

Child Protection (Working with Children) Regulation 2013

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New South Wales

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New South Wales

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Child Protection (Working with Children) Regulation 2013



New South Wales

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Child Protection (Working with Children) Act 2012*.

VICTOR DOMINELLO, MP Minister for Citizenship and Communities

Part 1 Preliminary

1 Name of Regulation

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

2 Commencement

This Regulation commences on 15 June 2013 and is required to be published on the NSW legislation website.

3 Definitions

(1) In this Regulation:

close relative of a person means:

- (a) a spouse or de facto partner of the person, or
- (b) a child, step-child, sibling, step-sibling, parent, step-parent, grandparent, step-grandparent, aunt, uncle, niece or nephew of the person,

and includes, in the case of an Aboriginal person or a Torres Strait Islander, persons who are part of the extended family or kin of the person according to the indigenous kinship system of the person's culture.

home-stay means residence with another family for a period for the purposes of a cultural or educational program.

parent of a child means the person having, in relation to the child, all the duties, powers, responsibilities and authority which, by law, parents have in relation to their

children.

the Act means the *Child Protection (Working with Children) Act 2012*.

working with children register means the register established under section 25 of the Act.

- (2) In this Regulation, a service is provided on a **commercial basis** if the service is provided on a fee for service basis, whether or not the fee concerned is imposed or funding for the service is obtained by a grant or other means.
- (3) Notes included in this Regulation do not form part of this Regulation.

Part 2 Child-related work

4 Child development and family welfare services

- (1) Work in mentoring and counselling services for children is child-related work, if the mentoring and counselling services are provided to children as part of a formal mentoring program provided by a government or non-government agency.
- (2) Work in providing family welfare services is child-related work, if clients to whom the services are provided ordinarily include children.

5 Child protection

Work in child protection services provided by a government or non-government agency is child-related work.

6 Children's health services

- (1) Work as a health practitioner providing health services in wards of hospitals where children are treated is child-related work.
- (2) Other work as a health practitioner providing child health services is child-related work.
- (3) Work by persons (other than health practitioners) who provide health and care services in paediatric or adolescent health services provided to children in wards of hospitals, or in connection with other child health services, is child-related work.
- (4) Work as a student in the course of a student clinical placement in a hospital or other health service is not child-related work.
- (5) In this clause:

health practitioner means:

- (a) a health practitioner registered under the *Health Practitioner Regulation National Law (NSW)*, and

(b) any other individual who provides a health service.

health service includes the following:

- (a) medical, hospital and nursing and midwifery services,
- (b) dental services,
- (c) mental health services,
- (d) pharmaceutical services,
- (e) ambulance services,
- (f) community health services,
- (g) health education services,
- (h) welfare services necessary to implement any services referred to in paragraphs (a)-(g),
- (i) services provided in connection with Aboriginal and Torres Strait Islander health practices and medical radiation practices,
- (j) Chinese medicine, chiropractic, occupational therapy, optometry, physiotherapy, podiatry and psychology services,
- (k) optical dispensing, dietician, massage therapy, naturopathy, acupuncture, speech therapy, audiology and audiometry services,
- (l) services provided in other alternative health care fields.

hospital means:

- (a) a private health facility licensed under the [Private Health Facilities Act 2007](#), or
- (b) a declared mental health facility or private mental health facility within the meaning of the [Mental Health Act 2007](#), or
- (c) a public hospital within the meaning of the [Health Services Act 1997](#).

7 Clubs or other bodies providing services for children

- (1) Work for a club, association, movement, society or other body of a cultural, recreational, sporting or community service nature that involves providing programs or services primarily for children is child-related work.
- (2) Without limiting subclause (1), work as a coach or as a team manager, or an assistant coach or assistant team manager, for a sport or activity for children is child-related work.

- (3) However, the work is not child-related work if the work is work as a referee, umpire, linesperson or otherwise as a sporting official or a groundsperson, and the work does not ordinarily involve contact with children for extended periods without other adults being present.

8 Disability services

- (1) Work in providing respite care or other support services primarily for children with a disability is child-related work.
- (2) However, the work is not child-related work if the work does not ordinarily involve contact with children for extended periods without other adults being present.

