

Child Protection (Working with Children) Act 2012 No 51

[2012-51]



New South Wales

Status Information

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Provisions in force

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

Notes—

- **Does not include amendments by**
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2015 No 58](#), Schs 2.4 and 3.14 (not commenced — Sch 2.4 to commence on 8.1.2016; Sch 3.14 to commence on 15.1.2016)

Authorisation

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Child Protection (Working with Children) Act 2012 No 51



New South Wales

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

Part 1 Preliminary

1 Name of Act

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

2 Commencement

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

3 Object of Act

The object of this Act is to protect children:

- (a) by not permitting certain persons to engage in child-related work, and
- (b) by requiring persons engaged in child-related work to have working with children check clearances.

Note—

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

4 Safety, welfare and well-being of children to be paramount consideration

The safety, welfare and well-being of children and, in particular, protecting them from child abuse, is the paramount consideration in the operation of this Act.

5 Definitions

(1) In this Act:

accredited adoption service provider has the same meaning as in the *Adoption*

Act 2000.

adult means a person who is 18 years of age or older.

application number means the unique number given to an applicant for a working with children check clearance under this Act.

approved provider means an approved provider under the *Children (Education and Care Services) National Law (NSW)* or the *Children (Education and Care Services) Supplementary Provisions Act 2011*.

assessment requirement—see section 14.

authorised carer has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.

carer applicant has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.

certified supervisor means a certified supervisor under the *Children (Education and Care Services) National Law (NSW)* or the *Children (Education and Care Services) Supplementary Provisions Act 2011*.

child-related work—see sections 6 and 7.

children means persons under the age of 18 years.

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

conviction includes a finding that the charge for an offence is proven, or that a person is guilty of an offence, even though the court does not proceed to a conviction.

current application for a working with children check clearance means an application that has not been finally determined or withdrawn or terminated.

Department means the Department of Family and Community Services.

designated agency has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.

disqualified person—see section 18 (1).

education and care service means an education and care service within the meaning of the *Children (Education and Care Services) National Law (NSW)* or a State regulated education and care service within the meaning of the *Children (Education and Care Services) Supplementary Provisions Act 2011*.

employer includes:

- (a) a person who, in the course of business, arranges for the placement of a person in employment with others, or
- (b) a person who engages a person under a contract to perform work, or
- (c) a person who engages a worker to perform work as a volunteer for the person under an agreement (whether written or unwritten).

enabling order—see section 28.

exercise a function includes perform a duty.

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

function includes a power, authority or duty.

government agency includes any public or local authority.

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

interim bar means an interim bar imposed under section 17.

notifiable person in relation to an applicant for a clearance or the holder of a clearance means each of the following:

- (a) any employer or proposed employer of the applicant or holder in respect of child-related work,
- (b) if the applicant or holder resides on the same property as an authorised carer or carer applicant—the designated agency that authorised the carer or to whom the carer applicant made the application,
- (c) if the applicant or holder resides on a property where a home based education and care service or family day care service is provided—the approved provider of the service,
- (d) if the applicant or holder is a prospective adoptive parent or an adult resident within the meaning of section 11—the relevant decision-maker (within the meaning of that section) in relation to the prospective adoptive parent,
- (e) if the applicant or holder is a prospective guardian or an adult resident within the meaning of section 11A—the relevant decision-maker (within the meaning of that section) in relation to the prospective guardian,
- (f) any other person prescribed by the regulations.

principal officer of:

(a) an accredited adoption service provider has the same meaning as in the *Adoption Act 2000*, or

(b) a designated agency or a registered agency has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.

prospective adoptive parent means a person who has submitted an application under the *Adoption Act 2000* to adopt a child and whose application has not been withdrawn or finally dealt with by the making of or refusal to make an adoption order.

prospective guardian has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.

registered agency has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.

reporting body—see section 35 (4).

reside on a property has the meaning given by section 5A.

Secretary means the Secretary of the Department.

Tribunal means the Civil and Administrative Tribunal.

worker means any person who is engaged in work in any of the following capacities:

(a) as an employee,

(b) as a self-employed person or as a contractor or subcontractor,

(c) as a volunteer,

(d) as a person undertaking practical training as part of an educational or vocational course (other than as a school student undertaking work experience),

(e) as a minister, priest, rabbi, mufti or other like religious leader or spiritual officer of a religion or other member of a religious organisation.

working day means any day that is not a Saturday, Sunday or public holiday.

working with children check clearance or **clearance** means an authorisation that is in force under this Act to engage in child-related work.

working with children number means the number given for a working with children check clearance under this Act.

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

(2) Notes included in this Act do not form part of this Act.

5A Meaning of “reside on a property”

- (1) Subject to subsection (2), a person **resides on a property** if the person resides (which includes sleep on a regular or frequent basis) anywhere on the property (whether or not in a building, caravan, structure, vehicle or other thing).
- (2) The regulations may prescribe circumstances in which a person is, or is not, taken to reside on a property (including by prescribing circumstances in which 2 persons are, or are not, taken to be residing on the same property).

Part 2 Restrictions on child-related work

Division 1 Child-related work

6 Child-related work

- (1) A worker is engaged in **child-related work** for the purposes of this Act if:
 - (a) the worker is engaged in work referred to in subsection (2) that involves direct contact by the worker with children, or
 - (b) the worker is engaged in work in a child-related role referred to in subsection (3).
- (2) The work referred to is work for, or in connection with, any of the following that is declared by the regulations to be child-related work:
 - (a) **child development**
mentoring and counselling services for children,
 - (b) **child protection**
child protection services,
 - (c) **children’s health services**
the provision of health care in wards of hospitals where children are treated and the direct provision of other child health services,
 - (d) **clubs or other bodies providing services for children**
clubs, associations, movements, societies or other bodies (including bodies of a cultural, recreational or sporting nature) providing programs or services for children,
 - (e) **disability services**
respite care or other support services for children with a disability,
 - (f) **early education and child care**

education and care services, child care centres, nanny services and other child care,

(g) **education**

schools or other educational institutions (other than universities) and private coaching or tuition of children,

(h) **entertainment for children**

sporting, cultural or other entertainment venues used primarily by children and entertainment services for children,

(i) **justice services**

detention centres (within the meaning of the *Children (Detention Centres) Act 1987*) and juvenile correctional centres (within the meaning of the *Crimes (Administration of Sentences) Act 1999*),

(j) **religious services**

any religious organisation,

(k) **residential services**

refuges used by children, long term home stays for children, boarding houses or other residential services for children and overnight camps for children,

(l) **transport services for children**

transport services especially for children, including school bus services and taxi services for children with a disability and supervision of school road crossings,

(m) **other**

any other service for children prescribed by the regulations.

(3) The following roles are referred to:

- (a) an approved provider or manager of an education and care service,
- (b) a certified supervisor of an education and care service,
- (c) an authorised carer,
- (d) an assessment officer (within the meaning of section 27A of the *Children and Young Persons (Care and Protection) Act 1998*),
- (e) the principal officer of a designated agency,
- (f) the principal officer of an accredited adoption service provider,

(g) any other role with respect to children prescribed by the regulations.

(4) In this section:

direct contact with children means:

- (a) physical contact, or
- (b) face to face contact.

7 Additional child-related work

- (1) A worker is taken to be engaged in **child-related work** if the worker is engaged, or proposes to engage, in work (other than as a volunteer) that is the subject of a requirement under this section.
- (2) The employer or proposed employer of a worker engaged in work for which a working with children check clearance is not required that involves access to confidential records or information about children may, by notice in writing to the worker, require the worker to obtain a clearance for the purposes of engaging in the work concerned.
- (3) The employer, or proposed employer, may at any time, by notice in writing given to the worker, revoke a requirement made under this section.
- (4) An employer may make or revoke a requirement under this section only with the approval of the Children's Guardian.

Division 2 Mandatory requirements for child-related work

8 Restrictions on engaging in child-related work

- (1) A worker must not engage in child-related work unless:
 - (a) the worker holds a working with children check clearance of a class applicable to the work, or
 - (b) there is a current application by the worker to the Children's Guardian for a clearance of a class applicable to that work.

Maximum penalty: 100 penalty units, or imprisonment for 2 years, or both.

- (2) A worker must not engage in child-related work at any time that the worker is subject to an interim bar.

Maximum penalty: 100 penalty units, or imprisonment for 2 years, or both.

- (3) It is a defence to proceedings for an offence against this section if the accused person establishes that:
 - (a) the accused person did not know, at the time the offence was committed, that the

work concerned was child-related work, or

- (b) the accused person was exempted by the regulations from the requirement to hold a clearance, or
- (c) the offence was consequential on the relevant accused person being subject to an interim bar, having an application for a clearance refused or terminated or having a clearance cancelled and, at the time that the offence was committed, the accused person did not know about the interim bar, refusal, termination or cancellation.

