



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.



New South Wales

# Child Protection Legislation Amendment Bill 2015

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New South Wales

# Child Protection Legislation Amendment Bill 2015

No. , 2015

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## **A Bill for**

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.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Child Protection Legislation Amendment Act 2015</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5
<b>3 Repeal</b>	6
The <i>Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001</i> No 91 is repealed.	7
	8

<b>Schedule 1</b>	<b>Amendment of Adoption Act 2000 No 75</b>	1
<b>[1] Whole Act (other than Schedule 3)</b>		2
	Omit “Director-General” and “Director-General’s” wherever occurring.	3
	Insert instead “Secretary” and “Secretary’s” respectively.	4
<b>[2] Chapter 3, Part 3</b>		5
	Insert after section 13:	6
<b>Part 3</b>	<b>Principal officer of accredited adoption service provider</b>	7
		8
<b>14</b>	<b>Actions of principal officer taken to be actions of provider</b>	9
(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.	10 11 12
(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.	13 14
(3)	Nothing in this section affects any personal liability of the principal officer.	15
<b>[3] Section 41A</b>		16
	Insert after section 41:	17
<b>41A</b>	<b>Definitions</b>	18
	In this Part:	19
	<b>applicant</b> means a person whose application to adopt under this Part:	20
(a)	has been submitted to the Secretary or a principal officer, and	21
(b)	has not been withdrawn or finally dealt with by the making of, or refusal to make, an adoption order.	22 23
	<b>reside on a property</b> has the same meaning as in the <i>Child Protection (Working with Children) Act 2012</i> .	24 25
<b>[4] Section 45</b>	<b>Assessment of suitability, and selection, of adoptive parents</b>	26
	Omit “resides with the person” from section 45 (2).	27
	Insert instead “resides on the same property as the person”.	28
<b>[5] Sections 45AA and 45AB</b>		29
	Insert after section 45A:	30
<b>45AA</b>	<b>Provision of information</b>	31
(1)	Any person (the <b>provider of information</b> ) may provide information to the principal officer of an accredited adoption service provider or the Secretary about another person if:	32 33 34
(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	35 36 37

(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.	1 2 3
(2)	Information provided under this section may be used to determine whether the applicant is suitable to adopt a child.	4 5
(3)	Information may be provided under this section regardless of whether the provider of information has been requested to provide the information.	6 7
(4)	A person who, acting in good faith, provides information under this section:	8
(a)	is not liable to any civil or criminal action, or any disciplinary action, for providing the information, and	9 10
(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.	11 12 13
<b>45AB</b>	<b>Notification about other residents</b>	14
	An applicant must, as soon as reasonably practicable, notify the Secretary or the principal officer to whom the application was submitted:	15 16
(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	17 18 19
(b)	if a person residing on the same property as the applicant attains the age of 18 years.	20 21
<b>[6]</b>	<b>Section 45CA</b>	22
	Insert after section 45C:	23
<b>45CA</b>	<b>Definitions</b>	24
	In this Part:	25
	<b><i>applicant</i></b> means a person whose application to adopt under this Part:	26
(a)	has been submitted to the Secretary or a principal officer, and	27
(b)	has not been withdrawn or finally dealt with by the making of, or refusal to make, an adoption order.	28 29
	<b><i>reside on a property</i></b> has the same meaning as in the <i>Child Protection (Working with Children) Act 2012</i> .	30 31
<b>[7]</b>	<b>Section 45D</b>	32
	Omit the section. Insert instead:	33
<b>45D</b>	<b>Application to adopt</b>	34
	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.	35 36 37

<b>[8] Sections 45GA and 45GB</b>	1
Insert after section 45G:	2
<b>45GA Provision of information</b>	3
(1) Any person (the <i>provider of information</i> ) may provide information to the principal officer of an accredited adoption service provider or the Secretary about another person if:	4
(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	5
(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.	6
(2) Information provided under this section may be used to determine whether the applicant is suitable to adopt a child.	7
(3) Information may be provided under this section regardless of whether the provider of information has been requested to provide the information.	8
(4) A person who, acting in good faith, provides information under this section:	9
(a) is not liable to any civil or criminal action, or any disciplinary action, for providing the information, and	10
(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.	11
<b>45GB Notification about other residents</b>	12
An applicant must, as soon as reasonably practicable, notify the Secretary or the principal officer to whom the application was submitted:	13
(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	14
(b) if a person residing on the same property as the applicant attains the age of 18 years.	15
<b>[9] Section 124A Guardian ad litem—exclusion of personal liability</b>	16
Omit “Department of Attorney General and Justice” from the definition of <i>Guardian Ad Litem Panel</i> in section 124A (3).	17
Insert instead “Department of Justice”.	18
<b>[10] Schedule 3 Savings, transitional and other provisions</b>	19
Insert after clause 26:	20
<b>Part 8 Provisions consequent on enactment of Child Protection Legislation Amendment Act 2015</b>	21
<b>27 Principal officer of accredited adoption service provider</b>	22
Section 14, as inserted by the <i>Child Protection Legislation Amendment Act 2015</i> , 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	23

