

Child Protection Legislation Amendment Act 2015 No 29

[2015-29]



New South Wales

Status Information

Currency of version

Repealed version for 16 October 2015 to 2 November 2015 (accessed 19 December 2024 at 2:51)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

Notes—

- **Repeal**

The Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 3.11.2015.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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Child Protection Legislation Amendment Act 2015 No 29



New South Wales

An Act to amend the *Adoption Act 2000*, the *Child Protection (Working with Children) Act 2012*, the *Children and Young Persons (Care and Protection) Act 1998* and other Acts with respect to the suitability of persons to be carers, adoptive parents and guardians of children and young people; and for other purposes.

1 Name of Act

This Act is the *Child Protection Legislation Amendment Act 2015*.

2 Commencement

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

3 Repeal

The *Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001 No 91* is repealed.

Schedule 1 Amendment of *Adoption Act 2000 No 75*

[1] Whole Act (other than Schedule 3)

Omit “Director-General” and “Director-General’s” wherever occurring.

Insert instead “Secretary” and “Secretary’s” respectively.

[2] Chapter 3, Part 3

Insert after section 13:

Part 3 Principal officer of accredited adoption service

provider

14 Actions of principal officer taken to be actions of provider

- (1) This section applies to anything done by, or with the approval of, the principal officer of an accredited adoption service provider in relation to adoption services.
- (2) Anything to which this section applies is, for the purposes of this Act and the regulations, taken to be done by the accredited adoption service provider.
- (3) Nothing in this section affects any personal liability of the principal officer.

[3] Section 41A

Insert after section 41:

41A Definitions

In this Part:

applicant means a person whose application to adopt under this Part:

- (a) has been submitted to the Secretary or a principal officer, and
- (b) has not been withdrawn or finally dealt with by the making of, or refusal to make, an adoption order.

reside on a property has the same meaning as in the [Child Protection \(Working with Children\) Act 2012](#).

[4] Section 45 Assessment of suitability, and selection, of adoptive parents

Omit “resides with the person” from section 45 (2).

Insert instead “resides on the same property as the person”.

[5] Sections 45AA and 45AB

Insert after section 45A:

45AA Provision of information

- (1) Any person (the **provider of information**) may provide information to the principal officer of an accredited adoption service provider or the Secretary about another person if:
 - (a) the provider of information has been notified by the principal officer or the

Secretary that the other person is an applicant or a person who resides on the same property as an applicant, or

- (b) the provider of information otherwise reasonably believes the other person to be an applicant or a person who resides on the same property as an applicant.
- (2) Information provided under this section may be used to determine whether the applicant is suitable to adopt a child.
- (3) Information may be provided under this section regardless of whether the provider of information has been requested to provide the information.
- (4) A person who, acting in good faith, provides information under this section:
- (a) is not liable to any civil or criminal action, or any disciplinary action, for providing the information, and
 - (b) in providing the information, cannot be held to have breached any code of professional etiquette or ethics or departed from any accepted standards of professional conduct.

45AB Notification about other residents

An applicant must, as soon as reasonably practicable, notify the Secretary or the principal officer to whom the application was submitted:

- (a) if any person (other than the applicant or a person who submitted an application to adopt jointly with the applicant) resides on the same property as the applicant for 3 weeks or more, or
- (b) if a person residing on the same property as the applicant attains the age of 18 years.

[6] Section 45CA

Insert after section 45C:

45CA Definitions

In this Part:

applicant means a person whose application to adopt under this Part:

- (a) has been submitted to the Secretary or a principal officer, and
- (b) has not been withdrawn or finally dealt with by the making of, or refusal to make, an adoption order.

reside on a property has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

[7] Section 45D

Omit the section. Insert instead:

45D Application to adopt

The Secretary or the principal officer of an accredited adoption service provider may, in accordance with the regulations, invite an authorised carer of a child who is in out-of-home care to submit an application to adopt the child.