Note—

Division 3 also requires adult persons residing with authorised carers or approved providers of education and care services and potential adoptive parents to hold clearances or to have a current application for a clearance.

9 Employers must require clearance or current application

- (1) An employer must not commence employing, or continue to employ, a worker in child-related work if the employer knows or has reasonable cause to believe that:
 - (a) the worker is not the holder of a working with children check clearance that authorises that work and that there is no current application by the worker to the Children’s Guardian for a clearance of a class applicable to that work, or
 - (b) the worker is subject to an interim bar.

Maximum penalty: 100 penalty units, in the case of a corporation, and 50 penalty units in any other case.

- (2) It is a defence to proceedings for an offence against this section if the accused person establishes that, at the time the offence was committed:
 - (a) the accused person had been advised by the Children’s Guardian that the worker was the holder of a clearance or that there was a current application by the worker for a clearance, or
 - (b) the worker was exempted by the regulations from the requirement to hold a clearance.

9A Employer must verify worker has clearance or current application

- (1) An employer must verify, in accordance with this section, that each worker who carries out, or is to carry out, child-related work for the employer:
 - (a) is the holder of a working with children check clearance that authorises the work, or
 - (b) has made a current application to the Children’s Guardian for a clearance of a class applicable to that work.

- (2) For the purposes of any such verification the employer must ensure that:
- (a) the **relevant details** of the worker are obtained by the employer, being:
 - (i) the worker's full name and date of birth, and
 - (ii) the working with children number of the worker's clearance or the application number of the worker's current application, and
 - (b) the employer has access to the working with children register, and
- Note—**
- Employers can gain access to the working with children register by registering online with the Children's Guardian.
- (c) such of the relevant details of the worker as may be required by the Children's Guardian are entered onto the working with children register, and
 - (d) a record is kept of each of the following obtained from the working with children register and that record is retained by the employer for 7 years:
 - (i) the working with children number of the worker,
 - (ii) the date on which each clearance of the worker ceases to have effect.
- (3) Verification in respect of a worker under this section must occur before the worker commences child-related work and then again within 5 working days after each clearance of the worker ceases to have effect under section 22 (1).
- (4) This section does not apply:
- (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
 - (b) in respect of a worker who is exempted by the regulations from the requirement to hold a clearance, or
 - (c) in respect of an employer who is exempted by the regulations from this section.

9B Governing body to ensure persons appointed to key positions hold clearance

- (1) In this section:
- key position**, in an organisation, means each of the following:
- (a) the chief executive of the organisation,
 - (b) the principal officer—if the organisation is a designated agency, a registered agency or an accredited adoption service provider,

(c) any other position in the organisation that is of a kind prescribed by the regulations.

- (2) The governing body of an organisation must ensure that a person is not appointed on a permanent basis to a key position in the organisation that involves child-related work unless the person is the holder of a working with children check clearance of a class applicable to that work.

Maximum penalty: 100 penalty units, in the case of a corporation, and 50 penalty units in any other case.

- (3) It is a defence to proceedings for an offence against subsection (2) if the governing body establishes that, at the time the offence was committed:
- (a) the governing body had been advised by the Children's Guardian that the person was the holder of a clearance, or
 - (b) the working with children register showed that the person was the holder of a clearance, or
 - (c) the governing body was exempted by the regulations from the requirements of this section or the person was exempted from the requirement to hold a clearance.
- (4) The governing body of an organisation must ensure that whenever a person is appointed on a permanent basis to a key position in the organisation that involves child-related work:
- (a) a record is kept of how the governing body determined that the person held a working with children check clearance of a class applicable to that work, and
 - (b) that record is retained by the organisation for at least 7 years.

Maximum penalty: 50 penalty units.

- (5) Nothing in this section prevents a person being appointed to a key position on a conditional basis, if there is a current application for a clearance of an appropriate class and appointment is conditional on the person obtaining the appropriate clearance as soon as is reasonably practicable and having that clearance considered by the governing body.

Division 3 Additional persons who must obtain clearances

10 Adult persons residing with authorised carers or persons providing home care services

- (1) An adult person (other than an exempt person) who resides on the same property as an authorised carer or on a property where a home based education and care service or family day care service is provided must hold a working with children check clearance (of any class) or have made a current application to the Children's Guardian

for a clearance.

Maximum penalty: 100 penalty units, or imprisonment for 2 years, or both.

- (2) The designated agency (that authorised the authorised carer) or the approved provider (of the home based education and care service or family day care service) referred to in subsection (1), must ensure that the adult person complies with that subsection.

Maximum penalty: 100 penalty units, in the case of a corporation, and 50 penalty units in any other case.

- (3) For the purposes of this section, a person no longer has a clearance or a current application for a clearance if an interim bar is in effect against the person.
- (4) It is a defence to proceedings for an offence against subsection (1) if the accused person establishes that the accused person did not know, at the time the offence was committed, that the care or service referred to in that subsection was provided on that property.
- (5) It is a defence to proceedings for an offence under subsection (1) or (2) if the accused person establishes that:
- (a) the adult person had been residing on the property for less than 3 weeks, or
 - (b) the offence was consequential on the adult person being subject to an interim bar, withdrawing an application, having an application for a clearance terminated or refused or having a clearance cancelled and the accused person:
 - (i) did not know about the interim bar, withdrawal, termination, refusal or cancellation, or
 - (ii) in the case of an adult person who resides on the same property as an authorised carer, had not known about the interim bar, withdrawal, termination, refusal or cancellation for more than 48 hours.
- (6) For the purposes of the application of this Act (other than section 9) to an adult person required by this section to hold a clearance, the designated agency or approved provider referred to in subsection (2) is to be treated as the employer of the adult person.

- (7) In this section:

exempt person means a person who is required under another provision of this Act to, or is exempt from the requirement to, hold a working with children check clearance.

11 Prospective adoptive parents and adults residing with them

(1) This section applies to:

- (a) a prospective adoptive parent, and
- (b) a person (an **adult resident**) who resides on the same property as another person while that other person is a prospective adoptive parent.

(2) A person to whom this section applies must apply to the Children's Guardian for a working with children check clearance of the volunteer class unless:

- (a) the person holds a clearance of any class that is in force, or
- (b) a current application for a clearance has been made by the person, or
- (c) the person is exempted by the regulations from the requirement to hold a clearance.

(3) For the purposes of the application of this Act (other than section 9) to a prospective adoptive parent or adult resident, the relevant decision-maker in relation to the prospective adoptive parent is to be treated as the employer of the prospective adoptive parent and adult resident.

(4) In this section:

relevant decision-maker in relation to a prospective adoptive parent means:

- (a) if the prospective adoptive parent has made an application to adopt a child to the Secretary—the Secretary, or
- (b) if the prospective adoptive parent has made an application to adopt a child to an accredited adoption service provider—the principal officer of the service provider.

11A Prospective guardians and adults residing with them

(1) This section applies to:

- (a) a prospective guardian, and
- (b) a person (an **adult resident**) who resides on the same property as the prospective guardian during the period beginning when the application for a guardianship order relating to that prospective guardian is made under section 79A of the *Children and Young Persons (Care and Protection) Act 1998* and ending when it is finally dealt with.

(2) A person to whom this section applies must apply to the Children's Guardian for a working with children check clearance of the volunteer class unless:

- (a) the person holds a clearance of any class that is in force, or

- (b) a current application for a clearance has been made by the person, or
 - (c) the person is exempted by the regulations from the requirement to hold a clearance.
- (3) For the purposes of the application of this Act (other than section 9) to a prospective guardian or adult resident, the relevant decision-maker in relation to the prospective guardian is to be treated as the employer of the prospective guardian and adult resident.
- (4) In this section:

relevant decision-maker in relation to a prospective guardian means:

- (a) if the application for the guardianship order was made by the Secretary—the Secretary, or
- (b) in the case of such an application made by any other person or body—the principal officer of the designated agency responsible for assessing the prospective guardian to be a suitable person to be allocated all aspects of parental responsibility for a child or young person.

11B Responsible agency must verify person has clearance or current application

- (1) For the purposes of this section, the **responsible agency** is:
- (a) for any adult person who resides on the same property as an authorised carer who is authorised by a designated agency—the designated agency, or
 - (b) for any adult person who resides on the same property as a carer applicant whose application was made to a designated agency—the designated agency, or
 - (c) for any adult person who resides on a property where a home based education and care service or a family day care service is provided—the approved provider of the service, or
 - (d) for any adult person in respect of whom a relevant decision-maker (within the meaning of section 11 or 11A) is to be treated as an employer under either of those sections—the relevant decision-maker.
- (2) A responsible agency must verify, in accordance with this section, that each adult person for whom the agency is the responsible agency:
- (a) is the holder of a working with children check clearance, or
 - (b) has made a current application to the Children’s Guardian for a clearance.
- (3) For the purposes of any such verification, the responsible agency must ensure that:
- (a) the **relevant details** of the person are obtained by the agency, being:

- (i) the person's full name and date of birth, and
- (ii) the working with children number of the person's clearance or the application number of the person's current application, and

(b) the agency has access to the working with children register, and

Note—

Responsible agencies can gain access to the register by registering online with the Children's Guardian.