things done by, or with the approval of, a principal officer after that commencement.	1 2
<b>28 Notification about other residents</b>	3
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.	4 5 6 7 8
<b>[11] Dictionary</b>	9
Omit the definition of <i>Director-General</i> . Insert in alphabetical order:	10
<i>Secretary</i> means the Secretary of the Department.	11

**Schedule 2      Amendment of Child Protection (Working with Children) Act 2012 No 51**      1  
2

**[1] Section 5 Definitions**      3

Omit the definitions of *interim bar* and *working with children check number* from section 5 (1).      4  
5

Insert in alphabetical order:      6

*accredited adoption service provider* has the same meaning as in the *Adoption Act 2000*.      7  
8

*application number* means the unique number given to an applicant for a working with children check clearance under this Act.      9  
10

*carer applicant* has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.      11  
12

*Department* means the Department of Family and Community Services.      13

*interim bar* means an interim bar imposed under section 17.      14

*notifiable person* in relation to an applicant for a clearance or the holder of a clearance means each of the following:      15  
16

(a) any employer or proposed employer of the applicant or holder in respect of child-related work,      17  
18

(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,      19  
20  
21

(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,      22  
23  
24

(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,      25  
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27  
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(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,      29  
30  
31  
32

(f) any other person prescribed by the regulations.      33

*principal officer* of:      34

(a) an accredited adoption service provider has the same meaning as in the *Adoption Act 2000*, or      35  
36

(b) a designated agency or a registered agency has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.      37  
38

*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.      39  
40  
41  
42

*prospective guardian* has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.      43  
44

*registered agency* has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.      45  
46

*reside on a property* has the meaning given by section 5A.      47

*Secretary* means the Secretary of the Department.      48

<i>working day</i> means any day that is not a Saturday, Sunday or public holiday.	1
<i>working with children number</i> means the number given for a working with children check clearance under this Act.	2 3
<i>working with children register</i> means the register established under section 25.	4 5
<b>[2] Section 5A</b>	6
Insert after section 5:	7
<b>5A Meaning of “reside on a property”</b>	8
(1) Subject to subsection (2), a person <i>resides on a property</i> 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).	9 10 11
(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).	12 13 14
<b>[3] Section 6 Child-related work</b>	15
Omit “within the meaning of the <i>Adoption Act 2000</i> ” from section 6 (3) (f).	16
<b>[4] Section 8 Restrictions on engaging in child-related work</b>	17
Insert at the end of section 8 (3) (b):	18
, or	19
(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.	20 21 22 23 24
<b>[5] Section 9 Employers must require clearance or current application</b>	25
Omit “accused person” where secondly occurring in section 9 (2) (a) and from section 9 (2) (b).	26 27
Insert instead “worker”.	28
<b>[6] Sections 9A and 9B</b>	29
Insert after section 9:	30
<b>9A Employer must verify worker has clearance or current application</b>	31
(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:	32 33
(a) is the holder of a working with children check clearance that authorises the work, or	34 35
(b) has made a current application to the Children’s Guardian for a clearance of a class applicable to that work.	36 37
(2) For the purposes of any such verification the employer must ensure that:	38
(a) the <i>relevant details</i> of the worker are obtained by the employer, being:	39
(i) the worker’s full name and date of birth, and	40
(ii) the working with children number of the worker’s clearance or the application number of the worker’s current application, and	41 42