[8] Sections 45GA and 45GB

Insert after section 45G:

45GA Provision of information

- (1) Any person (the **provider of information**) may provide information to the principal officer of an accredited adoption service provider or the Secretary about another person if:
 - (a) the provider of information has been notified by the principal officer or the Secretary that the other person is an applicant or a person who resides on the same property as an applicant, or
 - (b) the provider of information otherwise reasonably believes the other person to be an applicant or a person who resides on the same property as an applicant.
- (2) Information provided under this section may be used to determine whether the applicant is suitable to adopt a child.
- (3) Information may be provided under this section regardless of whether the provider of information has been requested to provide the information.
- (4) A person who, acting in good faith, provides information under this section:
 - (a) is not liable to any civil or criminal action, or any disciplinary action, for providing the information, and
 - (b) in providing the information, cannot be held to have breached any code of professional etiquette or ethics or departed from any accepted standards of professional conduct.

45GB Notification about other residents

An applicant must, as soon as reasonably practicable, notify the Secretary or the principal officer to whom the application was submitted:

- (a) if any person (other than the applicant or a person who submitted an application to adopt jointly with the applicant) resides on the same property as the applicant for 3 weeks or more, or
- (b) if a person residing on the same property as the applicant attains the age of 18 years.

[9] Section 124A Guardian ad litem—exclusion of personal liability

Omit “Department of Attorney General and Justice” from the definition of **Guardian Ad Litem Panel** in section 124A (3).

Insert instead “Department of Justice”.

[10] Schedule 3 Savings, transitional and other provisions

Insert after clause 26:

Part 8 Provisions consequent on enactment of [Child Protection Legislation Amendment Act 2015](#)

27 Principal officer of accredited adoption service provider

Section 14, as inserted by the [Child Protection Legislation Amendment Act 2015](#), extends to things done by, or with the approval of, a principal officer before the commencement of that section in the same way as it applies to things done by, or with the approval of, a principal officer after that commencement.

28 Notification about other residents

Sections 45AB and 45GB extend to any person residing on the same property as an applicant who has not been notified to the Secretary or a principal officer even if that person commenced residing on the same property as the applicant, or attained the age of 18 years, before the commencement of the relevant section.

[11] Dictionary

Omit the definition of **Director-General**. Insert in alphabetical order:

Secretary means the Secretary of the Department.

Schedule 2 Amendment of [Child Protection \(Working with Children\)](#)

Act 2012 No 51

[1] Section 5 Definitions

Omit the definitions of **interim bar** and **working with children check number** from section 5 (1).

Insert in alphabetical order:

accredited adoption service provider has the same meaning as in the [Adoption Act 2000](#).

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

carer applicant has the same meaning as in the [Children and Young Persons \(Care and Protection\) Act 1998](#).

Department means the Department of Family and Community Services.

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*.

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

Secretary means the Secretary of the Department.

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

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] Section 5A

Insert after section 5:

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).

[3] Section 6 Child-related work

Omit “within the meaning of the *Adoption Act 2000*” from section 6 (3) (f).

[4] Section 8 Restrictions on engaging in child-related work

Insert at the end of section 8 (3) (b):

, 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.

[5] Section 9 Employers must require clearance or current application

Omit “accused person” where secondly occurring in section 9 (2) (a) and from section 9 (2) (b).

Insert instead “worker”.

[6] Sections 9A and 9B

Insert after section 9:

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.

[7] Section 10

Omit the section. Insert instead:

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.

[8] Section 11 Prospective adoptive parents and adults residing with them

Omit section 11 (1) (a) and (b). Insert instead:

- (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.

[9] Section 11 (4)

Omit the definition of **accredited adoption service provider**.

[10] Section 11 (4), definition of “relevant decision-maker”

Omit “the Director-General of the Department of Family and Community Services—the Director-General” from paragraph (a).

Insert instead “the Secretary—the Secretary”.

[11] Section 11A Prospective guardians and adults residing with them

Omit section 11A (1) (a) and (b). Insert instead:

- (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.

[12] Section 11A (4), definition of “relevant decision-maker”

Omit “the Director-General of the Department of Family and Community Services—the Director-General” from paragraph (a).

Insert instead “the Secretary—the Secretary”.

[13] Section 11B

Insert after section 11A:

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.

[14] (Repealed)

[15] Section 13A

Insert after section 13:

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.