(c) such of the relevant details of the person as may be required by the Children's Guardian are entered onto the working with children register, and

(d) a record is kept of any of the following obtained from the working with children register and that record is retained by the agency for 7 years:

- (i) the working with children number of the person,
- (ii) the expiry date of any clearance of the person.

(4) Verification in respect of an adult person under this section must occur as soon as practicable after the responsible agency becomes aware that it is the responsible agency for the person and then again within 5 working days after each clearance of the person ceases to have effect under section 22 (1).

(5) This section does not apply:

- (a) in respect of a person who is exempted by the regulations from the requirement to hold a clearance, or
- (b) in respect of a responsible agency that is exempted by the regulations from this section.

Part 3 Working with children check clearances

Division 1 Classes of clearances

12 Classes of clearances

(1) There are to be the following classes of working with children check clearances:

- (a) volunteer—authorising workers to engage in unpaid child-related work,
- (b) non-volunteer—authorising workers to engage in paid and unpaid child-related work.

(2) Despite section 8, the holder of a volunteer clearance may engage in paid child-related work if the person has been engaged in that work for a period of 30 consecutive days or less.

Division 2 Applications for clearances

13 Applications for clearances

- (1) A person may apply to the Children's Guardian for a working with children check clearance.
- (2) An application must:
 - (a) be in the form approved by the Children's Guardian, and
 - (b) be accompanied by any other information required by the Children's Guardian, and
 - (c) specify the class of clearance applied for.
- (3) The approved form must provide for the authorisation by the applicant of, and the consent by the applicant to, the following in connection with the application or any application under Part 4 and at any time while a clearance is in force:
 - (a) the conduct of a criminal record check in respect of the applicant,
 - (b) the disclosure of the applicant's criminal history,
 - (c) other inquiries about the applicant relevant to the application or clearance,
 - (d) without limiting paragraphs (b) and (c), disclosure of information about the applicant relevant to whether the applicant may be subject to an assessment requirement.
- (4) The regulations may:
 - (a) prescribe the fee payable for an application and the manner in which it is to be paid, and
 - (b) require proof of identity to be provided by an applicant for a clearance in the manner prescribed by the regulations or approved by the Children's Guardian.
- (5) The Children's Guardian must ensure that each applicant is given an application number and that the applicant is notified of that number.
- (6) An applicant may, with the consent of the Children's Guardian, withdraw an application at any time.
- (7) The Children's Guardian must not consent to the withdrawal of an application if the Children's Guardian is of the opinion that it is likely that there is a risk to the safety of children if the applicant were to engage in child-related work.
- (8) The Children's Guardian must, as soon as practicable after an application is withdrawn by an applicant, give written notice of that withdrawal to each person that the

Children's Guardian reasonably believes to be a notifiable person in relation to the applicant.

13A Embargo after refusal of application or cancellation of clearance

- (1) A person who is refused a working with children check clearance, or whose clearance is cancelled under section 23, is not entitled to make a further application for a clearance:
 - (a) until 5 years after the date notice of the refusal or cancellation was given to the person, or
 - (b) unless there has been a change of circumstances under which a further early application is permitted under this section.
- (2) A further early application is permitted if any of the following occurs after the date of the refusal or cancellation:
 - (a) proceedings that were pending at the date of the refusal or cancellation are withdrawn or dealt with without the person being found guilty of the offence,
 - (b) a finding of guilt is quashed or set aside,
 - (c) a finding the subject of an assessment requirement is quashed or set aside or otherwise expressly or impliedly ceases to have effect,
 - (d) the Children's Guardian permits a person to make such an application.

Division 3 Risk assessment of applicants and holders

14 Assessment requirements

A person is subject to an **assessment requirement** under this Act if any of the matters specified in Schedule 1 apply to the person.

15 Assessment of applicants and holders

- (1) The Children's Guardian must conduct a risk assessment of an applicant for a working with children check clearance, or the holder of a clearance, to determine whether the applicant or holder poses a risk to the safety of children if the Children's Guardian becomes aware that the applicant or holder is subject to an assessment requirement.
- (2) The Children's Guardian may conduct a risk assessment of the holder of a clearance if the Children's Guardian becomes aware that the decision to grant the clearance was based on wrong or incomplete information.
- (3) Subsections (1) and (2) do not limit the circumstances in which the Children's Guardian may conduct a risk assessment of an applicant or holder.

- (4) In making an assessment, the Children's Guardian may consider the following:
- (a) the seriousness of any matters that caused the assessment in relation to the person,
 - (b) the period of time since those matters occurred and the conduct of the person since they occurred,
 - (c) the age of the person at the time the matters occurred,
 - (d) the age of each victim of any relevant offence or conduct at the time it occurred and any matters relating to the vulnerability of the victim,
 - (e) the difference in age between the victim and the person and the relationship (if any) between the victim and the person,
 - (f) whether the person knew, or could reasonably have known, that the victim was a child,
 - (g) the person's present age,
 - (h) the seriousness of the person's total criminal record and the conduct of the person since the matters occurred,
 - (i) the likelihood of any repetition by the person of the offences or conduct or of any other matters that caused the assessment and the impact on children of any such repetition,
 - (j) any information given in, or in relation to, the application,
 - (k) any other matters that the Children's Guardian considers necessary.
- (4A) The Children's Guardian must not determine that an applicant does not pose a risk to the safety of children unless the Children's Guardian is satisfied that:
- (a) a reasonable person would allow his or her child to have direct contact with the applicant that was not directly supervised by another person while the applicant was engaged in any child-related work, and
 - (b) it is in the public interest to make the determination.
- (5) The Children's Guardian may, but is not required to, notify the holder of a clearance in writing if the Children's Guardian decides to conduct a risk assessment of the holder.

16 Request for further information

- (1) The Children's Guardian may, by notice in writing to an applicant for a working with children check clearance or the holder of a clearance, request the applicant or holder to provide further information about an offence or other matter related to the

application or clearance.

- (2) The Children's Guardian may terminate an application for a clearance if the applicant fails, without reasonable excuse, to provide the further information within 3 months of the request being made and the Children's Guardian has not withdrawn the request.
- (3) The Children's Guardian must as soon as practicable after terminating an application, give written notice of that termination to the applicant and to each person that the Children's Guardian reasonably believes to be a notifiable person in relation to the applicant.

17 Interim bars

- (1) The Children's Guardian may, at any time after receiving an application for a working with children check clearance or commencing an assessment of an applicant for or holder of a clearance, determine that the applicant or holder is subject to an **interim bar**, being a bar on the applicant or holder doing any of the following:
 - (a) engaging in child-related work,
 - (b) residing on the same property as an authorised carer,
 - (c) residing on a property where a home based education and care service or family day care service is provided.
- (2) The Children's Guardian may make a determination under this section if it is of the opinion that it is likely that there is a risk to the safety of children if the applicant or holder engages in child-related work or resides on a property referred to in subsection (1) (b) or (c) pending the determination of the application or assessment.
- (3) The Children's Guardian must as soon as practicable after determining that an applicant or holder is subject to an interim bar, give written notice of that determination to the applicant or holder and to each person that the Children's Guardian reasonably believes to be a notifiable person in relation to the applicant or holder.
- (4) An interim bar ceases to have effect:
 - (a) on notification in writing by the Children's Guardian to the applicant or holder that the interim bar is revoked, or
 - (b) in the case of an applicant for a clearance, if the applicant is granted or refused a clearance, or
 - (c) 12 months after the interim bar takes effect,whichever occurs first.

Division 4 Determination of applications for clearances

18 Determination of applications for clearances

- (1) The Children's Guardian must not grant a working with children check clearance to the following persons (***disqualified persons***):
 - (a) a person convicted before, on or after the commencement of this section of an offence specified in Schedule 2, if the offence was committed as an adult,
 - (b) a person against whom proceedings for any such offence have been commenced, if the offence was committed as an adult, pending determination of the proceedings for the offence.
- (2) The Children's Guardian must grant a clearance to a person who is subject to a risk assessment under Division 3 unless the Children's Guardian is satisfied that the person poses a risk to the safety of children.
- (3) The Children's Guardian must grant a clearance to a person if it is satisfied that the person is not a disqualified person and the person is not subject to a risk assessment under Division 3.