9 Early education and child care

- (1) Work in education and care services, child care centres, nanny services and other child minding services provided on a commercial basis is child-related work.
- (2) Work in providing baby sitting services is child-related work, unless the services are provided under a private arrangement (whether or not a fee is payable).
- (3) Work as an au pair is child-related work, if the work involves the provision of child care.

10 Education

- (1) Work in schools or other educational institutions (other than universities) is child-related work.
- (2) Work providing private coaching or tuition to children is child-related work.

11 Entertainment for children

- (1) Work at sporting, cultural or other entertainment venues where services, activities or entertainment is provided on a commercial basis primarily for children is child-related work.
- (2) Work that involves providing entertainment services primarily for children on a commercial basis is child-related work.
- (3) However, providing food or equipment at or for a sporting, cultural or other entertainment venue or providing a venue is not child-related work.

12 Justice centres

- (1) Work at detention centres and juvenile correctional centres is child-related work.
- (2) Work as a supervisor or case manager of children on community justice placements, for a government or non-government body, is child-related work.

- (3) Work for a residential parent and child program provided by a government or non-government agency involving inmates or detainees, and their children, at a correctional centre, juvenile correctional centre or detention centre or other place is child-related work.
- (4) Expressions used in this clause have the same meaning as they have in the *Children (Detention Centres) Act 1987* and the *Crimes (Administration of Sentences) Act 1999*.

13 Religious services

Work for a religious organisation where children form part of the congregation or organisation is child-related work, if the work is carried out:

- (a) as a minister, priest, rabbi, mufti or other like religious leader or spiritual officer of the organisation, or
- (b) in any other role in the organisation involving activities primarily related to children, including youth groups, youth camps, teaching children and child care.

14 Residential services

(1) Work at the following services is child-related work:

- (a) refuges used regularly by children,
- (b) boarding houses or places providing other residential services for children,
- (c) overnight camps for children.

(2) Work in providing home-stays of 3 weeks or more for children is child-related work.

15 Transport services for children

Work in providing transport services especially for children on a government funded or commercial basis, including school bus services and taxi services for children with a disability and supervision of school road crossings, is child-related work.

16 Youth workers

Work as a youth worker, for a government or non-government agency, is child-related work.

Part 3 Clearances

17 Application fees

- (1) The application fee for a clearance is as follows:
 - (a) for a volunteer clearance—nil,
 - (b) for any other clearance—\$80.

- (2) The application fee is to be paid at a motor registry or a Government Access Centre established by the New South Wales Government.
- (3) The following persons are exempt from the requirement to pay an application fee for a clearance:
 - (a) authorised carers referred to in section 137 (1) (b) or (c) of the *Children and Young Persons (Care and Protection) Act 1998* or an adult person referred to in section 10 (1) of the Act,
 - (b) a person undertaking practical training as part of an educational or vocational course,
 - (c) potential adoptive parents.

18 Proof of identity

- (1) An applicant for a clearance is to provide proof of the applicant's identity at a motor registry or a Government Access Centre established by the New South Wales Government.
- (2) The proof is to consist of the same documents that are required for proof of identity when applying for a New South Wales driver licence.

19 Information to be provided to applicant for or holder of clearance

The Commission must provide, by notice in writing:

- (a) an application number to each applicant who applies for a clearance, and
- (b) a clearance number to each applicant who is granted a clearance.

Part 4 Exemption of workers and employers from Act

20 Exemption from Act for specified workers and employers

- (1) The following workers engaged in child-related work (and employers of those workers in that capacity) are exempt from the Act (other than section 7 of the Act):
 - (a) a worker who provides administrative, clerical or maintenance services, or other ancillary services, if the work does not ordinarily involve contact with children for extended periods,
 - (b) a worker who works for a period of not more than a total of 5 working days in a calendar year, if the work involves minimal direct contact with children or is supervised when children are present,
 - (c) a worker who carries out the work in the course of an informal domestic arrangement that is not carried out on a professional or commercial basis,