[16] Section 15 Assessment of applicants and holders

Insert after section 15 (4):

- (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.

[17] Section 16 Request for further information

Omit "6 months" from section 16 (2). Insert instead "3 months".

[18] Section 16 (3)

Insert after section 16 (2):

- (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.

[19] Section 17 Interim bars

Omit section 17 (1). Insert instead:

- (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.

[20] Section 17 (2)

Insert "or resides on a property referred to in subsection (1) (b) or (c)" after "child-related work".

[21] Section 17 (3)

Omit the subsection. Insert instead:

- (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.

[22] Section 17 (4) (b)

Insert "or refused" after "granted".

[23] Section 20 Notice of final decision granting or refusing clearance

Omit “working with children check number” from section 20 (2).

Insert instead “working with children number”.

[24] Section 20 (4)

Omit the subsection. Insert instead:

- (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.

[25] Section 21 Embargo on further applications after refusal

Omit the section.

[26] Section 23 Cancellation of clearances

Omit section 23 (4). Insert instead:

- (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.

[27] Section 24 Surrender of clearances

Omit section 24 (3). Insert instead:

- (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.

[28] Section 25 Working with children register

Omit section 25 (2). Insert instead:

- (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.

[29] Section 25 (5) and (6)

Omit section 25 (5). Insert instead:

- (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.

[30] Section 26

Omit the section. Insert instead:

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.

[31] Section 30 Determination of applications and other matters

Insert after section 30 (1):

- (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.

[32] Section 35 Notification by reporting bodies of conduct constituting assessment requirement trigger

Insert after section 35 (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.

[33] Section 35 (4), definition of “reporting body”

Insert after paragraph (c):

- (c1) a designated agency,

[34] Section 37 Database functions of Children’s Guardian

Omit section 37 (c). Insert instead:

- (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.

[35] Section 38 Children’s Guardian’s public awareness and advice functions

Insert at the end of the section:

- (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.

[36] Section 40A Power to audit declarations made by exempt workers

Omit “the Department of Family and Community Services” from section 40A (6) (f).

Insert instead “the Department”.

[37] Section 42A

Insert after section 42:

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.

[38] Section 48A Reports under *Children and Young Persons (Care and Protection) Act 1998*

Omit "the Director-General of the Department of Family and Community Services" from section 48A (1).

Insert instead "the Secretary".

[39] Section 48A (1A)

Insert after section 48A (1):

- (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.

[40] Section 48A (3)

Insert after section 48A (2):

- (3) In this section:

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

[41] Section 51 Service of documents

Omit “working with children check number” from section 51 (2).

Insert instead “working with children number”.

[42] Schedule 2 Disqualifying offences

Omit clause 1 (1) (z). Insert instead:

- (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,

[43] Schedule 2, clause 1 (1) (ac)

Insert after clause 1 (1) (ab):

- (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.

[44] Schedule 3 Savings, transitional and other provisions

Omit clause 3.

[45] Schedule 3, clause 4 (4)

Omit the subclause. Insert instead:

- (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.

[46] (Repealed)

Schedule 3 Amendment of *Children and Young Persons (Care and*

Protection) Act 1998 No 157

[1] Whole Act (other than Schedule 3)

Omit “Director-General” and “Director-General’s” wherever occurring.

Insert instead “Secretary” and “Secretary’s” respectively.

[2] Section 3 Definitions

Omit the definition of **Director-General** from section 3 (1).

Insert in alphabetical order:

accredited adoption service provider has the same meaning as in the [Adoption Act 2000](#).

carer applicant means a person who has applied to a designated agency to be authorised as an authorised carer and whose application has not been withdrawn or finally determined.

guardian—see section 79A.

principal officer—see section 5A.

prospective guardian means a person whose suitability to have parental responsibility for a child or young person allocated to the person under a guardianship order is being considered (whether by the Secretary, a designated agency or the Children’s Court) and who has agreed to an assessment of the person’s suitability under section 79B (1A).

registered agency means any of the following that is registered for the time being by the Children’s Guardian in accordance with section 181 (1) (f):

- (a) a Public Service agency (or part of a Public Service agency),
- (b) an organisation (or part of an organisation) that provides or arranges voluntary out-of-home care.