19 Notice of proposed refusal of application

- (1) If the Children's Guardian proposes not to grant a working with children check clearance to a person, the Children's Guardian must notify the person in writing of the proposed decision and that the person may make a submission to the Children's Guardian within the period specified in the notice.
- (2) The Children's Guardian must consider any submission made by an applicant within that period before finally deciding the application.
- (3) This section does not apply to an application for a clearance that is made by a disqualified person.

20 Notice of final decision granting or refusing clearance

- (1) The Children's Guardian must notify the applicant in writing of the Children's Guardian's decision to grant or refuse to grant a working with children check clearance.
- (2) Notice of a decision to grant a clearance must include the working with children number.
- (3) Notice of a decision not to grant a clearance must set out the reasons for the refusal and the right to seek a review under Part 4.
- (4) The Children's Guardian must as soon as practicable after refusing an application,

give written notice of that refusal to the applicant and to each person that the Children's Guardian reasonably believes to be a notifiable person in relation to the applicant.

21 (Repealed)

Division 5 Duration and termination of clearances

22 Duration of clearances

- (1) A working with children check clearance ceases to have effect 5 years after the date it is granted, unless it is sooner cancelled or surrendered.
- (2) The holder of a clearance may apply for a new clearance at any time within the period beginning 3 months before the expiry of the clearance.

23 Cancellation of clearances

- (1) The Children's Guardian must cancel the working with children check clearance of a person if the Children's Guardian becomes aware that the person is a disqualified person or the Children's Guardian is satisfied that the person poses a risk to the safety of children.
- (2) The Children's Guardian must notify the holder of the clearance in writing of the Children's Guardian's decision to cancel the clearance.
- (3) Notice of a decision to cancel a clearance must set out the reasons for the cancellation and the right to seek a review under Part 4.
- (4) The Children's Guardian must as soon as practicable after cancelling a clearance, give written notice of that cancellation to each person that the Children's Guardian reasonably believes to be a notifiable person in relation to the holder of the clearance.

Note—

The holder of a clearance may also be made subject to an interim bar (see section 17).

24 Surrender of clearances

- (1) The holder of a working with children check clearance may, at any time, notify the Children's Guardian in writing that the holder wishes to surrender the clearance.
- (2) The Children's Guardian must cancel the clearance on receiving the notice.
- (3) The Children's Guardian must as soon as practicable after cancelling a clearance, give written notice of that cancellation to each person that the Children's Guardian reasonably believes to be a notifiable person in relation to the holder of the clearance.

Division 6 Working with children register

25 Working with children register

- (1) The Children's Guardian must establish a working with children register.
- (2) The register must contain the following:
 - (a) particulars of applications for working with children check clearances, including the applicant's name and date of birth, the application number, the status of the application (including whether the applicant is subject to an interim bar) and any determination to refuse the application,
 - (b) particulars of clearances, including the clearance holder's name and date of birth, the working with children number, the class and expiry date of the clearance and whether the clearance holder is subject to an interim bar or has had a clearance cancelled.
- (3) The register is to be maintained in the manner and form approved by the Children's Guardian.
- (4) The Children's Guardian must ensure that information kept on the register is accurate and up-to-date.
- (5) The Children's Guardian must make information on the register available to an employer or responsible agency carrying out a verification in respect of a person under section 9A or 11B to the extent that the Children's Guardian considers the information to be relevant for the purposes of the verification or for informing the employer or responsible agency of any interim bar, refusal of an application or cancellation of a clearance.
- (6) The regulations may make provision for or with respect to the following:
 - (a) any additional information that may be contained on the register,
 - (b) the entry of information on the register by employers or other persons,
 - (c) making information on the register publicly available or available to particular classes of persons.

Part 4 Reviews and appeals

26 Persons not entitled to apply for review or enabling order

- (1) The following persons are not entitled to make an application under this Part:
 - (a) a person who has been convicted of any of the following offences, if the offence was committed as an adult and the person is a person who satisfies subsection (2):

- (i) murder,
- (ii) an offence against section 61B, 61C, 61D, 61E, 61F, 61I, 61J, 61JA, 61K, 61L, 61M, 61N, 61O, 61P, 63, 65A, 66, 66F, 76, 78A, 78B, 80A, 80D, 80E or 81 of the *Crimes Act 1900*, if the person against whom the offence was committed was a child,
- (iii) the common law offence of rape, if the person against whom the offence was committed was a child,
- (iv) an offence against section 66A, 66B, 66C, 66D, 66EA or 66EB of the *Crimes Act 1900*,
- (v) an offence against section 67, 68, 71, 72, 72A, 73, 74 or 76A of the *Crimes Act 1900*,
- (vi) an offence against section 78H, 78I, 78K, 78L, 78M, 78N, 78O or 78Q of the *Crimes Act 1900*,
- (vii) an offence against section 91D, 91E or 91F of the *Crimes Act 1900*,
- (viii) an offence against section 91G, 91H, 578B or 578C (2A) of the *Crimes Act 1900*,
- (ix) an offence against section 272.8, 272.10 (if it relates to an underlying offence against section 272.8) or 272.11 of the *Criminal Code* of the Commonwealth,
- (x) an offence against section 272.9, 272.10 (if it relates to an underlying offence against section 272.9), 272.11, 272.12, 272.13, 272.14 or 272.15 of the *Criminal Code* of the Commonwealth,
- (xi) an offence against section 272.18, 272.19 or 272.20 of the *Criminal Code* of the Commonwealth, if it relates to a Class 1 offence within the meaning of the *Child Protection (Offenders Registration) Act 2000*,
- (xii) an offence against section 273.5, 273.6, 273.7, 471.16, 471.17, 471.19, 471.20, 471.22, 471.24, 471.25, 474.19, 474.20, 474.22, 474.23, 474.24A, 474.25A, 474.25B, 474.26 or 474.27 of the *Criminal Code* of the Commonwealth,
- (xiii) an offence against section 233BAB of the *Customs Act 1901* of the Commonwealth involving items of child pornography or of child abuse material,
- (xiv) an offence an element of which is an intention to commit an offence listed in subparagraphs (i)–(xiii),
- (xv) an offence of attempting, or of conspiracy or incitement, to commit an

offence listed in subparagraphs (i)–(xiii),

- (b) a person who has been convicted of an offence committed as an adult under a law of another State or a Territory, the Commonwealth or a foreign jurisdiction that, if committed in New South Wales, would constitute an offence referred to in paragraph (a) and the person is a person who satisfies subsection (2),
 - (c) a person whose application for a working with children check clearance has been refused wholly or partly on the grounds that proceedings have been commenced against the person for an offence specified in Schedule 2 and the proceedings have not been finally determined.
- (2) A person convicted of an offence specified in subsection (1) satisfies this subsection if:
- (a) the person received a sentence of full time custody for the offence, or
 - (b) any of the following orders was imposed on the person in respect of the offence and the order is in force:
 - (i) a home detention order, intensive correction order or community service order under the *Crimes (Sentencing Procedure) Act 1999*, a good behaviour order under section 9 of that Act or an order under section 12 of that Act,
 - (ii) a conditional release order or recognizance release order under section 20 of the *Crimes Act 1914* of the Commonwealth, or
 - (c) a prohibition order under the *Child Protection (Offenders Prohibition Orders) Act 2004* is in force against the person.
- (3) This section applies to convictions for offences whether occurring before, on or after the commencement of this Act.

27 Applications to Civil and Administrative Tribunal for administrative reviews of clearance decisions

- (1) A person who has been refused a working with children check clearance by the Children’s Guardian may apply to the Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision within 28 days after notice of the decision was given to the person.
- (2) A person whose clearance is cancelled by the Children’s Guardian may apply to the Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision within 28 days after notice of the decision was given to the person.
- (3) A person who is subject to an interim bar imposed by the Children’s Guardian may apply to the Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision, but only if the interim bar has been in force for more

than 6 months.

- (4) An applicant must fully disclose to the Tribunal any matters relevant to the application.
- (5), (6) (Repealed)
- (7) Section 53 of the *Administrative Decisions Review Act 1997* does not apply to a decision that may be reviewed by the Tribunal under this section.

