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Earlier legislative changes

Legislative changes October 2016

In October 2016, the NSW Government introduced reforms to strengthen the regulatory powers of the Office of the Children's Guardian. New amendments also tightened provisions for appealing against decisions to bar unsuitable Working With Children Check applicants from working with children. Also, under the Working With Children Check, it is now an offence to make a false or misleading statement, punishable by a maximum penalty of \$550.

These changes are included in the *Child Protection (Working with Children) and Other Child Protection Legislation Amendment Act 2016*, making amendments to the following Acts:

- *Child Protection (Working with Children) Act 2012*
- *Children and Young Persons (Care and Protection) Act 1998*
- *Teaching Service Act 1980*
- *Education (School Administrative and Support Staff) Act 1987*

Amendments to the Teaching and Education Staff Acts provide for suspension from duty (instead of dismissal) for a person whose Working with Children Check is cancelled because of a pending charge for a serious offence under the Working with Children legislation.

In children's employment, the amendments give the Office of the Children's Guardian new powers to enter and inspect premises where they reasonably suspect a person is illegally employing a child, as well as the ability to serve on-the-spot penalty notices for breaches of children's employment legislation.

[A summary of the effects of the new amendments is provided here.](#)

Legislative changes November 2015

In November 2015, the NSW Government introduced reforms to strengthen the protection of children, particularly in situations where they are not in the care of their parents or families. These changes have been made under the [Child Protection Legislation Amendment Act 2015](#) to the following Acts:

- *Adoption Act 2000*
- *Children and Young Persons (Care and Protection) Act 1998*

- *Child Protection (Working with Children) Act 2012*
- *Ombudsman Act 1974*
- *Community Services (Complaints, Reviews and Monitoring) Act 1993.*

The changes aim to make sure that anyone in NSW who: carries out child-related work; resides on a property of an authorised carer or on a property where home-based education and care service or family day care services is provided; or holds a key position in an agency providing out-of-home care and adoption services has a Working With Children Check (WWCC) clearance that has been properly verified online.

These amendments come into effect on 2 November 2015. They affect all employers and organisations providing child-related services with roles that require a Working With Children Check clearance.

Key changes for:

- Child-related employers
- Designated agencies
- Working With Children Check clearances
- Exchange of information

Child-related employers

Employers and organisations must register and verify child-related workers online

Employers must verify a person's WWCC application or clearance online before engaging that person to work in child-related employment.

Sighting the WWC number is not sufficient verification.

Employers must verify online the WWC clearance status of all existing child-related workers within three months of the law taking effect on November 2, 2015. Verification must be done through the Working With Children Check Employer Register.

Expiring WWC clearances

A worker with an existing WWC clearance that is due to expire must reapply for a new WWCC and provide the new number to their employer. The employer must verify the new WWC application or clearance online within five working days of the expiry date of the old WWC clearance number.

Designated agencies

People who reside on the property of an authorised carer must hold a Working With Children Check clearance

All people residing for longer than three weeks on the property of an authorised carer or on a property where home-based education and care service of family day care service is provided must hold a WWC clearance. This includes people sleeping on a regular or frequent basis anywhere on the property, including a building, caravan, structure, vehicle or other thing.

Key positions in governing bodies to have WWCC

A governing body must ensure that a person appointed to a key

position, for example a chief executive officer or principal officer, holds a clearance. A record must be kept for 7 years detailing how the governing body determined that the person held a clearance.

Provision of information for selection purposes

Any person can provide information to a Principal Officer or the Secretary of Family and Community Services (FACS) about another person reasonably believed to be a prospective adoptive parent, authorised carer/carers applicant, guardian/prospective guardian.

Information can also be provided about a person residing on the same property of any of the above.

This information can be used to determine a person's suitability for the relevant role.

Further details about changes to the Acts relevant to designated agencies.

Working With Children Check clearances

Decisions that are not reviewable by the NSW Civil and Administrative Tribunal

People convicted and imprisoned for murder, the indecent or sexual assault of a child, child pornography or incest with a child victim will never be able to appeal to the NSW Civil and Administrative Tribunal (NCAT) to overturn a ban on them working with children.

Persons subject to a control order, for example good behaviour bond or home detention, cannot appeal to NCAT against a refusal decision for the duration of the order.

Time frame to provide further information reduced

When the Children's Guardian makes a request to a WWCC applicant for further information, the time frame to provide that information has been reduced from six to three months.

Withdrawal of WWCC application by consent only

Withdrawal from a WWCC application is only possible with the consent of the Children's Guardian.

Application of a reasonable person test

A 'reasonable person test' has been introduced. This means that a WWC clearance or enabling order cannot be granted unless the Guardian or Tribunal respectively is satisfied that a reasonable person would allow his or her child to have direct contact with the affected person who was not directly supervised.

Exchange of information

The Ombudsman and the exchange of information

The NSW Ombudsman can provide information about investigations into reportable allegations to the child or person with a disability who is the alleged victim of the conduct to which the allegation relates.

The Ombudsman also has the power to provide that information to certain other people, for example carers or parents, who are concerned with the welfare of the victim.

The Ombudsman's reportable conduct framework also applies to individuals who reside on the same property with an authorised carer for more than three weeks – in the same way it is applied to the authorised carer (who is considered to be an employee of the designated agency).

Disclosure of information to bodies in other jurisdictions

Information can be exchanged between state child protection bodies and bodies that arrange or provide child protection, out-of-home care, guardianship or adoption services in other jurisdictions.

The type of information that may be exchanged needs to be relevant for assessing the suitability of a person to be an adoptive parent, authorised carer or guardian or equivalent in other jurisdictions.

Provision of information to the Children's Guardian

In addition, persons acting in the role of Official Community Visitors can provide the Children's Guardian with any information that the Children's Guardian determines is relevant to the accreditation or registration of a designated/registered agency.