- (d) a worker whose work involves direct contact only with children who are close relatives of the worker, other than a worker who carries out the work in the capacity of an authorised carer,
- (e) a parent, or close relative, of a child who attends a school, an education and care service or other educational institution when volunteering at or for activities of the school, service or institution,
- (f) a parent, or close relative, of a child when volunteering in connection with a team, program or other activity of which the child is a member or in which the child usually participates,
- (g) a worker who is under the age of 18 years,
- (h) a police officer or a member of the Australian Federal Police when working in his or her capacity as a police officer,
- (i) a worker who is a health practitioner in private practice, if the provision of services by the practitioner in the course of that practice does not ordinarily involve treatment of children without one or more other adults present,
- (j) a worker who is a co-worker of a child or who is a work supervisor or work placement supervisor of a child (other than as referred to in clause 12 (2)),
- (k) a home care worker who holds a police certificate that is current for the purposes of the *Accountability Principles 1998* made under the *Aged Care Act 1997* of the Commonwealth, if the work is home care work and the clients are not primarily children,
- (l) a health practitioner who is working in and visiting New South Wales from outside the State, if the period of work does not exceed a total of 5 days in any period of 3 months,
- (m) a worker who is working in and visiting New South Wales from outside the State for the purposes of a one-off event such as a jamboree, sporting or religious event or tour, if the event is the only child-related work carried out by the worker in New South Wales in that calendar year and the period of the work does not exceed 30 days,
- (n) a worker who is working in and visiting New South Wales from outside the State for the purposes of child-related work (other than a worker referred to in paragraph (l) or (m)), if the worker is the holder of an interstate working with children check in the jurisdiction in which the person ordinarily resides, or is exempt from the requirement to have such a check in that jurisdiction, and the period of the child-related work in New South Wales does not exceed a total of 30 days in any calendar year,

- (o) a visiting speaker, adjudicator, performer, assessor or other similar visitor at a school or other place where child-related work is carried out if the work of the person at that place is for a one-off occasion and is carried out in the presence of one or more other adults.
- (2) Subclause (1) (e) and (f) do not apply to a parent or close relative, if the volunteering involves any of the following:
 - (a) providing personal care services to children with disabilities, being services that involve intimate contact with those children, such as assistance with toileting, bathing or dressing,
 - (b) providing mentoring services as part of a formal mentoring program provided by a government or non-government agency.
- (3) In this clause:

holder of an interstate working with children check means a person who has undergone interstate child-related work screening under a law of another jurisdiction in which the person ordinarily resides and who is permitted by that law to carry out child-related work.

interstate child-related work screening has the same meaning as in section 34 of the Act.

21 Short-term emergency exemption

A worker engaged in child-related work and any adult person who resides at the home of the worker, and the employer of the worker, are exempt from the Act if:

- (a) the employer is of the opinion that the engagement of that worker is necessary in the circumstances of the case to prevent an increased risk to the safety of children, and
- (b) the worker has been engaged for a period of not more than 5 consecutive working days without complying with Division 2 of Part 2 of the Act.

22 Exemption of certain household members

An adult person who resides at the home of:

- (a) an authorised carer referred to in section 137 (1) (a) of the *Children and Young Persons (Care and Protection) Act 1998* is exempt from the requirements of section 10 of the Act, or
- (b) an approved provider within the meaning of the *Children (Education and Care Services) National Law (NSW)* (other than a family day care educator within the meaning of that Law) is exempt from the requirements of section 10 of the Act.

Part 5 General

23 Information that may be made available

- (1) The following information about a person contained in the working with children register may be made available by the Commission to an employer or proposed employer of the person on a request by the employer or proposed employer:
 - (a) the application number of any application for a clearance made by the person,
 - (b) the current clearance status of an applicant or holder,
 - (c) the number, class and expiry date of any clearance held by a person.
- (2) The Commission must not make the information available unless the request is made in the form approved by the Commission and contains the particulars required by the Commission.
- (3) The following information about an employer held in a database maintained by the Commission may be made publicly available by the Commission:
 - (a) the trading name or registered business name, if any, of the employer,
 - (b) the child-related work for which the employer engages a child-related worker,
 - (c) the postcode or name of the place in which the business of the employer is located,
 - (d) whether any requests for information about clearance status were made to the Commission by the employer within a specified period.