28 Orders relating to disqualified and ineligible persons

- (1) The Tribunal may, on the application of a disqualified person, make an order declaring that the person is not to be treated as a disqualified person for the purposes of this Act in respect of an offence specified in the order (an **enabling order**). Any such order has effect according to its tenor.
- (2) The Tribunal may, on the application of a person who is not eligible to apply for a clearance because the person has been previously refused a clearance, make an order declaring that the person is to be treated as a person who is eligible to apply for a clearance (an **enabling order**). Any such order has effect according to its tenor.
- (3) A disqualified person may make an application under this section only if:
 - (a) the person has been refused a working with children check clearance, or
 - (b) the person's clearance has been cancelled,because the person is a disqualified person.
- (4) The Children's Guardian is to be a party to any proceedings for an order under this section and may make submissions in opposition to or support of the making of the order.
- (5) An applicant must fully disclose to the Tribunal any matters relevant to the application.
- (6) If the Tribunal makes an enabling order, the Tribunal may order the Children's Guardian to revoke an interim bar or to grant the person a clearance.
- (7) In any proceedings where an enabling order is sought, it is to be presumed, unless the applicant proves to the contrary, that the applicant poses a risk to the safety of children.
- (8) An enabling order may not be made subject to conditions.
- (9) (Repealed)

29 Further review of persons who obtain enabling orders

- (1) The Children's Guardian may apply to the Tribunal to revoke or vary an enabling order made by the Tribunal.
- (2) The Tribunal may:
 - (a) revoke an enabling order, if it is satisfied, on the basis of fresh evidence provided by the Children's Guardian, that the person the subject of the order poses a risk to the safety of children, or
 - (b) confirm an enabling order, if it is satisfied that the person is not likely to pose such a risk.
- (3) The Tribunal may consider fresh evidence provided by the Children's Guardian.
- (4) (Repealed)

30 Determination of applications and other matters

- (1) The Tribunal must consider the following in determining an application under this Part:
 - (a) the seriousness of the offences with respect to which the person is a disqualified person or any matters that caused a refusal of a clearance or imposition of an interim bar,
 - (b) the period of time since those offences or matters occurred and the conduct of the person since they occurred,
 - (c) the age of the person at the time the offences or matters occurred,
 - (d) the age of each victim of any relevant offence or conduct at the time they occurred and any matters relating to the vulnerability of the victim,
 - (e) the difference in age between the victim and the person and the relationship (if any) between the victim and the person,
 - (f) whether the person knew, or could reasonably have known, that the victim was a child,
 - (g) the person's present age,
 - (h) the seriousness of the person's total criminal record and the conduct of the person since the offences occurred,
 - (i) the likelihood of any repetition by the person of the offences or conduct and the impact on children of any such repetition,
 - (j) any information given by the applicant in, or in relation to, the application,

(k) any other matters that the Children's Guardian considers necessary.

(1A) The Tribunal may not make an order under this Part which has the effect of enabling a person (the **affected person**) to work with children in accordance with this Act unless the Tribunal is satisfied that:

(a) a reasonable person would allow his or her child to have direct contact with the affected person that was not directly supervised by another person while the affected person was engaged in any child-related work, and

(b) it is in the public interest to make the order.

(2) On an application under section 28 or 29, the Tribunal may, by order, stay the operation of a determination by the Children's Guardian under this Act relating to the applicant pending the determination of the matter.

Note—

Division 2 of Part 3 of Chapter 3 of the [Administrative Decisions Review Act 1997](#) enables a decision the subject of an application under section 27 of this Act for an administrative review under that Act to be stayed by the Tribunal.

(3) (Repealed)

Part 5 Provision of information

31 Powers of Children's Guardian to compel production of information

(1) The Children's Guardian may, by notice in writing, require any government agency to provide the Children's Guardian with information (including documents) relevant to an assessment of whether a person poses a risk to the safety of children.

(2) A notice under subsection (1) may be given for the purposes of:

(a) preparing submissions to the Tribunal under this Act or section 16 of the [Child Protection \(Offenders Registration\) Act 2000](#), or

(b) determining an application for a working with children check clearance or an assessment of an applicant or the holder of a clearance.

(3) A government agency to which any such notice is given is by this section authorised and required to provide the Children's Guardian with the information sought by the notice.

(4) The Children's Guardian may, by notice in writing, request a person other than a government agency to provide the Children's Guardian with a statement setting out information specified by the notice relevant to an assessment of whether a person poses a risk to the safety of children for the purposes of this Act.

(5) A person other than a government agency to whom any such request is given is by

this section authorised to provide the Children's Guardian with the information requested.

- (6) A notice under this section may specify a day on or before which the notice is to be complied with.
- (7) If documents are given to the Children's Guardian under this section, the Children's Guardian:
 - (a) may take possession of, and make copies of or take extracts from, the documents, and
 - (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
 - (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.

32 Incidental disclosure of information by DPP authorised

- (1) The Director of Public Prosecutions is, on receipt of a notice under section 31, authorised to disclose to the Children's Guardian information or other documents that may contain information in addition to the information required by the notice, whether or not that information or those documents are subject to legal professional privilege or other restrictions on disclosure.
- (2) This section has effect despite any other Act or law.

33 Notification of offences and other information

- (1) The Commissioner of Police is authorised at any time, in accordance with this Part and the regulations, to disclose (or arrange for a member of the NSW Police Force to disclose) to the Children's Guardian the following information:
 - (a) information relating to any matter that may cause a person to be a disqualified person or result in an assessment requirement affecting a person,
 - (b) information relating to the criminal history of a person, including (but not limited to) information about offences that cause or may cause the person to be a disqualified person or result in an assessment requirement affecting the person,
 - (c) without limiting paragraph (a) or (b), information relating to the circumstances of an offence or other matter disclosed under this section.
- (2) Information that may be disclosed under this section includes:
 - (a) information relating to spent convictions, despite anything to the contrary in the *Criminal Records Act 1991*, and

- (b) information relating to criminal charges, whether or not heard, proven, dismissed, withdrawn or discharged, and
 - (c) information relating to offences, despite anything to the contrary in section 579 of the *Crimes Act 1900*.
- (3) This section does not limit the persons to whom, or the circumstances in which, information relating to the criminal history, including the criminal record, of persons may be disclosed apart from this Act.
- (4) Information about a person's criminal history may be disclosed under this Act whether or not the information relates to events that occurred when the person was under the age of 18 years.

34 Notification of information relating to criminal history for interstate child-related work screening

- (1) The Commissioner of Police may disclose (or arrange for a member of the NSW Police Force to disclose) information relating to any criminal history of persons to the following persons for the purposes of interstate child-related work screening:
- (a) CrimTrac,
 - (b) a police force or service of the Commonwealth or another State or Territory,
 - (c) an approved interstate screening agency.
- (2) A person to whom information is disclosed may disclose that information to an approved interstate screening agency for the purposes of interstate child-related work screening undertaken by the agency.
- (3) The Commissioner of Police may disclose (or arrange for a member of the NSW Police Force to disclose) to an approved interstate screening agency, at the request of the agency, information relating to the circumstances of an offence or alleged offence disclosed under this section for the purposes of interstate child-related work screening.
- (4) Information that may be disclosed under this section includes:
- (a) information relating to convictions, including spent convictions, quashed convictions and offences for which a pardon has been given, despite anything to the contrary in the *Criminal Records Act 1991*,
 - (b) information relating to criminal charges, whether heard or not heard, proven, dismissed, withdrawn or discharged,
 - (c) information relating to offences, despite anything to the contrary in section 579 of the *Crimes Act 1900*.

(5) This section does not limit the persons to whom, or the circumstances in which, information relating to the criminal history, including the criminal record of, persons may be disclosed apart from this Act.

(6) In this section:

approved interstate screening agency means:

- (a) a person or body prescribed by the regulations, or
- (b) a body that is authorised under a law of the Commonwealth, another State or a Territory to conduct interstate child-related work screening and is approved by the Minister for the purposes of this section.

interstate child-related work screening means using information about persons who work, or seek to work, with children in a way that is authorised or required under a law of the Commonwealth, another State or a Territory, for the purpose of estimating the risk to the safety of children posed by any such person if working with children.

35 Notification by reporting bodies of conduct constituting assessment requirement trigger

(1) It is the duty of a reporting body to notify the Children's Guardian of the name and other identifying particulars of any child-related worker against whom the reporting body has made a finding that the worker has engaged in conduct specified in clause 2 of Schedule 1.

(1A) It is the duty of a reporting body that is a designated agency that has authorised a person as an authorised carer, to notify the Children's Guardian of the name and other identifying particulars of each adult person:

- (a) who resides for 3 weeks or more on the same property as the authorised carer, and
- (b) against whom the reporting body has made a finding that the adult person has engaged in conduct specified in clause 2 of Schedule 1.

(2) Notification under this section extends to findings made before the commencement of this section.

(3) The regulations may make provision for or with respect to the following:

- (a) the form of any such notification,
- (b) the provision by reporting bodies of further particulars of any such matter, or any potential such matter, if requested by the Children's Guardian,
- (c) the keeping of records by reporting bodies of information about such matters or potential such matters supplied to the Children's Guardian,

(d) the amendment or withdrawal of a notification by a reporting body.

(4) In this section:

reporting body means the following:

(a) a NSW Government agency,

(b) a Department or public sector agency within the meaning of the *Public Sector Employment and Management Act 2002*,

(c) a registration or other licensing authority constituted under an Act,

(c1) a designated agency,

(d) a designated government agency or designated non-government agency within the meaning of Part 3A of the *Ombudsman Act 1974* that has been granted an exemption under section 25CA of that Act,

(e) any other employer or professional or other body that supervises the conduct of an employee prescribed by the regulations for the purposes of this section.

