



New South Wales

Child Protection Legislation Amendment Bill 2015

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Adoption Act 2000*, the *Child Protection (Working with Children) Act 2012*, the *Children and Young Persons (Care and Protection) Act 1998*, the *Community Services (Complaints, Reviews and Monitoring) Act 1993* and the *Ombudsman Act 1974* to implement miscellaneous reforms relating to the protection of children and young persons, including amendments with respect to:

- (a) assessing a person's suitability to be an adoptive parent, guardian or carer, including by taking into account the persons who reside with any such person, and
- (b) applying the child protection provisions of the *Ombudsman Act 1974* and the reporting body provisions of the *Child Protection (Working with Children) Act 2012* to adult persons who reside on the same property as authorised carers, and
- (c) ensuring that persons who carry out child-related work or who reside on certain properties or who hold key positions in certain agencies hold working with children check clearances or have current applications for clearances, and
- (d) ensuring that employers, responsible agencies and the governing bodies of agencies verify that those persons hold a clearance or have a current application and are notified when any such person ceases to hold a clearance or have a current application, and
- (e) requiring and permitting information to be provided and exchanged for the purposes specified in paragraphs (a)–(d), and
- (f) permitting information about investigations into reportable allegations to be provided to the child or person with a disability who is the alleged victim of the conduct to which the

allegation relates and to certain other persons who are concerned in the welfare of the child or person with a disability.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act by proclamation.

Clause 3 repeals the *Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001*.

Schedule 1 Amendment of Adoption Act 2000 No 75

Schedule 1 [1] and [9] update references to a Department and the head of a Department.

Schedule 1 [2] provides that anything done by or with the approval of the principal officer of an accredited adoption service provider in relation to adoption services is taken to be done by the accredited adoption service provider.

Schedule 1 [3] inserts definitions of *applicant* (being a person who has made an application to adopt that is still current) and *reside on a property* (which refers to the definition inserted by Schedule 2 [2]) for the purposes of Part 3 of Chapter 4 of the *Adoption Act 2000* (the *Principal Act*). **Schedule 1 [6]** inserts similar definitions for the purposes of Part 3A of Chapter 4 of the *Principal Act*. **Schedule 1 [4]** makes a consequential amendment.

Schedule 1 [5] inserts proposed sections 45AA and 45AB into Part 3 of Chapter 4 of the *Principal Act* and **Schedule 1 [8]** inserts similar sections into Part 3A of Chapter 4 of the *Principal Act*.

Proposed section 45AA permits any person to provide information about another person to the principal officer of an accredited adoption service provider or to the Secretary of the Department of Family and Community Services (the *Secretary*) if the person reasonably believes the other person to be an applicant or a person who resides on the same property as an applicant. The information provided may be used to determine whether the applicant is suitable to adopt a child. The person who provides the information is protected from civil, criminal or disciplinary action in relation to the provision of the information.

Proposed section 45AB requires an applicant to notify the person to whom the application was made about any person who resides on the same property as the applicant for 3 weeks or more, or about any person residing on the same property as the applicant who attains the age of 18 years.

Schedule 1 [7] permits the Secretary or the principal officer of an accredited adoption service provider to invite an authorised carer of a child who is in out-of-home care to submit an application to adopt the child (currently this may only be done by the Secretary).

Schedule 1 [10] inserts savings and transitional provisions consequential on the other amendments proposed to be made by Schedule 1.

Schedule 1 [11] inserts a definition of *Secretary* for the purposes of the *Principal Act*.

Schedule 2 Amendment of Child Protection (Working with Children) Act 2012 No 51

Schedule 2 [1] omits definitions of *interim bar* and *working with children check number* and inserts a number of definitions for the purposes of the *Child Protection (Working with Children) Act 2012* (the *Principal Act*) including *notifiable person* in relation to an applicant for, or a holder of, a working with children check clearance (a *clearance*). Notifiable persons include any employer or proposed employer of the applicant or holder in respect of child-related work. **Schedule 2 [3], [8]–[12], [22], [32], [33] and [36]** make consequential amendments.

Schedule 2 [2] sets out what is meant by the term *reside on a property* as this term is to replace the concept of reside at a home throughout the Principal Act.

