

# Child Protection (Working with Children) Regulation 2013

[2013-156]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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New South Wales

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# Child Protection (Working with Children) Regulation 2013



New South Wales

## 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.

**registered agency** means any of the following that is registered to provide voluntary out-of-home care for the time being by the Children's Guardian in accordance with section 181 (1) (f) of the *Children and Young Persons (Care and Protection) Act 1998*:

- (a) a Public Sector agency (or part of a Public Sector agency),
- (b) an organisation (or part of an organisation).

**school cleaner**—see clause 16A.

**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 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.

### **16A School cleaners**

For the purposes of section 6 (3) of the Act, the role of a cleaner providing cleaning services at a school (a ***school cleaner***) is prescribed as a child-related role.



### **16B Membership of governing body of certain agencies**

For the purposes of section 6 (3) of the Act, the role of each member of the governing body of any of the following is prescribed as a child-related role:

- (a) a designated agency,
- (b) a registered agency,
- (c) an accredited adoption service provider (within the meaning of the *Adoption Act 2000*).

### **16C Principal officer of registered agency**

- (1) For the purposes of section 6 (3) of the Act, the role of the principal officer of a registered agency is prescribed as a child-related role.
- (2) In this clause, the **principal officer** of a registered agency means the person who has the overall supervision of the agency's arrangements for providing voluntary out-of-home care.

## **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.
- (3) Despite subclauses (1) and (2), the following applicants may provide proof of identity in the manner approved by the Children's Guardian:
  - (a) an authorised carer, or a person 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 is provided, who is not physically capable of attending a motor registry or Government Access Centre for that purpose, if a certificate by a medical practitioner to that effect is provided to the Children's Guardian,
  - (b) an authorised carer who resides in another State or a Territory, and any person who resides at the home of that authorised carer.

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

The Children's Guardian 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 (other than a school cleaner) 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 for certain household members where out-of-home care not provided**

An adult person who resides at the home of an authorised carer who provides out-of-home care (within the meaning of the [Children and Young Persons \(Care and Protection\) Act 1998](#)) is exempt from the requirements of section 10 of the Act if the authorised carer only provides that care at a place other than the home.

### **22A Exemption for birth parents resident in households of authorised carers**

An adult person who resides at the home of an authorised carer is exempt from the requirements of section 10 of the Act if the person is the birth parent of a child for whom care is provided by the authorised carer at that home.

### **22B Exemption for authorised carers and adult residents who reside overseas**

- (1) An authorised carer who resides outside Australia, and any adult person who resides at the home of that authorised carer, are exempt from the Act.
- (2) This exemption ceases to apply to an authorised carer or adult person during any

period that the authorised carer or person remains in Australia for more than 7 consecutive days.

**22C 48 hour exemption if adult resident no longer has clearance or current application**

- (1) This clause applies to an adult person who resides at the home of an authorised carer if the adult person:
  - (a) has a working with children check clearance which is cancelled, or
  - (b) has an application for a clearance that is refused.
- (2) An adult person or a designated agency does not commit an offence against section 10 of the Act because of a cancellation or refusal referred to in subclause (1) unless the person or agency has been notified of the cancellation or refusal and more than 48 hours have passed since that notification.

**22D Exemption if adult resident residing with carer whose authorisation suspended**

Section 10 of the Act does not apply to a person residing at the home of an authorised carer if the carer's authorisation is suspended.

**22E Exemption from notification by reporting bodies of certain historic matters**

- (1) A reporting body within the meaning of section 35 of the Act is exempt from the requirement under that section to notify the Children's Guardian in respect of a finding made by the reporting body before 3 July 1995.
- (2) This clause does not apply in respect of a finding made by a reporting body if the Children's Guardian gives a written direction to the reporting body that this clause does not apply to the finding.
- (3) A direction of the Children's Guardian may specify a particular finding or may specify findings of a particular class (such as findings against a specified person or findings during a specified period).
- (4) Nothing in this clause prevents a reporting body from notifying the Children's Guardian under section 35 of the Act about a finding in respect of which an exemption under this clause applies.
- (5) This clause ceases to have effect on 29 October 2015.