Secretary means the Secretary of the Department.

[3] Section 5A

Insert after section 5:

5A Meaning of “principal officer”

- (1) In this Act, the **principal officer** of a designated agency means:

- (a) in the case of a designated agency that does not provide or arrange voluntary out-of-home care—the person who has the overall supervision of the agency’s arrangements for providing statutory out-of-home care and supported out-of-home care, or
 - (b) in the case of any other designated agency:
 - (i) the person who has the overall supervision of the agency’s arrangements for providing statutory out-of-home care and supported out-of-home care, and
 - (ii) if a different person has the overall supervision of the agency’s arrangements for providing and arranging voluntary out-of-home care—that other person.
- (2) In this Act, the **principal officer** of a registered agency means the person who has the overall supervision of the agency’s arrangements for providing and arranging voluntary out-of-home care.
- (3) If more than one person is the principal officer of a designated agency under subsection (1) (b), any reference in this or any other Act to the principal officer of the designated agency is a reference to each of those persons, unless the reference:
- (a) relates only to statutory out-of-home care or supported out-of-home care (or both), in which case it is a reference to the person referred to in subsection (1) (b) (i), or
 - (b) relates only to voluntary out-of-home care, in which case it is a reference to the person referred to in subsection (1) (b) (ii).
- (4) Anything done by, or with the approval of, the principal officer of a designated agency or a registered agency in relation to out-of-home care is, for the purposes of this Act and the regulations, taken to be done by the designated agency or registered agency concerned.
- (5) Nothing in subsection (4) affects any personal liability of the principal officer.

[4] Section 79 Order (other than guardianship order) allocating parental responsibility

Insert after section 79 (4):

- (4A) The Children’s Court must not make an order under this section allocating any aspect of parental responsibility to an organisation or to the principal officer of a designated agency (other than the Secretary).

[5] Section 79A Allocation of parental responsibility by guardianship order

Omit the definition of *prospective guardian* from section 79A (1).

[6] Section 79B Applications for guardianship orders

Omit section 79B (1) (c). Insert instead:

(c) with the written consent of the Secretary—a person who is seeking to be allocated all aspects of parental responsibility for the child or young person.

Note—

An authorised carer may be such a person.

[7] Section 79B (1A)

Insert after section 79B (1):

(1A) The Secretary must not make an application, or give consent to the making of an application, under subsection (1) unless satisfied that the person to whom parental responsibility for the child or young person is to be allocated has agreed to undergo, and has satisfied, such suitability assessments as may be prescribed by the regulations.

[8] Section 79B (9) (b)

Omit the paragraph. Insert instead:

(b) the arrangements for contact between the child or young person and his or her parents, relatives and friends and other persons connected with the child or young person (including where relevant, any contact order made under section 86 by the Children's Court or contact variation agreement made under section 86A),

[9] Section 79D

Insert after section 79C:

79D Prospective guardian must notify Secretary of resident

(1) A prospective guardian must, as soon as reasonably practicable, notify the Secretary:

(a) if any person (other than the prospective guardian and any other prospective guardian of the child or young person) resides on the same property as the prospective guardian for 3 weeks or more, or

(b) if a person residing on the same property as the prospective guardian attains the age of 18 years.

(2) This section does not apply to a prospective guardian who is authorised as an authorised carer by a designated agency if the designated agency is also responsible for supervising the placement of the child or young person for whom parental responsibility is being sought by the prospective guardian.

Note—

See section 137 (3) in the case of authorised carers authorised by a designated agency.

(3) For the purposes of this section:

reside on a property has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

[10] Section 101A Guardian ad litem—exclusion of personal liability

Omit “Department of Attorney General and Justice” from the definition of **Guardian Ad Litem Panel** in section 101A (3).

Insert instead “Department of Justice”.

[11] Section 137 Authorised carers

Insert after section 137 (2) (b):

(b1) the authorisation of persons, by designated agencies, as authorised carers on a provisional basis,

[12] Section 137 (2) (e)

Insert “, including prescribing events, the occurrence of which, raise a presumption that an authorisation is to be cancelled” after “authorisation”.