Schedule 2 [4] provides a defence to offences of engaging in child-related work by a person who does not have a clearance or a current application for a clearance or by a person who is subject to an interim bar. If the offence was consequential on the 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 person did not know about the interim bar, refusal, termination or cancellation.

Schedule 2 [5] corrects an incorrect reference.

Schedule 2 [6] inserts proposed sections 9A and 9B.

Proposed section 9A requires an employer to verify on the working with children register that each worker who will carry out child-related work for the employer holds a clearance or has a current application for such a clearance. The verification must occur before the worker commences child-related work and then again when a clearance of the worker ceases to have effect (which occurs 5 years after it is granted).

Proposed section 9B requires the governing body of an organisation to 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 clearance or has a current application for a clearance. Failure to do so is an offence with a maximum penalty of \$11,000, in the case of a corporation, and \$5,500 in any other case. Key positions in an organisation are the chief executive officer, the principal officer (in the case of a designated agency, a registered agency or an accredited adoption service provider) and any other position prescribed by the regulations under the Principal Act.

Schedule 2 [7] re-enacts section 10 of the Principal Act. That section made it an offence if an adult person who does not have a clearance or a current application for a clearance resides at the home of an authorised carer or at a home where a home based education and care service or family day care service is provided. The new section will take account of the change in terminology from reside at a home to reside on a property. The new section will also make it clear that a person who is subject to an interim bar is taken not to have a clearance or a current application for a clearance. Finally, the new section will provide defences if the adult person has been residing on the property for less than 3 weeks or if the accused person (which may be the adult person, the agency that authorised the authorised carer or the agency that oversees the provision of the education and care service or family day care service) did not know about certain matters that caused the adult person to no longer have a clearance or a current application for a clearance.

Schedule 2 [13] prescribes certain agencies as the responsible agency in respect of prospective adoptive parents, prospective guardians and adult persons who reside on the same property as any such person or adult persons who reside on the same property as an authorised carer or carer applicant or on a property where a home based education and care service or family day care service is provided. A responsible agency must verify on the working with children register that each person, for whom the agency is the responsible agency, holds a clearance or has a current application for a clearance. The verification must occur when the agency becomes aware that it is the responsible agency for the person and then again when a clearance of the person ceases to have effect (which occurs 5 years after it is granted).

Schedule 2 [14] requires the Children's Guardian to ensure that each applicant for a clearance is given an application number and provides that an applicant may withdraw an application only with the consent of the Children's Guardian. The Children's Guardian is not to consent if of the opinion that there would be a risk to the safety of children if the applicant were to engage in child-related work. The Children's Guardian is required to give written notice of the withdrawal to notifiable persons in respect of the applicant.

Schedule 2 [15] extends the embargo on a fresh application for a clearance following a refusal of an application so that a person whose clearance is cancelled under section 23 (Cancellation of clearances) of the Principal Act is also unable to make a further application for 5 years unless

certain circumstances change or the Children's Guardian permits an earlier application to be made. **Schedule 2 [24]** makes a consequential amendment.

Schedule 2 [16] reduces the period within which an applicant for a clearance must provide further information to the Children's Guardian from 6 months to 3 months. The Children's Guardian may terminate an application if the applicant fails to provide the information within that time. **Schedule 2 [17]** requires the Children's Guardian to give written notice of the termination to notifiable persons in respect of the applicant.

Schedule 2 [18] provides that an interim bar is also a bar on residing 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 (currently it is only a bar on engaging in child-related work). **Schedule 2 [19]** makes a consequential amendment.

Schedule 2 [20] requires the Children's Guardian to give written notice of any interim bar to notifiable persons in respect of any applicant or holder of a clearance who is subject to the interim bar.

Schedule 2 [21] makes it clear that an interim bar ceases in respect of an applicant for a clearance if the application for the clearance is refused.

Schedule 2 [23] requires the Children's Guardian to give written notice of any refusal of an application to the applicant and to notifiable persons in respect of the applicant.

Schedule 2 [25] and [26] require the Children's Guardian to give written notice of any cancellation of a clearance to notifiable persons in respect of the holder of the clearance.