**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 Children's Guardian 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 Children's Guardian must not make the information available unless the request is made in the form approved by the Children's Guardian and contains the particulars required by the Children's Guardian.
- (3) The following information about an employer held in a database maintained by the Children's Guardian may be made publicly available by the Children's Guardian:
- (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 Children's Guardian 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 Children's Guardian and submitted to the Children's Guardian online via the website of the Children's Guardian.
- (2) The reporting body must, on the written request of the Children's Guardian, provide the Children's Guardian 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 Children's Guardian.
- (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 Children's Guardian before the body or successor ceases to exist.
- (5) A reporting body may amend or withdraw a notification, in writing to the Children's Guardian, 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

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

(2) In Part 2 of Schedule 3 to the Act:

**existing resident** means an adult who was, immediately before the commencement of Part 2 of the Act, residing at the home of an authorised carer (other than an authorised carer referred to in section 137 (1) (a) of the *Children and Young Persons (Care and Protection) Act 1998*) or at a home where a home based education and care service or family day care service was provided.

### 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 at the same home where a home based education and care service or family day care service was provided immediately before the commencement of Part 2 of the Act, and where that care or 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 or the applicable approved provider.



(3) **15 June 2013 to 31 March 2014 compliance period** On and from 31 March 2014, existing residents and all 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 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 April 2014 to 31 March 2015 compliance period** On and from 31 March 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) **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,

(e) **designated agencies**

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

(f) **adoption service providers**

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

(5) **1 April 2015 to 31 March 2016 compliance period** On and from 31 March 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) **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), (e) (Renumbered as cl 2 (4) (e) and (f))

(6) **1 April 2016 to 31 March 2017 compliance period** On and from 31 March 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 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 or as a school cleaner in a secondary school,

(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 April 2017 to 31 March 2018 compliance period** On and from 31 March 2018, 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)) or as a school cleaner in an educational institution,

(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 Children's Guardian is not required to deal with an application for a working with children check clearance for that work until the beginning of the period of 12 months preceding that date.

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

(9A) This clause does not apply to a person who:

- (a) is a disqualified person, or
- (b) has been subject to an interim bar, or
- (c) has had an application for a working with children check clearance refused, or
- (d) has had a working with children check clearance cancelled.

(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*.

**2A School cleaners employed after commencement of Part 2 of the Act and before 31 March 2014**

- (1) On and from 31 March 2014, workers engaged as school cleaners by an employer after the commencement of Part 2 of the Act are required to comply with Division 2 of Part 2 of the Act.
- (2) Until 31 March 2014, a worker referred to in subclause (1) is not required to obtain or have a clearance in respect of that work and section 9 of the Act does not apply in respect of an employer of any such person.
- (3) This clause has effect despite any provision of Part 2 of Schedule 3 to the Act.

## **2B Membership of governing body of certain agencies**

- (1) On and from 31 March 2015, a person who is a member of a governing body that is specified to be a child-related role by clause 16B of this Regulation is required to comply with Division 2 of Part 2 of the Act.
- (2) Until 31 March 2015, a person referred to in subclause (1) is not required to obtain or have a clearance in respect of that role and section 9 of the Act does not apply in respect of an employer of any such person.

## **2C Principal officer of registered agency**

- (1) On and from 31 March 2015, a person in the role of principal officer of a registered agency within the meaning of clause 16C of this Regulation is required to comply with Division 2 of Part 2 of the Act.
- (2) Until 31 March 2015, a person referred to in subclause (1) is not required to obtain or have a clearance in respect of that role and section 9 of the Act does not apply in respect of an employer of any such person.