24 Notifications by reporting bodies

- (1) A notification by a reporting body under section 35 of the Act must be made in the form approved by the Commission and submitted to the Commission online via the website of the Commission.
- (2) The reporting body must, on the written request of the Commission, provide the Commission with copies of records of allegations, investigations and findings concerning the subject of the notification.
- (3) Records of allegations, investigations and findings concerning the subject of any such notification must be kept by the reporting body or any successor of that body for not less than 30 years, unless the records are given to the Commission.
- (4) If a reporting body or any successor to a reporting body ceases to exist and there is no successor to that body, the body or successor must ensure that the records are lodged with the Commission before the body or successor ceases to exist.

- (5) A reporting body may amend or withdraw a notification, in writing to the Commission, if:
 - (a) the finding the subject of the notification is quashed, withdrawn or amended, or
 - (b) there is an error in the notification or a finding the subject of the notification, or
 - (c) the notification is otherwise wrongly made, or
 - (d) the person the subject of the notification dies.
- (6) An amendment or withdrawal of a notification on the basis of an error must be accompanied by a statutory declaration by or on behalf of the reporting body specifying the error and any correction of that error.
- (7) A reporting body must, as soon as practicable after making a notification or amending or withdrawing a notification, give written notice to the child-related worker who is the subject of the notification, amendment or withdrawal.
- (8) A reporting body must not, without reasonable excuse, contravene this clause.
Maximum penalty: 20 penalty units.

25 Additional reporting bodies

The following are prescribed as reporting bodies:

- (a) out-of-home care agencies accredited or provisionally accredited under section 181 of the *Children and Young Persons (Care and Protection) Act 1998*,
- (b) members of the Islamic Council of New South Wales,
- (c) organisations and ministries of Christian Brethren Assemblies in New South Wales,
- (d) the Catholic Church in New South Wales, including organisations of dioceses, non-geographical dioceses operating in New South Wales and institutes of consecrated life and societies of apostolic life operating in New South Wales,
- (e) Baptist churches, being members of the Baptist Union of New South Wales or the Association of Baptist Churches NSW,
- (f) churches in New South Wales that are members of NSW Australian Christian Churches (Assemblies of God),
- (g) the Anglican Church in New South Wales, including organisations of dioceses,
- (h) Seventh-day Adventist churches in New South Wales, including the North NSW Conference, the Sydney Conference and the South NSW Conference and associated organisations,

- (i) Uniting churches in New South Wales, including presbyteries in New South Wales,
- (j) constituents of the NSW Jewish Board of Deputies,
- (k) members of the Association of Independent Schools of NSW,
- (l) The Scout Association of Australia, New South Wales Branch,
- (m) members in New South Wales of Christian Education National Ltd.

26 Reviews and appeals

A person whose 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 (other than an offence specified in Schedule 2 to the Act) is exempt from the operation of section 26 (b) of the Act.

Schedule 1 Savings and transitional provisions

1 Interpretation

Words and expressions used in this Schedule have the same meaning as they have in Part 2 of Schedule 3 to the Act.

2 Staged application of Act to volunteers and existing workers and others

- (1) This clause applies to the following persons:
 - (a) workers engaged in child-related work as volunteers,
 - (b) existing child-related workers who continue in the employment of the existing employer,
 - (c) existing residents who continue to reside at the home of the same authorised carer or provider of an education and care service where authorised care or an education and care service was provided immediately before the commencement of Part 2 of the Act, and where that service continues to be provided,
 - (d) a person to whom clause 4 of Schedule 3 to the Act applies who is not exempted by that clause from having to comply with Division 2 of Part 2 of the Act.
- (2) Until the end of the applicable compliance date specified by this clause for work done by a person, the person is not required to obtain or have a working with children check clearance in respect of that work and:
 - (a) in the case of a child-related worker, section 9 of the Act does not apply in respect of an employer of any such person, and
 - (b) in the case of an existing resident, section 10 (2) of the Act does not apply to the applicable designated agency.