Schedule 2 [27] specifies additional matters that must be included on the working with children register. These include the name and date of birth of the applicant for, or holder of, a clearance and, in the case of an application for a clearance, any determination by the Children's Guardian to refuse the application and in respect of a clearance, whether the holder of the clearance is subject to an interim bar or has had a clearance cancelled.

Schedule 2 [28] requires the Children's Guardian to make information on the working with children register available to a person carrying out a verification under proposed section 9A or 11B. The amendment also permits regulations under the Principal Act to be made for or with respect to a number of matters related to the register.

Schedule 2 [29] requires a designated agency to notify the Children's Guardian of the name and identifying particulars of any adult person who resides for 3 weeks or more on the same property as an authorised carer authorised by the agency if the agency has made a finding that the adult person engaged in sexual misconduct committed against, with or in the presence of a child, including grooming of a child or engaged in the serious physical assault of a child. **Schedule 2 [30]** includes designated agencies as reporting bodies for the purposes of section 35 of the Principal Act.

Schedule 2 [31] extends the database functions of the Children's Guardian so as to require information to be collected and maintained about persons who verify information on clearances or applications for clearances.

Schedule 2 [34] permits the Children's Guardian to disclose information obtained or used under the Principal Act to the Secretary for the purposes of the Secretary exercising functions under Chapter 4 (Children and young persons in need of care and protection) of the *Children and Young Persons (Care and Protection) Act 1998*. The information that may be disclosed is information about any person who the Children's Guardian reasonably believes is or was an authorised carer, a carer applicant, a prospective adoptive parent, a guardian or a prospective guardian, or a person who resides or has resided on the same property as any such person. **Schedule 2 [35]** inserts a definition of *guardian*.

Schedule 2 [37] removes a provision that has become redundant because of changes made to the regulations under the Principal Act.

Schedule 2 [38] provides that certain exemptions from the requirement to have a clearance or a current application for a clearance in the case of self-employed persons who undertake child-related work do not apply to a disqualified person or to a person who has been subject to an interim bar, had an application for a clearance refused or had a clearance cancelled.

Schedule 2 [39] inserts savings and transitional provisions consequential on the other amendments proposed to be made by Schedule 2.

Schedule 3 Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157

Schedule 3 [1] updates references to the head of a Department.

Schedule 3 [2] omits the definition of *Director-General* and inserts a number of definitions for the purposes of the *Children and Young Persons (Care and Protection) Act 1998* (the *Principal Act*). **Schedule 3 [5], [15] and [18]** make consequential amendments.

Schedule 3 [3] specifies who is the principal officer of a designated agency or a registered agency and provides that anything done by, or with the approval of, the principal officer in relation to out-of-home care is taken to be done by the designated agency or registered agency concerned.

Schedule 3 [4] prevents the Children's Court from making an order allocating any aspect of parental responsibility for a child or young person to an organisation or the principal officer of a designated agency (other than the Secretary).

Schedule 3 [7] prevents the Secretary from making an application for a guardianship order (or consenting to a designated agency or other person making such an application) unless the Secretary is satisfied that the person to whom parental responsibility for the child or young person is to be allocated under those orders has satisfied such suitability assessments as may be prescribed by regulations under the Principal Act. **Schedule 3 [6]** makes a consequential amendment.

Schedule 3 [8] provides that a care plan prepared by an applicant for a guardianship order must include information about the arrangements for contact between the child or young person and parents, relatives, friends and other persons connected with the child or young person.

Schedule 3 [9] requires a prospective guardian (other than an authorised carer) to notify the Secretary if a person resides on the same property as the prospective guardian for 3 weeks or more or if a person residing on that property attains the age of 18 years.

Schedule 3 [10] updates a reference to a renamed Department.

Schedule 3 [11] permits regulations under the Principal Act to make provision with respect to the authorisation of persons as authorised carers on a provisional basis.

Schedule 3 [12] permits regulations under the Principal Act to make provision with respect to prescribing events the occurrence of which raise a presumption that an authorised carer's authorisation will be cancelled.