[13] Section 137 (3) and (4)

Omit the subsections. Insert instead:

(3) In the case of an authorised carer who is authorised by a designated agency, it is a condition of the authorisation that the carer must, as soon as reasonably practicable, notify the designated agency:

(a) if any person (other than the carer) resides on the same property as the carer for 3 weeks or more, or

(b) if a person residing on the same property as the carer attains the age of 18 years.

Note—

See section 10 of the *Child Protection (Working with Children) Act 2012* which requires that an adult person who resides on the same property as an authorised carer for more than 3 weeks must hold a working with children check clearance.

(4) For the purposes of this section:

reside on a property has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

[14] Section 139 Designated agencies

Omit section 139 (1). Insert instead:

(1) In this Act, **designated agency** means:

- (a) a Public Service agency (or part of a Public Service agency), or
- (b) an organisation (or part of an organisation) that arranges the provision of out-of-home care,

if the agency or organisation (or part of the agency or organisation) is accredited for the time being in accordance with the regulations.

[15] Section 156 Preliminary

Omit the definition of **relevant agency** from section 156 (1). Insert instead:

relevant agency means a designated agency or a registered agency.

[16] Section 156 (2) (b)

Omit the paragraph. Insert instead:

- (b) the registration of a Public Service agency or an organisation (or part of any such agency or organisation) as a registered agency for the purposes of this Part.

[17] Section 171A

Insert after section 171:

171A Principal officer of designated agency must not reside with children under agency's care

- (1) The principal officer of a designated agency must not reside on the same property as a child or young person who is in out-of-home care supervised by the

designated agency.

Maximum penalty: 200 penalty units.

(2) Subsection (1) does not apply if the principal officer resides with the child or young person at a facility of the designated agency at which out-of-home care is provided.

(3) In this section:

reside on a property has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

[18] Section 186A Referral of matters to police and other investigative agencies

Omit “of the Department of Family and Community Services” from section 186A (2).

[19] Section 245 Decisions that are administratively reviewable by Civil and Administrative Tribunal

Omit section 245 (1) (a) and (b). Insert instead:

- (a) a decision of the relevant decision-maker to suspend a person’s authorisation as an authorised carer or to impose conditions on a person’s authorisation,
- (a1) a decision of the relevant decision-maker to cancel a person’s authorisation as an authorised carer, other than a decision to cancel an authorisation granted on a provisional basis or a decision to cancel an authorisation on the occurrence of an event prescribed under section 137 (2) (e),
- (b) a decision of the relevant decision-maker to accredit or not to accredit a Public Service agency or an organisation (or part of a Public Service agency or organisation) as a designated agency,

[20] Section 245B Interpretation

Omit “or organisation” from paragraph (b) of the definition of ***prescribed body*** in section 245B (1).

Insert instead “, organisation or person”.

[21] Section 245CA

Insert after section 245C:

245CA Provision of information by any person

(1) This section applies to the following persons:

- (a) an authorised carer or a carer applicant,
 - (b) a guardian or a prospective guardian,
 - (c) a person who resides on the same property as a person referred to in paragraph (a) or (b).
- (2) Any person (the **provider of information**) may provide information to a designated agency about another person if the provider of information:
- (a) has been notified by the designated agency, the Children’s Guardian or the Secretary that the other person is a person to whom this section applies, or
 - (b) otherwise reasonably believes the other person to be a person to whom this section applies.
- (3) A designated agency may use any such information to determine whether a person is suitable to be, or to continue to be, an authorised carer or guardian.
- (4) Information may be provided under this section regardless of whether the provider has been requested to provide the information.
- (5) For the purposes of this section:

reside on a property has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

[22] Section 248 Provision and exchange of information

Omit “Division of the Government Service” from paragraph (a) of the definition of **prescribed body** in section 248 (6).

Insert instead “Public Service agency”.

[23] Section 248B

Insert after section 248A:

248B Disclosure of information to bodies in other jurisdictions

- (1) In this section:

assessment information means information relevant to assessing the suitability of a person to be an adoptive parent (within the meaning of the *Adoption Act 2000*), an authorised carer or a guardian or the equivalent of any of these in another jurisdiction and may include information about the person and any other person who resides on the same property as the person.

reside on a property has the same meaning as in the *Child Protection*

(Working with Children) Act 2012.