(3) **15 April 2013 to 31 December 2013 compliance period** On and from 31 December 2013, all workers engaged in the following categories of child-related work, and existing residents, are required to comply with Division 2 of Part 2 of the Act:

(a) **child protection**

work specified in clause 5 of this Regulation,

(b) **disability services**

work specified in clause 8 of this Regulation,

(c) **justice centres**

work specified in clause 12 of this Regulation,

(d) **religious services—Ministers etc**

work by persons specified in clause 13 (a) of this Regulation,

(e) **youth workers**

work specified in clause 16 of this Regulation,

(f) **authorised carers**

an authorised carer specified in section 6 (3) (c) of the Act and adult persons residing in the same household.

(4) **1 January 2014 to 31 December 2014 compliance period** On and from 31 December 2014, workers engaged in the following categories of child-related work are required to comply with Division 2 of Part 2 of the Act:

(a) **child development and family welfare services**

work specified in clause 4 of this Regulation,

(b) **religious services—children services**

work specified in clause 13 (b) of this Regulation,

(c) **residential services**

work specified in clause 14 of this Regulation,

(d) **transport services for children**

work specified in clause 15 of this Regulation.

(5) **1 January 2015 to 31 December 2015 compliance period** On and from 31 December 2015, workers engaged in the following categories of child-related work are required to comply with Division 2 of Part 2 of the Act:

(a) clubs or other bodies providing services for children (including sporting bodies)

work specified in clause 7 of this Regulation,

(b) entertainment for children

work specified in clause 11 of this Regulation,

(c) assessment of reportable matters

assessment officer specified in section 6 (3) (d) of the Act,

(d) designated agencies

principal officer of a designated agency specified in section 6 (3) (e) of the Act,

(e) adoption service providers

principal officer of an accredited adoption service provider specified in section 6 (3) (f) of the Act.

(6) 1 January 2016 to 31 December 2016 compliance period On and from 31 December 2016, workers engaged in the following categories of child-related work are required to comply with Division 2 of Part 2 of the Act:

(a) children's health services—hospitals and public health services in certain local health districts

work specified in clause 6 of this Regulation in hospitals and public health services in the following local health districts (other than work by visiting medical practitioners whose contracts are not due for renewal until 2017):

- (i) Central Coast Local Health District,
- (ii) Hunter New England Local Health District,
- (iii) Illawarra Shoalhaven Local Health District,
- (iv) Mid North Coast Local Health District,
- (v) Northern NSW Local Health District,
- (vi) South Eastern Sydney Local Health District,

(b) education—secondary schools

work specified in clause 10 of this Regulation in secondary schools,

(c) education—vocational education

work specified in clause 10 of this Regulation in vocational education institutions,

(d) education—private tuition and coaching

work specified in clause 10 of this Regulation in private tuition or coaching.

(7) 1 January 2017 to 31 December 2017 compliance period On and from 31 December 2017, workers engaged in the following categories of child-related work are required to comply with Division 2 of Part 2 of the Act:

(a) children’s health services—hospitals and public health services in certain local health districts

work specified in clause 6 of this Regulation in hospitals and public health services provided by the following local health districts and corporations:

- (i) Sydney Local Health District,
- (ii) South Western Sydney Local Health District,
- (iii) Western Sydney Local Health District,
- (iv) Nepean Blue Mountains Local Health District,
- (v) Murrumbidgee Local Health District,
- (vi) Southern NSW Local Health District,
- (vii) Western NSW Local Health District,
- (viii) Far West Local Health District,
- (ix) The Sydney Children’s Hospitals Network (Randwick and Westmead),
- (x) Justice Health and Forensic Mental Health Network,
- (xi) Ambulance Service of New South Wales,

(b) children’s health services—remaining services

work specified in clause 6 of this Regulation in private health services (other than services provided in hospitals and public health services) and work by visiting medical practitioners specified in subclause (6) (a),

(c) early education and child care

work specified in clause 9 of this Regulation,

(d) education—other

work specified in clause 10 of this Regulation in educational institutions (other than those specified in subclause (6)),

(e) **approved provider or manager of education and care service**

an approved provider or manager of an education and care service specified in section 6 (3) (a) of the Act,

(f) **certified supervisor of an education and care service**

a certified supervisor of an education and care service specified in section 6 (3) (b) of the Act.

