |  | 26 |
| (2)         | The Children’s Guardian may revoke or amend an appointment at any time.  | 27 |
| (3)         | Every authorised officer is to be provided with identification as an authorised officer.   | 28 |
|             |  | 29 |
| (4)         | In the course of exercising the functions of an authorised officer under this Act, the officer must, if requested to do so by any person affected by the exercise of any such function, produce to the person the officer’s identification as an authorised officer.               | 30 |
|             |  | 31 |
|             |  | 32 |
|             |  | 33 |

**Schedule 2 Amendment of other legislation** 1

**2.1 Child Protection (Working with Children) Regulation 2013** 2

**[1] Clause 6 Children’s health services** 3

Insert after clause 6 (3): 4

(3A) For the purposes of section 6 (3A) of the Act, any direct contact that a worker has with a child or children when engaged in work referred to in subclause (1), (2) or (3) is taken to be a usual part of and more than incidental to the work. 5  
6  
7

**Note.** A worker who is found to be engaged in child-related work may still be exempt from the requirement to obtain a working with children check clearance if the worker is exempted by a provision of Part 4 of this Regulation. 8  
9  
10

**[2] Clause 20 Exemption from Act for specified workers and employers** 11

Insert after clause 20 (2) (b): 12

(c) attending at an overnight camp for children. 13

**[3] Schedule 2** 14

Insert after Schedule 1: 15

**Schedule 2 Penalty notice offences** 16

For the purposes of section 50A of the Act: 17

(a) each offence specified in Column 1 of this Schedule is an offence for which a penalty notice may be issued, and 18  
19

(b) the amount payable under any such penalty notice is the amount specified for the offence in Column 2 of this Schedule (in respect of a corporation) or in Column 3 of this Schedule (in respect of an individual). 20  
21  
22

| Column 1                      | Column 2            | Column 3           |
|-------------------------------|---------------------|--------------------|
| Offence                       | Penalty—corporation | Penalty—individual |
| <b>Offences under the Act</b> |                     |                    |
| Section 9A (6)                | \$1,000             | \$500              |
| Section 9AA (6)               | \$1,000             | \$500              |

**2.2 Children and Young Persons (Care and Protection) Regulation 2012** 23

**[1] Clause 3 Definitions** 24

Insert in alphabetical order in clause 3 (1): 25

*continuing residence approval* has the same meaning as it has in the *Child Protection (Working with Children) Act 2012*. 26  
27

**[2] Clause 42D Automatic suspension of authorisation** 28

Omit “or a current working with children application” from paragraph (a) of the definition of *inappropriate resident* in clause 42D (1). 29  
30

Insert instead “, a current working with children application or a continuing residence approval”. 31  
32



**[3] Clause 86A Definitions**

Insert after paragraph (b) of the definition of *working with children clearance information*:

- (b1) whether the person has a continuing residence approval,

1  
2  
3  
4