(b)	the employer has access to the working with children register, and	1
	<b>Note.</b> Employers can gain access to the working with children register by registering online with the Children’s Guardian.	2 3
(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	4 5 6
(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:	7 8
	(i) the working with children number of the worker,	9
	(ii) the date on which each clearance of the worker ceases to have effect.	10 11
(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).	12 13 14
(4)	This section does not apply:	15
	(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	16 17 18
	(b) in respect of a worker who is exempted by the regulations from the requirement to hold a clearance, or	19 20
	(c) in respect of an employer who is exempted by the regulations from this section.	21 22
<b>9B</b>	<b>Governing body to ensure persons appointed to key positions hold clearance</b>	23
(1)	In this section:	24
	<b>key position</b> , in an organisation, means each of the following:	25
	(a) the chief executive of the organisation,	26
	(b) the principal officer—if the organisation is a designated agency, a registered agency or an accredited adoption service provider,	27 28
	(c) any other position in the organisation that is of a kind prescribed by the regulations.	29 30
(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.	31 32 33 34
	Maximum penalty: 100 penalty units, in the case of a corporation, and 50 penalty units in any other case.	35 36
(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:	37 38
	(a) the governing body had been advised by the Children’s Guardian that the person was the holder of a clearance, or	39 40
	(b) the working with children register showed that the person was the holder of a clearance, or	41 42
	(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.	43 44 45

(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:	1 2 3
(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	4 5 6
(b)	that record is retained by the organisation for at least 7 years.	7
	Maximum penalty: 50 penalty units.	8
(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.	9 10 11 12 13
<b>[7]</b>	<b>Section 10</b>	14
	Omit the section. Insert instead:	15
<b>10</b>	<b>Adult persons residing with authorised carers or persons providing home care services</b>	16 17
(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.	18 19 20 21 22
	Maximum penalty: 100 penalty units, or imprisonment for 2 years, or both.	23
(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.	24 25 26 27
	Maximum penalty: 100 penalty units, in the case of a corporation, and 50 penalty units in any other case.	28 29
(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.	30 31
(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.	32 33 34 35
(5)	It is a defence to proceedings for an offence under subsection (1) or (2) if the accused person establishes that:	36 37
(a)	the adult person had been residing on the property for less than 3 weeks, or	38 39
(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:	40 41 42 43
(i)	did not know about the interim bar, withdrawal, termination, refusal or cancellation, or	44 45
(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,	46 47

	withdrawal, termination, refusal or cancellation for more than 48 hours.	1 2
(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.	3 4 5 6
(7)	In this section: <i>exempt person</i> 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.	7 8 9 10
<b>[8]</b>	<b>Section 11 Prospective adoptive parents and adults residing with them</b>	11
	Omit section 11 (1) (a) and (b). Insert instead:	12
	(a) a prospective adoptive parent, and	13
	(b) a person (an <i>adult resident</i> ) who resides on the same property as another person while that other person is a prospective adoptive parent.	14 15
<b>[9]</b>	<b>Section 11 (4)</b>	16
	Omit the definition of <i>accredited adoption service provider</i> .	17
<b>[10]</b>	<b>Section 11 (4), definition of “relevant decision-maker”</b>	18
	Omit “the Director-General of the Department of Family and Community Services—the Director-General” from paragraph (a).	19 20
	Insert instead “the Secretary—the Secretary”.	21
<b>[11]</b>	<b>Section 11A Prospective guardians and adults residing with them</b>	22
	Omit section 11A (1) (a) and (b). Insert instead:	23
	(a) a prospective guardian, and	24
	(b) a person (an <i>adult resident</i> ) 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 <i>Children and Young Persons (Care and Protection) Act 1998</i> and ending when it is finally dealt with.	25 26 27 28 29
<b>[12]</b>	<b>Section 11A (4), definition of “relevant decision-maker”</b>	30
	Omit “the Director-General of the Department of Family and Community Services—the Director-General” from paragraph (a).	31 32
	Insert instead “the Secretary—the Secretary”.	33
<b>[13]</b>	<b>Section 11B</b>	34
	Insert after section 11A:	35
<b>11B</b>	<b>Responsible agency must verify person has clearance or current application</b>	36
(1)	For the purposes of this section, the <i>responsible agency</i> is:	37
(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	38 39 40