## **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 Children's Guardian may at any time determine that this clause is not to apply to a person if the Children's Guardian 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**

- (1) The Children's Guardian may, by notice in writing to a person to whom clause 2-2C applies or an employer, require the person or a specified class of such persons engaged by the employer to comply with Division 2 of Part 2 of the Act.
- (2) An employer who is given a notice under this clause must, by notice in writing, inform

any person who belongs to the specified class of persons of the requirement to comply with Division 2 of Part 2 of the Act within the period specified by the Children's Guardian in the notice to the employer.

- (3) A person who is given a notice under this clause, and any employer of that person:
  - (a) ceases to be subject to clause 2-2C of this Schedule, and
  - (b) is required to comply with Division 2 of Part 2 of the Act within the period specified in the notice.

#### **5A Early application of Act—certain self-employed persons**

- (1) The Children's Guardian may, by notice in writing to a person to whom clause 4 of Schedule 3 to the Act applies, require the person to comply with Division 2 of Part 2 of the Act by a specified day.
- (2) Clause 4 of Schedule 3 to the Act ceases to apply to the person on and from the specified day and the person must instead comply with Division 2 of Part 2 of the Act after the specified day.

#### **6 Existing Tribunal proceedings**

- (1) This clause 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 Children's Guardian 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 Children's Guardian or tribunal is taken to be an existing declaration for the purposes of clause 6 of Schedule 3 to the Act.

#### **Note—**

Part 7 of the *Commission for Children and Young People Act 1998* was repealed by the Act. The Children's Guardian will, instead of the Commission, hear applications that were made, but not finally determined, before the repeal of that Part in accordance with the repealed provisions.

#### **7 Existing employees and residents**

- (1) This clause applies instead of clause 3 of Schedule 3 to the Act.
- (2) An existing child-related worker is not required to obtain or have a working with children check clearance while the worker continues in the employment of an existing employer.
- (3) For the purposes of this clause:

- (a) a person in the Public Service is taken to have ceased to be employed by an existing employer if the person becomes a member of staff of a Government Department or agency that has a different ABN by way of an employee-initiated transfer, and
  - (b) a person employed in the NSW Health Service is taken to have ceased to be employed by an existing employer if the person ceases to be employed in the NSW Health Service.
- (4) An existing resident who resides at the home of an authorised carer is not required to obtain or have a clearance until the authorised carer is required to obtain or have a clearance.
- (5) An existing resident who resides at a home where a home based education and care service or family day care service is provided is not required to obtain or have a clearance until:
- (a) the person who provides the education and care service or family day care service at that home is required to obtain or have a clearance, or
  - (b) 31 March 2014,
- whichever occurs first.
- (6) This clause does not apply to an existing child-related worker or an existing resident who:
- (a) is a disqualified person, or
  - (b) has been subject to an interim bar, or
  - (c) has had an application for a working with children check clearance refused, or
  - (d) has had a working with children check clearance cancelled.
- (7) This clause does not apply to a person in respect of work carried out by the person as a self-employed person.

#### **7A Self-employed persons**

Clause 4 of Schedule 3 to the Act does not apply to a person who:

- (a) has been subject to an interim bar, or
- (b) has had an application for a working with children check clearance refused, or
- (c) has had a working with children check clearance cancelled.

**Note—**

Clause 4 of Schedule 3 to the Act also does not apply to a disqualified person.

## **8 Application of change to disqualifying offences**

- (1) The amendments made by the *Child Protection (Working with Children) Amendment (Miscellaneous) Regulation 2013* to Schedule 2 to the Act do not apply to or in respect of an application for a clearance made by a person before the commencement of that Regulation or to any subsequent application for a further clearance by that person.
- (2) The amendment made by the *Child Protection (Working with Children) Amendment Regulation 2014* to Schedule 2 to the Act does not apply to or in respect of an application for a clearance made by a person before the commencement of that Regulation or to any subsequent application for a further clearance by that person.

## **Schedule 2 (Repealed)**