



New South Wales

Child Protection (Working with Children) Amendment Regulation 2014

under the

Child Protection (Working with Children) Act 2012

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

GABRIELLE UPTON, MP
Minister for Family and Community Services

Explanatory note

The objects of this Regulation are as follows:

- (a) to make murder of any person a disqualifying offence for the purposes of the *Child Protection (Working with Children) Act 2012* (the *Act*),
- (b) to define certain agencies that provide voluntary out-of-home care as **registered agencies** and to provide that the role of the person having the overall supervision of the agency's arrangements for the provision of that care (the **principal officer** of the agency) is a child-related role,
- (c) to provide that the role of a member of a governing body of a designated agency, accredited adoption service provider or registered agency is a child-related role,
- (d) to provide a 48 hour exemption from offences in section 10 of the Act if an adult person who resides at the home of an authorised carer ceases to have a clearance or current application,
- (e) to provide an exemption from offences in section 10 of the Act in the case of an adult person who resides at the home of an authorised carer whose authorisation is suspended,
- (f) to provide a one-year exemption (unless the Children's Guardian directs otherwise) from the requirement that a reporting agency notify the Children's Guardian of any finding it has made before 3 July 1995 that a worker has engaged in misconduct involving children,
- (g) to require the principal officer and each member of the governing body of a designated agency, registered agency or accredited adoption service provider to comply with Division 2 (Mandatory requirements for child-related work) of Part 2 of the Act by 31 March 2015,
- (h) to provide that the Children's Guardian may require certain self-employed persons who are exempt from Division 2 of Part 2 of the Act to comply with that Division,
- (i) to provide that certain exemptions do not apply to persons who are disqualified persons or persons who have been subject to an interim bar or who have had a working with children check clearance cancelled or an application for a clearance refused,
- (j) to make other minor amendments.

This Regulation is made under the *Child Protection (Working with Children) Act 2012*, including sections 6 (3) (g) and 52 (the general regulation-making power) and Schedule 3, clauses 1 and 7.

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Child Protection (Working with Children) Act 2012

1 Name of Regulation

This Regulation is the *Child Protection (Working with Children) Amendment Regulation 2014*.

2 Commencement

This Regulation commences on 29 October 2014.

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

Omit “murder of a child” from clause 1 (1) (a) of Schedule 2. Insert instead “murder”.

Schedule 1 Amendment of Child Protection (Working with Children) Regulation 2013

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

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

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

[2] Clauses 16B and 16C

Insert after clause 16A:

16B Membership of governing body of certain agencies

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

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

16C Principal officer of registered agency

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

[3] Clauses 22C–22E

Insert after clause 22B:

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

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

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

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

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

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

[4] Schedule 1 Savings and transitional provisions

Renumber clause 2 (5) (d) and (e) as clause 2 (4) (e) and (f) respectively and move and insert after clause 2 (4) (d).

[5] Schedule 1, clause 2 (9A)

Insert after clause 2 (9):

- (9A) This clause does not apply to a person who:
- (a) is a disqualified person, or
 - (b) has been subject to an interim bar, or
 - (c) has had an application for a working with children check clearance refused, or
 - (d) has had a working with children check clearance cancelled.

[6] Schedule 1, clauses 2B and 2C

Insert after clause 2A:

2B Membership of governing body of certain agencies

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

2C Principal officer of registered agency

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

[7] Schedule 1, clause 5 (1) and (3) (b)

Omit “clause 2 or 2A” wherever occurring. Insert instead “clause 2–2C”.

[8] Schedule 1, clause 5A

Insert after clause 5:

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

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

[9] Schedule 1, clause 7 (3) (a)

Omit “Government Service”. Insert instead “Public Service”.

[10] Schedule 1, clause 7 (6)

Omit the subclause. Insert instead:

- (6) This clause does not apply to an existing child-related worker or an existing resident who:
 - (a) is a disqualified person, or
 - (b) has been subject to an interim bar, or
 - (c) has had an application for a working with children check clearance refused, or
 - (d) has had a working with children check clearance cancelled.

[11] Schedule 1, clause 7A

Insert after section 7:

7A Self-employed persons

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

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

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

[12] Schedule 1, clause 8

Insert at the end of clause 8:

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

[13] Schedule 2 Amendment of Child Protection (Working with Children) Act 2012

Omit the Schedule.