36 Enforcement notices

(1) The Children's Guardian may, by notice in writing served on a reporting body or an officer of a reporting body, require the reporting body to comply with obligations of the reporting body under section 35 within the period specified in the notice.

(2) The Children's Guardian may serve a notice under this section if it is of the opinion that the reporting body has failed to comply with any provision of section 35.

(3) The notice must set out the reasons for the notice being given.

(4) The period specified in a notice is to be not less than 28 days.

(5) The Children's Guardian may revoke a notice at any time.

(6) A person who fails, without reasonable excuse, to comply with a notice in force under this section is guilty of an offence.

Maximum penalty: 100 penalty units, in the case of a corporation, or 50 penalty units in any other case.

(7) In any proceedings for an offence against this section, the onus of proving that a person had a reasonable excuse lies with the defendant.

(8) Nothing in this section prevents the Children's Guardian from contacting reporting bodies for the purpose of informing them of their obligations under this Act or requesting any information that reporting bodies are required to provide to the Children's Guardian under this Act.

Part 6 Functions of Children's Guardian

37 Database functions of Children's Guardian

The Children's Guardian may exercise the following functions:

- (a) collecting and maintaining a database of orders by the Tribunal under this Act, and other orders and proceedings completed against a person that result in assessment requirements, including updating, correcting and removing entries on the database,
- (b) collecting and maintaining a database of notifications to the Children's Guardian of matters that constitute or might constitute the basis of an assessment requirement, including updating, correcting and removing entries on the database,
- (c) collecting and maintaining a database of employers and other persons who verify information about working with children check clearances and applications for clearances, including updating, correcting or removing entries on the database.

38 Children's Guardian's public awareness and advice functions

- (1) The Children's Guardian may promote public awareness of and provide advice on requirements for working with children check clearances and related matters concerning child-related work, including encouraging organisations to develop their capacity to be safe for children.
- (2) Without limiting subsection (1), the Children's Guardian may make information available to employers and other persons about matters to consider in relation to employing persons to work with children.

Note—

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

39 Children's Guardian's monitoring and auditing functions

- (1) The Children's Guardian is to monitor and audit compliance with the requirements of this Act and the regulations.
- (2) The Minister may give the Children's Guardian a written direction on the exercise of its functions under this section, and the Children's Guardian is to comply with the direction.

40 Power to compel production of information for monitoring or auditing purposes

- (1) For the purposes of exercising its monitoring or auditing functions under this Act, the Children's Guardian may, by notice in writing, require an officer of a government agency, an employer or a body that supervises, represents or has other functions with respect to an employer to do any one or more of the following:

- (a) to provide to the Children's Guardian, on or before a day specified in the notice, a statement setting out such information as is so specified relating to the matters being monitored or audited,
- (b) to provide to the Children's Guardian, on or before a day specified in the notice, such documents as are so specified relating to the matters being monitored or audited.

(2) A person who:

- (a) fails, without reasonable excuse, to comply with a requirement of a notice under this section, or
- (b) provides the Children's Guardian with information that the person knows is false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: 100 penalty units, in the case of a corporation, and 50 penalty units in any other case.

- (3) A notice may specify the manner in which a statement or documents may be given to the Children's Guardian.
- (4) If documents are given to the Children's Guardian under this section, the Children's Guardian:
 - (a) may take possession of, and make copies of or take extracts from, the documents, and
 - (b) may keep possession of the documents for such period as is necessary for the purposes of exercising its monitoring or auditing functions, and
 - (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.
- (5) In any proceedings for an offence against this section, the onus of proving that a person had a reasonable excuse lies with the defendant.

40A Power to audit declarations made by exempt workers

- (1) This section applies to a statutory declaration provided to an employer by an exempt worker that contains information relating to the offences specified in Schedule 2.
- (2) The Children's Guardian may audit the accuracy of the statutory declaration, or may authorise a person to carry out such an audit.
- (3) The Children's Guardian may authorise a person under this section only if the Privacy

Commissioner advises the Children's Guardian, in writing, that the Privacy Commissioner is satisfied that the person is able to adequately provide for the security of any information obtained in the exercise of functions pursuant to the authorisation.

- (4) The Commissioner of Police is authorised to disclose (or arrange for a member of the NSW Police Force to disclose) the following information for the purposes of this section:
 - (a) information relating to spent convictions, despite anything to the contrary in the *Criminal Records Act 1991*,
 - (b) information relating to offences, despite anything to the contrary in section 579 of the *Crimes Act 1900*.
- (5) If a person authorised under this section reasonably believes that a statutory declaration is inaccurate, the person must, as soon as practicable, inform the Children's Guardian and provide any information relevant to that belief to the Children's Guardian.
- (6) The Children's Guardian may disclose information obtained under this section to the following persons:
 - (a) the person who made the statutory declaration,
 - (b) the employer of that person,
 - (c) a police officer of the State or of the Commonwealth or another State or Territory,
 - (d) the Ombudsman,
 - (e) any other investigative agency that the Children's Guardian considers appropriate,
 - (f) the Department,
 - (g) the Director of Public Prosecutions,
 - (h) a court or tribunal,
 - (i) an approved interstate screening agency,
 - (j) the Minister,
 - (k) the Privacy Commissioner,
 - (l) any other person approved by the Privacy Commissioner and prescribed in the regulations.
- (7) The Minister may give the Children's Guardian a written direction on the exercise of

functions under this section and the Children's Guardian is to comply with the direction.

- (8) In this section, **exempt worker** means a worker who is exempted by the regulations from the requirement to hold a clearance.

Part 7 Miscellaneous

41 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

42 Effect of Act on other rights and procedures

- (1) An assessment under this Act or interstate child-related work screening (as referred to in section 34) may be conducted, and information disclosed or obtained, in accordance with this Act despite any other Act or law to the contrary.
- (2) Nothing in this Act affects any statutory right that an employee may have in relation to employment or termination of employment.
- (3) However, any court or tribunal exercising jurisdiction with respect to any such right must have regard to the results of any determination of an application for a working with children check clearance or assessment carried out under this Act in connection with the work concerned and the welfare of children as the paramount consideration in that determination or assessment.
- (4) Nothing in this Act affects the operation of Part 2 of Chapter 9 of the [Health Services Act 1997](#).
- (5) This section is subject to section 47.

42A Expert advisory panel

- (1) The Children's Guardian may appoint an expert advisory panel to provide advice to the Children's Guardian about matters relating to offenders for the purposes of assisting the Children's Guardian in carrying out risk assessments and exercising functions under this Act.
- (2) The advice provided is not to relate to particular individuals.
- (3) The Children's Guardian may make advice provided by the expert advisory panel available to the Tribunal, on the initiative of the Children's Guardian or at the request of the Tribunal.
- (4) The Children's Guardian and the Tribunal may, when exercising functions under this Act, consider any advice provided by the expert advisory panel.

- (5) The terms of the appointment and any remuneration of members of the expert advisory panel are to be determined by the Children's Guardian and must be approved by the Minister.

43 Protection of persons relating to child-related work

- (1) Anything done or omitted to be done by a person in good faith and with reasonable care:
- (a) for the purpose of the determination of an application for a working with children check clearance or an assessment of the holder of a clearance, or
 - (b) for the purpose of exercising a function under this Act,
- does not subject the person to any action, liability, claim or demand.
- (2) Without limiting subsection (1):
- (a) a person has qualified privilege in proceedings for defamation in respect of anything done or omitted to be done by the person for the purposes of the determination of an application for a clearance or an assessment or otherwise exercising a function under this Act, and
 - (b) damages or compensation (whether for breach of contract or otherwise) are not payable in respect of a decision not to grant a clearance or to cancel a clearance, or to impose an interim bar, as a result of an assessment carried out in good faith and with reasonable care for the purposes of this Act or a review application.
- (3) This section does not limit or affect any other right, privilege or immunity that a person has as a defendant in any proceedings.

44 Evidentiary certificate

A certificate issued by the Children's Guardian that states that, on a specified date or during a specified period:

- (a) a specified person was or was not the holder of a working with children check clearance, or
- (b) a specified person had or had not made an application for a clearance, or
- (c) a clearance was or was not in force, or
- (d) a specified person was or was not subject to an interim bar,

is admissible in legal proceedings as evidence of the matters so stated.

45 Unauthorised disclosure or dishonest collection of information

- (1) A person who discloses any information obtained by the person in connection with the

exercise of functions under this Act or the regulations is guilty of an offence unless the disclosure:

- (a) is made in good faith for the purposes of the exercise of a function under this Act or the regulations, or
- (b) is made with the consent of the person to whom the information relates, or
- (c) is ordered by a court, or any other body or person exercising judicial functions, for the purposes of the hearing or determination by the court, body or person of any matter, or
- (d) is made with other lawful excuse.