State child protection body means the following:

- (a) the Department,
 - (b) the Children's Guardian,
 - (c) each designated agency,
 - (d) each accredited adoption service provider.
- (2) The object of this section is to provide for the exchange of assessment information between State child protection bodies and bodies that arrange or provide child protection, out-of-home care, guardianship or adoption services in other jurisdictions.
 - (3) The Minister may, by order published in the Gazette, make protocols setting out the circumstances under which assessment information may be exchanged under this section.
 - (4) The protocols may contain recommended privacy standards for bodies in other jurisdictions and may prohibit the disclosure of information under this section to bodies that do not adopt those standards.
 - (5) The Minister is to consult with the Privacy Commissioner in the preparation of the protocols.
 - (6) A State child protection body may exchange assessment information with bodies that arrange or provide child protection, out-of-home care, guardianship or adoption services in other jurisdictions, but only if the exchange is in accordance with the protocols.
 - (7) Section 245G applies to a person who, acting in good faith, exchanges information in accordance with this section in the same way as it applies to a person who, acting in good faith, provides information under Chapter 16A.
 - (8) Nothing in this section limits an exchange of assessment information that is otherwise permitted under any Act or law.

Note—

See for example section 231V.

[24] Section 264 Regulations

Omit section 264 (1A) (k). Insert instead:

- (j) the appointment of principal officers and other officers by designated agencies and

registered agencies and the licensing of those principal officers,

- (k) the register under section 181 (1) (d), including the information that is to be included on the register, the circumstances in which persons are required to enter information on the register, access to, and disclosure of, information on the register and any requirements for consultation with the Ombudsman in relation to the register or information held on the register.

[25] Schedule 3 Savings, transitional and other provisions

Omit “that authorised person and his or her spouse” from clause 35 (1).

Insert instead “that relative or kin”.

[26] Schedule 3, clause 35 (1A)

Insert after clause 35 (1):

- (1A) A guardianship order that is taken to have been made under subclause (1) is taken to have allocated aspects of parental responsibility to the relevant relative or kin referred to in that subclause only and not to any other person.

[27] Schedule 3, clause 36

Omit “clause 34”. Insert instead “clause 35”.

[28] Schedule 3, Part 11

Insert after clause 39:

Part 11 Provisions consequent on enactment of [Child Protection Legislation Amendment Act 2015](#)

40 Definition

In this Part:

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

41 Principal officer

Section 5A (4) extends to things done by, or with the approval of, a principal officer before the commencement of that subsection in the same way as it applies to things done by, or with the approval of, a principal officer after that commencement.

42 Notification of other residents

- (1) Section 79D extends to any person residing on the same property as the

prospective guardian who has not been notified to the designated agency even if that person commenced residing on the property, or attained the age of 18 years, before the commencement of that section.

- (2) Section 137 (3), as substituted by the amending Act, extends to any person residing on the same property as the authorised carer who has not been notified to the designated agency even if that person commenced residing on the property, or attained the age of 18 years, before that substitution.

43 Reviews by NCAT

Section 245 (1), as in force immediately before it was amended by the amending Act, continues to apply in respect of any decision made before that amendment.

Schedule 4 Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2

[1] Section 8A Provision of information to Children's Guardian

Omit section 8A (1). Insert instead:

- (1) This section applies to information of a class that the Children's Guardian has determined is information that is relevant to the exercise of the functions of the Children's Guardian in connection with the accreditation or registration of a designated agency or registered agency under the *Children and Young Persons (Care and Protection) Act 1998*.
- (1A) An Official Community Visitor is required to provide to the Children's Guardian, and the Children's Guardian is authorised to collect and use, any information belonging to a class referred to in subsection (1), but only if the Children's Guardian has notified the Official Community Visitor that the information belongs to such a class.

[2] Section 22 Complaints about service providers

Insert at the end of the section:

- (6) For the avoidance of doubt, subsection (1) extends to a complaint about any decision of a designated agency in respect of the authorisation of a person as an authorised carer under the *Children and Young Persons (Care and Protection) Act 1998*.