(8) If this clause specifies a date by which a person must comply with Division 2 of Part 2 of the Act in respect of specified work, the Commission is not required to deal with an application for a working with children check clearance for that work until the beginning of the year concerned.

(9) This clause has effect despite any provision of Part 2 of Schedule 3 to the Act.

(10) In this clause:

authorised carer means an authorised carer referred to in section 137 (1) (b) or (c) of the *Children and Young Persons (Care and Protection) Act 1998*.

3 Existing check applications

(1) This clause applies to a person who, immediately before the repeal of the former provisions, was a preferred applicant who was the subject of a request to the Commission for background checking, if the checking was requested more than 7 days before that repeal and was not completed before that repeal.

(2) The former provisions continue to apply in respect of the person's employment by the employer who sought the background checking and, for that purpose, the person is taken to be an existing child-related worker.

(3) The Commission may at any time determine that this clause is not to apply to a person if the Commission is of the opinion that the provisions of Division 2 of Part 2 of the Act should apply to the person.

4 Application of Act to potential adoptive parents

Section 11 of the Act does not apply in respect of a person referred to in subsection (1) of that section unless the person made an application referred to in that subsection on or after 1 July 2013.

5 Early application of Act to certain existing workers

(1) The Commission may, by notice in writing to an existing worker, require the existing worker to comply with Division 2 of Part 2 of the Act.

(2) An existing worker who is given a notice under this section, and any employer of that

worker:

- (a) ceases to be subject to clause 2 of this Schedule, and
- (b) is required to comply with Division 2 of Part 2 of the Act within the period specified in that notice.

6 Existing Tribunal proceedings

- (1) This section applies to an application made to the Commission or a relevant Tribunal by a prohibited person under section 33H (1) or 33I (1) of the *Commission for Children and Young People Act 1998* that was made, but not finally determined, before the commencement of this Regulation.
- (2) The Commission or relevant tribunal may continue to hear an application to which this clause applies in accordance with the provisions of the *Commission for Children and Young People Act 1998* and any declaration made by the Commission or tribunal is taken to be an existing declaration for the purposes of clause 6 of Schedule 3 to the Act.

7 References to former provisions

- (1) References in the following provisions to the *Commission for Children and Young People Act 1998* are taken to be references to the *Child Protection (Working with Children) Act 2012*:
 - (a) clause 2 of Schedule 2 to the *Administrative Decisions Tribunal Act 1997*,
 - (b) section 15 of the *Children (Education and Care Services National Law Application) Act 2010*.
- (2) The reference in section 24A of the *Crimes (Sentencing Procedure) Act 1999* to a person who is prohibited under the *Commission for Children and Young People Act 1998* from applying for or attempting to obtain child-related employment or from undertaking or remaining in child-related employment is taken to be a reference to a person who is unable to be granted a working with children check clearance under the *Child Protection (Working with Children) Act 2012* to enable the person to undertake child-related work or whose working with children check clearance for that purpose is required to be cancelled because of that conviction.
- (3) The reference to section 38 or 38A of the *Commission for Children and Young People Act 1998* in section 13 (4A) of the *Criminal Records Act 1991* is taken to be a reference to section 33 or 34 of the *Child Protection (Working with Children) Act 2012*.

Schedule 2 Amendment of *Child Protection (Working with Children)*

Act 2012 No 51

Schedule 1 Assessment requirement triggers

Insert after clause 2:

2A Notification by Ombudsman

- (1) A person has been the subject of a notification of concern to the Commission by the Ombudsman that, on a risk assessment by the Commission, the Commission may be satisfied that the person poses a risk to the safety of children.
- (2) A **notification of concern** is a notification made by the Ombudsman as a result of concerns arising from the receipt of information by the Ombudsman in the course of exercising the Ombudsman's functions.