(2) A person who dishonestly obtains confidential information relating to the exercise of functions under this Act or the regulations is guilty of an offence.

Maximum penalty: 50 penalty units, or imprisonment for 6 months, or both.

46 Obtaining information on disciplinary matters under [Government Information \(Public Access\) Act 2009](#)

- (1) A person against whom a finding referred to in clause 2 of Schedule 1 has been made is, subject to this section, entitled to apply for access under the [Government Information \(Public Access\) Act 2009](#) to any information about the finding. That Act applies to the determination of any such application for access.
- (2) Any provision of that Act relating to fees or charges payable by applicants does not apply to such an application for access.
- (3) The provisions of the [Government Information \(Public Access\) Act 2009](#) apply for the purposes of this section whether or not the agency is an agency to which those provisions apply.
- (4) The regulations under this Act may modify any provisions of that Act in its application under this section.

47 Relationship with other Acts and laws

- (1) A prohibition on employment under this Act prevails to the extent of any inconsistency between it and any other Act or law.
- (2) The Industrial Relations Commission or any other court or tribunal does not have jurisdiction under any Act or law to order the re-instatement or re-employment of a person or worker contrary to a prohibition on employment imposed by this Act, or to order the payment of damages or compensation for any removal from employment of a person from employment prohibited under this Act.

48 Information about old offences may be given

For the purposes of this Act, section 579 of the *Crimes Act 1900* does not apply to or in respect of an offence referred to in Schedule 1 or 2.

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

- (1) Any information obtained by the Children's Guardian in the course of exercising functions under this Act may be used for the purposes of making a report to the Secretary under section 24 (Report concerning child or young person at risk of significant harm) or 27 (Mandatory reporting) of the *Children and Young Persons (Care and Protection) Act 1998*.
- (1A) Any information about or in connection with a person (who the Children's Guardian reasonably believes to be any one or more of the following) that has been obtained or used by the Children's Guardian in the course of exercising functions under this Act, may be disclosed to the Secretary for the purposes of the Secretary exercising functions under Chapter 4 of the *Children and Young Persons (Care and Protection) Act 1998*:
 - (a) a person who is or has been an authorised carer, a carer applicant, a prospective adoptive parent, a guardian or a prospective guardian,
 - (b) a person who resides or has resided on the same property as another person while that other person is or was an authorised carer, a carer applicant, a prospective adoptive parent, a guardian or a prospective guardian.
- (2) A report referred to in section 29 of the *Children and Young Persons (Care and Protection) Act 1998* may be provided to the Children's Guardian for the purpose of the exercise of the Children's Guardian's functions under this Act. Any such report may not be subsequently dealt with by the Children's Guardian in a manner that contravenes that section, except to the extent that it is necessary for the Children's Guardian to do so in the exercise of functions under this Act.

(3) In this section:

guardian has the same meaning as in section 79A of the *Children and Young Persons (Care and Protection) Act 1998*.

49 Nature of proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

50 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act, each person who is a director of the corporation or who is concerned in the

management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

- (2) Subsection (1) does not apply in respect of a contravention of a provision of the regulations that is declared by the regulations to be an excluded provision for the purposes of this section.
- (3) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (4) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act.
- (5) This section applies only to offences against Part 2.

51 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be given to any person may be given by:
 - (a) in the case of a natural person:
 - (i) delivering it to the person personally, or
 - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
 - (iii) sending it by facsimile transmission to the facsimile number of the person or by email to the email address of the person, or
 - (b) in the case of a body corporate:
 - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
 - (ii) sending it by facsimile transmission to the facsimile number of the body corporate or by email to the email address of the body corporate.
- (2) Notice of a working with children number may be given to a person by sending it by SMS message to the person's last known mobile telephone number.
- (3) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

52 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following:
 - (a) the information to be provided by the Children's Guardian to applicants for or holders of working with children check clearances,
 - (b) the exemption of persons or classes of persons from all or any requirements of this Act, unconditionally or subject to conditions.
- (3) The regulations may amend Schedule 1 or Schedule 2.
- (4) The regulations may create offences punishable by a penalty not exceeding 20 penalty units.

53 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Assessment requirement triggers

1 Offences

- (1) Proceedings have been commenced against a person:
 - (a) for an offence specified in clause 1 of Schedule 2, if the offence was committed as a child (whatever the outcome of the proceedings), or
 - (b) for an offence specified in clause 1 of Schedule 2, if the offence was committed as an adult, and the person is not because of those proceedings a disqualified person.
- (2) Proceedings have been commenced against a person for any of the following offences (whatever the outcome of those proceedings):
 - (a) an offence involving intentional wounding of or causing bodily harm to a child by an adult (other than an offence specified in clause 1 of Schedule 2),

- (b) any sexual offence committed against, with or in the presence of a child, other than an offence specified in clause 1 of Schedule 2,
 - (c) an offence under section 38 or 38A of the *Crimes Act 1900* committed against a child,
 - (d) an offence under section 45 or 45A of the *Crimes Act 1900* committed against a child,
 - (e) an offence under section 60E of the *Crimes Act 1900*,
 - (f) an offence under section 13 of the *Crimes (Domestic and Personal Violence) Act 2007* committed against a child,
 - (g) an offence under section 6 of the *Prevention of Cruelty to Animals Act 1979*.
- (3) Proceedings have been commenced against a person for any of the following offences (other than where a person has been found not guilty of the offence concerned):
- (a) an offence under section 43A of the *Crimes Act 1900*,
 - (b) an offence under section 44 of the *Crimes Act 1900* committed against a child,
 - (c) an offence under section 227, 228 or 231 of the *Children and Young Persons (Care and Protection) Act 1998*,
 - (d) an offence under section 530 of the *Crimes Act 1900*,
 - (e) an offence under section 23A, 24 (1A) or (2A) or 25 (1A) of the *Drug Misuse and Trafficking Act 1985*,
 - (f) any other offence, whether under the law of New South Wales or elsewhere, prescribed by the regulations for the purposes of this subclause.
- (4) A person has been convicted of an offence under section 61 of the *Crimes Act 1900* committed against a child.
- (5) Subclauses (1), (2), (3) and (4) apply to:
- (a) an offence an element of which is an intention to commit an offence of a kind listed in those subclauses, and
 - (b) an offence under a law other than a law of New South Wales that is an offence similar to an offence listed in those subclauses, and
 - (c) an offence of attempting, or of conspiracy or incitement, to commit an offence listed in those subclauses,
- in the same way that they apply to the offences listed in those subclauses.

- (6) A person has been convicted of, or proceedings have been commenced against a person for, offences involving violence or sexual misconduct (whether or not listed in this Schedule or Schedule 2) sufficient to indicate a pattern of behaviour that warrants investigation as to whether it may cause a risk to the safety of children.
- (7) An offence is not specified for the purposes of this clause if it was an offence specified in this clause at the time of its commission and the conduct has ceased to be an offence in New South Wales.

2 Findings of misconduct involving children

A person has been the subject of a finding by a reporting body that the person engaged in the following conduct:

- (a) sexual misconduct committed against, with or in the presence of a child, including grooming of a child,
- (b) any serious physical assault of a child.

2A Notification by Ombudsman

- (1) A person has been the subject of a notification of concern to the Children's Guardian by the Ombudsman that, on a risk assessment by the Children's Guardian, the Children's Guardian 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.

3 Application of Schedule

This Schedule applies to offences and other matters whether occurring before, on or after the commencement of this Schedule.

Schedule 2 Disqualifying offences

1 Specified offences

- (1) The following offences are specified:
 - (a) murder,
 - (b) manslaughter of a child (other than as a result of a motor vehicle accident),
 - (c) an offence involving intentional wounding or causing grievous bodily harm to a child by an adult who is more than 3 years older than the victim,
 - (d) an offence under section 61B, 61C, 61D, 61E or 61F of the [Crimes Act 1900](#),