[3] Schedule 1 Savings and transitional provisions

Insert after clause 18:

Part 6 Child Protection Legislation Amendment Act 2015

19 Provision of information to Children's Guardian

Section 8A (1A) extends to information obtained by an Official Community Visitor before the commencement of that subsection.

Schedule 5 Amendment of Ombudsman Act 1974 No 68

[1] Section 25A Definitions

Insert in alphabetical order in section 25A (1):

parent of a child means a person having parental responsibility (within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*) for the child.

[2] Section 25AAA

Insert after section 25A:

25AAA Part extends to persons who reside with authorised carers

(1) This Part applies to an individual (other than a child) who resides for 3 weeks or more on the same property as an authorised carer in the same way as this Part applies to an employee and in any such case the individual is, for the purposes of this Part, taken to be an employee of the designated agency that authorised the authorised carer.

(2) In this section:

authorised carer means a person who is authorised as an authorised carer by a designated agency under section 137 of the *Children and Young Persons (Care and Protection) Act 1998* and who cares for children or young persons in his or her private capacity.

reside on a property has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

[3] Section 25GA

Insert after section 25G:

25GA Disclosure of information about investigations to children, parents and carers

(1) This section applies to the following information in relation to an investigation by

the Ombudsman, a designated government agency or a designated non-government agency concerning a reportable allegation:

- (a) information about the progress of the investigation,
 - (b) the findings of the investigation,
 - (c) any action taken in response to those findings.
- (2) The Ombudsman, the head of a designated government agency or the head of a designated non-government agency may disclose information to which this section applies to any one or more of the following persons:
- (a) the child who was allegedly the subject of the reportable conduct or misconduct forming the basis of the reportable allegation,
 - (b) any parent of the child,
 - (c) if the child is in out-of-home care (within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*)—any authorised carer (within the meaning of that Act) that provides that out-of-home care.
- (3) Nothing in this section limits any disclosure that may otherwise be made under any Act or law.

Note—

See Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*, which authorises agencies to exchange information to facilitate the provision of services to children and young persons.

- (4) In this section:

reportable allegation includes an allegation of conduct or misconduct that may involve any of the following conduct:

- (a) conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards,
- (b) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures,
- (c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.

[4] Section 25WA

Insert after section 25W:

25WA Disclosure of information about investigations to persons with disability

- (1) This section applies to the following information in relation to an investigation by the Ombudsman, the Department or a funded provider concerning a reportable allegation:
 - (a) information about the progress of the investigation,
 - (b) the findings of the investigation,
 - (c) any action taken in response to those findings.
- (2) The Ombudsman, the Secretary or the head of a funded provider may disclose information to which this section applies to any one or more of the following persons:
 - (a) the person with a disability who was allegedly the subject of the reportable incident or behaviour forming the basis of the reportable allegation,
 - (b) any person nominated by the person with a disability to receive the information,
 - (c) if the Ombudsman, the Secretary or the head of a funded provider has a reasonable belief that the person with the disability does not have the capacity to understand the information or to nominate a person under paragraph (b):
 - (i) a guardian (within the meaning of the *Guardianship Act 1987*) of the person with a disability, or
 - (ii) a person who holds an enduring power of attorney in respect of the person with a disability, or
 - (iii) a person who is authorised to make legal or financial decisions on behalf of the person with a disability, or
 - (iv) a close friend or relative of the person with a disability (being a friend or relative of the person who maintains both a close personal relationship with the person through frequent personal contact and a personal interest in the person's welfare and who does not provide support to the person wholly or substantially on a commercial basis).
- (3) Nothing in this section limits any disclosure that may otherwise be made under any other Act or law.
- (4) In this section:

reportable allegation includes an allegation against a person of an incident that is exempt under section 25S from being a reportable incident or an allegation of behaviour that may involve such an incident.

[5] Schedule 2 Savings and transitional provisions

Insert after clause 5:

6 Child Protection Legislation Amendment Act 2015

- (1) Section 25GA extends to information in relation to an investigation that commenced before the commencement of that section.
- (2) Section 25WA extends to information in relation to an investigation that commenced before the commencement of that section.