Schedule 3 [13] requires an authorised carer to notify the designated agency that authorised the authorised carer if a person resides on the same property as the authorised carer for 3 weeks or more or if a person residing on that property attains the age of 18 years.

Schedule 3 [14], [16] and [22] update terminology as a consequence of the commencement of the *Government Sector Employment Act 2013*.

Schedule 3 [17] makes it an offence with a maximum penalty of \$22,000 if the principal officer of a designated agency resides on the same property as a child or young person who is in out-of-home care supervised by the designated agency. However, the offence 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.

Schedule 3 [19] provides that certain decisions are not reviewable by the Civil and Administrative Tribunal. These are decisions not to authorise a person as an authorised carer, a decision to cancel an authorisation granted on a provisional basis and a decision to cancel a person's authorisation if the cancellation occurs because of an event that has been prescribed by the regulation under the Principal Act as an event, the occurrence of which raises a presumption that an authorised carer's authorisation will be cancelled (see Schedule 3 [12]).

Schedule 3 [20] permits a person to be prescribed by the regulations under the Principal Act as a prescribed body for the purposes of Chapter 16A (Exchange of information and co-ordination of services) of the Principal Act.

Schedule 3 [21] permits a person (the *provider of information*) to provide information to a designated agency about another person if the provider of information reasonably believes that the other person is an authorised carer, carer applicant, guardian, prospective guardian or person who resides on the same property as any such person. The designated agency is authorised to use information so provided to determine whether a person is suitable to be, or to continue to be, an authorised carer or guardian.

Schedule 3 [23] provides for the exchange of information between bodies that assess the suitability of persons to be adoptive parents, guardians or authorised carers in this State and bodies that arrange or provide child protection, out-of-home care, guardianship or adoption services in other jurisdictions. An exchange may occur only if it is in accordance with protocols made by the Minister for Family and Community Services in consultation with the Privacy Commissioner.

Schedule 3 [24] permits regulations under the Principal Act to make provision for or with respect to officers of designated agencies and registered agencies (including principal officers) and the register established by the Children's Guardian for the purpose of the authorisation of individuals as authorised carers.

Schedule 3 [25] and [26] update a savings and transitional provision to make it clear that a guardianship order that is taken to be made under that provision allocates parental responsibility to a person who is a relative or kin and not to any other person.

Schedule 3 [27] corrects a cross-reference.

Schedule 3 [28] inserts savings and transitional provisions consequential on the other amendments proposed to be made by Schedule 3.

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

Schedule 4 [1] requires an Official Community Visitor to provide the Children's Guardian with any information that the Children's Guardian determines is relevant to the accreditation or registration of a designated agency or a registered agency. **Schedule 4 [3]** inserts a transitional provision consequential on the amendment.

Schedule 4 [2] makes it clear that a person may make a complaint to the Ombudsman about the conduct of a designated agency in respect of the authorisation of a person as an authorised carer.

Schedule 5 Amendment of Ombudsman Act 1974 No 68

Schedule 5 [1] inserts a definition of *parent* for the purposes of Part 3A (Child protection) of the *Ombudsman Act 1974* (the *Principal Act*).

Schedule 5 [2] provides that Part 3A of the Principal Act applies to an adult who resides on the same property as an authorised carer for 3 weeks or more in the same way as it applies to an employee and in such a case the adult is taken to be an employee of the designated agency that authorised the carer.

Schedule 5 [3] permits the Ombudsman, the head of a designated government agency or the head of a designated non-government agency to disclose certain information concerning an investigation into a reportable allegation. The information may be disclosed to the child who is allegedly the subject of the reportable conduct or misconduct that forms the basis of the allegation, a parent of the child or an authorised carer of the child.

Schedule 5 [4] permits the Ombudsman, the Secretary or the head of a funded provider to disclose certain information concerning an investigation into a reportable allegation. The information may be disclosed to the person with a disability who is allegedly the subject of the reportable incident or behaviour that forms the basis of the allegation, a nominee of the person or if the person lacks capacity, specified persons who are concerned in the welfare of the person with a disability.

Schedule 5 [5] inserts savings and transitional provisions consequential on the other amendments proposed to be made by Schedule 5.