- (e) an offence under section 61I, 61J, 61JA, 61K, 61L, 61M, 61N, 61O or 61P of the *Crimes Act 1900*,
- (f) the common law offence of rape or attempted rape,
- (g) an offence under section 65A or 66 of the *Crimes Act 1900*,
- (h) an offence under section 66A, 66B, 66C, 66D, 66EA, 66EB, 66F or 73 of the *Crimes Act 1900*,
- (i) an offence under section 67, 68, 71, 72, 73 (before its substitution by the *Crimes Amendment (Sexual Offences) Act 2003*), 74 or 76 of the *Crimes Act 1900*,
- (j) an offence under section 78A, 78B or 79 of the *Crimes Act 1900*,
- (k) an offence under section 78H, 78I, 78K, 78L, 78N, 78O, 78Q or 81 of the *Crimes Act 1900*,
- (l) an offence under section 80A, 80D or 80E of the *Crimes Act 1900*,
- (m) an offence under section 86 of the *Crimes Act 1900* where the person against whom the offence is committed is a child, except where the person found guilty of the offence was, when the offence was committed or at some earlier time, a parent or carer of the child,
- (n) an offence under section 91D, 91E, 91F, 91G or 91H of the *Crimes Act 1900* (other than an offence committed by a child prostitute),
- (o) an offence under section 42 or 43 of the *Crimes Act 1900*,
- (p) an offence under section 91J, 91K or 91L of the *Crimes Act 1900*,
- (q) an offence under section 21G of the *Summary Offences Act 1988* or section 91M of the *Crimes Act 1900* where the person intended to be observed or filmed was a child,
- (r) an offence against section 272.8, 272.10 (if it relates to an underlying offence against section 272.8) or 272.11 of the *Criminal Code* of the Commonwealth,
- (s) an offence against section 272.9, 272.10 (if it relates to an underlying offence against section 272.9), 272.14 or 272.15 of the *Criminal Code* of the Commonwealth,
- (t) an offence against section 272.18, 272.19 or 272.20 of the *Criminal Code* of the Commonwealth if it relates to another offence listed in this Schedule,
- (u) an offence against section 270.6A or 270.7 of the *Criminal Code* of the Commonwealth where the person against whom the offence is committed is a child,

- (v) an offence against section 233BAB of the *Customs Act 1901* of the Commonwealth involving items of child pornography or of child abuse material,
- (w) an offence against section 471.16, 471.17, 471.19, 471.20 or 471.22 of the *Criminal Code* of the Commonwealth,
- (x) an offence against section 471.24, 471.25 or 471.26 of the *Criminal Code* of the Commonwealth,
- (y) an offence under section 91H, 578B or 578C (2A) of the *Crimes Act 1900*,
- (z) an offence under a law of another State or a Territory, the Commonwealth or a foreign jurisdiction that, if committed in New South Wales, would constitute an offence listed in this clause,
- (aa) an offence an element of which is an intention to commit an offence of a kind listed in this clause,
- (ab) an offence of attempting, or of conspiracy or incitement, to commit an offence of a kind listed in this clause,
- (ac) any other offence that is a registrable offence within the meaning of the *Child Protection (Offenders Registration) Act 2000*, if the offence was committed as an adult.

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

2 Excluded offences

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

Schedule 3 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not

operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part:

existing child-related worker means a worker who was engaged in child-related work immediately before the commencement of Part 2 of this Act.

existing employer means the employer of an existing child-related worker immediately before the commencement of Part 2 of this Act.

existing resident means an adult who was residing at the home of an authorised carer or a provider of an education and care service where foster care or an education and care service was provided immediately before the commencement of Part 2 of this Act.

former provisions means Part 7 of the *Commission for Children and Young People Act 1998*, as in force immediately before its repeal by this Act.

3 (Repealed)

4 Application of Act to existing self-employed persons

- (1) This clause applies to a person:
 - (a) who was engaged in child-related work as a self-employed person immediately before the commencement of Part 2 of this Act, and
 - (b) who was, immediately before the commencement of this clause, required to hold a child-related employment certificate.
- (2) A person to whom this clause applies who held a child-related employment certificate immediately before the commencement of this clause is not, until the expiry date of the person's certificate, required to comply with Division 2 of Part 2 of this Act in respect of child-related work undertaken by the person as a self-employed person.
- (3) A person to whom this clause applies who did not hold a child-related employment certificate on the commencement of this clause is not required to comply with Division 2 of Part 2 of this Act in respect of child-related work undertaken by the person as a

self-employed person until the day prescribed by the regulations for the purposes of this clause.

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

- (a) is a disqualified person, or
- (b) is or 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.

(5) In this clause:

child-related employment certificate means a certificate issued under Part 2 of the *Commission for Children and Young People Regulation 2009* to a self-employed person in which the Commission certified that the person was not a prohibited person (within the meaning of Part 7 of the *Commission for Children and Young People Act 1998*).

5 Staged implementation of new scheme

The regulations may make provision for or with respect to the following:

- (a) the application of this Act (or provisions of this Act) to classes of existing child-related workers or existing residents, and other persons who become child-related workers or residents subject to section 10 on or after the commencement of Part 2 of this Act, on and from a specified date or dates,
- (b) the obligations of persons who are child-related workers or such residents pending the application of this Act to those persons,
- (c) the exemption from this Act (or provisions of this Act) of, or the application of provisions of this Act to, classes of persons who are existing child-related workers or existing residents,
- (d) the application of the former provisions to existing child-related workers or existing residents, and other persons, pending the application of provisions of this Act to those persons.

6 Existing prohibited persons declarations

- (1) This clause applies to a person who is the subject of an order containing a declaration (in force immediately before the repeal of the former provisions) under section 33H or 33I of the former provisions that Division 2 of those provisions is not to apply to the person in respect of a specified offence (an **existing declaration**).
- (2) On the application of this Act to a person to whom this clause applies:

- (a) a person who is the subject of an unconditional existing declaration is taken to be the subject of an order under Part 4 of this Act declaring that the person concerned is not to be treated as a disqualified person in respect of the offence, and
- (b) any other person to whom this clause applies is to be treated as a disqualified person for the purposes of this Act.

7 Part subject to regulations

This Part is subject to the regulations.

Part 3 Provision consequent on enactment of [Child Protection Legislation Amendment Act 2014](#)

8 Potential adoptive parents

Section 11, as substituted by the [Child Protection Legislation Amendment Act 2014](#) applies to and in respect of an application to adopt that has been made but not finally dealt with by the making of or refusal to make an adoption order before the commencement of this clause.

Part 4 Provisions consequent on enactment of [Child Protection Legislation Amendment Act 2015](#)

9 Definition

In this Part:

amending Act means the [Child Protection Legislation Amendment Act 2015](#).

10 Restrictions on engaging in child-related work

Section 8 (3) (c) extends to offences occurring before the commencement of that paragraph, but not if the person charged with the offence has been convicted or found guilty of the offence before that commencement.

11 Employers must verify worker has clearance or current application

Section 9A extends to a worker who was employed before the commencement of that section and in such a case the requirement in that section that verification occur in respect of the worker before the worker commences child-related work is taken to be a requirement that verification occur within 3 months after the commencement of that section.

12 Governing body to ensure persons appointed to key positions hold clearance

Section 9B does not apply in respect of the appointment of a person to a key position

before the commencement of that section.

13 Adult persons residing with authorised carers or home care service providers

- (1) Section 10 (5), as substituted by the amending Act, extends to offences occurring before that substitution, but not if the person charged with the offence has been convicted or found guilty of the offence before that substitution.
- (2) The period of 48 hours referred to in section 10 (5) (b) (ii) commences from the commencement of section 10 (3) in the case of an interim bar imposed before that commencement.

14 Responsible agency must verify person has clearance or current application

An agency that becomes the responsible agency for an adult person on the commencement of section 11B is not required to carry out a verification under that section in respect of the person until 3 months after that commencement.

15 Withdrawal of application for clearance

Section 13, as amended by the amending Act, extends to an application that was made before that amendment.

16 Matters for consideration

Sections 15 and 30, as amended by the amending Act, do not apply to an application that was made before the amendment of the section concerned.

17 Request for further information

Section 16 (2), as amended by the amending Act, does not apply in respect of a request made by the Children's Guardian before that amendment.

18 Interim bars

Section 17, as amended by the amending Act, extends to an application received, or an assessment commenced, before the commencement of those amendments.

19 Review and enabling order applications

- (1) Section 26, as in force before its substitution by the amending Act, continues to apply to a person who had made an application for a working with children check clearance which had not been withdrawn or finally determined before the commencement of the amending Act, but only in connection with matters arising out of that application.
- (2) Nothing in the amending Act affects any application made under Part 4 of this Act before the substitution of section 26 by the amending Act.

20 Notification by reporting bodies

Subject to the regulations, section 35 (1A) extends to findings made before the commencement of that subsection.

21 Disclosure of information to Secretary

Section 48A (1A) extends to information obtained or used by the Children's Guardian before the commencement of that subsection.

22 Disqualifying offences

- (1) Schedule 2 as amended by the amending Act, and section 18 in its application to that Schedule as so amended, does not apply to or in respect of the following:
 - (a) an application for a clearance made by a person before the commencement of the amending Act or an application for a further clearance made by that person on or after that commencement,
 - (b) an application for a further clearance made on or after that commencement by a person who held a clearance immediately before that commencement.
- (2) A person who was the holder of a clearance immediately before the amendment of Schedule 2 by the amending Act is not, merely because of those amendments, a disqualified person for the purposes of this Act.
- (3) This clause does not affect the operation of this Act in relation to any offence committed on or after the commencement of the amending Act by a person referred to in subclause (1) or (2).

Schedule 4 (Repealed)