(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	1 2 3
(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	4 5 6
(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.	7 8 9
(2)	A responsible agency must verify, in accordance with this section, that each adult person for whom the agency is the responsible agency:	10 11
(a)	is the holder of a working with children check clearance, or	12
(b)	has made a current application to the Children’s Guardian for a clearance.	13 14
(3)	For the purposes of any such verification, the responsible agency must ensure that:	15 16
(a)	the <i>relevant details</i> of the person are obtained by the agency, being:	17
(i)	the person’s full name and date of birth, and	18
(ii)	the working with children number of the person’s clearance or the application number of the person’s current application, and	19 20
(b)	the agency has access to the working with children register, and	21
	<b>Note.</b> Responsible agencies can gain access to the register by registering online with the Children’s Guardian.	22 23
(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	24 25 26
(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:	27 28
(i)	the working with children number of the person,	29
(ii)	the expiry date of any clearance of the person.	30
(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).	31 32 33 34
(5)	This section does not apply:	35
(a)	in respect of a person who is exempted by the regulations from the requirement to hold a clearance, or	36 37
(b)	in respect of a responsible agency that is exempted by the regulations from this section.	38 39
<b>[14] Section 13 Applications for clearances</b>		40
Omit section 13 (5). Insert instead:		41
(5)	The Children’s Guardian must ensure that each applicant is given an application number and that the applicant is notified of that number.	42 43
(6)	An applicant may, with the consent of the Children’s Guardian, withdraw an application at any time.	44 45

(7)	The Children’s Guardian must not consent to the withdrawal of an application if the Children’s Guardian is of the opinion that it is likely that there is a risk to the safety of children if the applicant were to engage in child-related work.	1 2 3
(8)	The Children’s Guardian must, as soon as practicable after an application is withdrawn by an applicant, give written notice of that withdrawal to each person that the Children’s Guardian reasonably believes to be a notifiable person in relation to the applicant.	4 5 6 7
<b>[15]</b>	<b>Section 13A</b>	8
	Insert after section 13:	9
<b>13A</b>	<b>Embargo after refusal of application or cancellation of clearance</b>	10
(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:	11 12 13
(a)	until 5 years after the date notice of the refusal or cancellation was given to the person, or	14 15
(b)	unless there has been a change of circumstances under which a further early application is permitted under this section.	16 17
(2)	A further early application is permitted if any of the following occurs after the date of the refusal or cancellation:	18 19
(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,	20 21 22
(b)	a finding of guilt is quashed or set aside,	23
(c)	a finding the subject of an assessment requirement is quashed or set aside or otherwise expressly or impliedly ceases to have effect,	24 25
(d)	the Children’s Guardian permits a person to make such an application.	26
<b>[16]</b>	<b>Section 16 Request for further information</b>	27
	Omit “6 months” from section 16 (2). Insert instead “3 months”.	28
<b>[17]</b>	<b>Section 16 (3)</b>	29
	Insert after section 16 (2):	30
(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.	31 32 33 34
<b>[18]</b>	<b>Section 17 Interim bars</b>	35
	Omit section 17 (1). Insert instead:	36
(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 <i>interim bar</i> , being a bar on the applicant or holder doing any of the following:	37 38 39 40 41
(a)	engaging in child-related work,	42
(b)	residing on the same property as an authorised carer,	43

	(c) residing on a property where a home based education and care service or family day care service is provided.	1 2
<b>[19] Section 17 (2)</b>		3
	Insert “or resides on a property referred to in subsection (1) (b) or (c)” after “child-related work”.	4 5
<b>[20] Section 17 (3)</b>		6
	Omit the subsection. Insert instead:	7
	(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.	8 9 10 11 12
<b>[21] Section 17 (4) (b)</b>		13
	Insert “or refused” after “granted”.	14
<b>[22] Section 20 Notice of final decision granting or refusing clearance</b>		15
	Omit “working with children check number” from section 20 (2).	16
	Insert instead “working with children number”.	17
<b>[23] Section 20 (4)</b>		18
	Omit the subsection. Insert instead:	19
	(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.	20 21 22 23
<b>[24] Section 21 Embargo on further applications after refusal</b>		24
	Omit the section.	25
<b>[25] Section 23 Cancellation of clearances</b>		26
	Omit section 23 (4). Insert instead:	27
	(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.	28 29 30 31
<b>[26] Section 24 Surrender of clearances</b>		32
	Omit section 24 (3). Insert instead:	33
	(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.	34 35 36 37

<b>[27] Section 25 Working with children register</b>	1
Omit section 25 (2). Insert instead:	2
(2) The register must contain the following:	3
(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,	4 5 6 7 8
(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.	9 10 11 12
<b>[28] Section 25 (5) and (6)</b>	13
Omit section 25 (5). Insert instead:	14
(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.	15 16 17 18 19 20
(6) The regulations may make provision for or with respect to the following:	21
(a) any additional information that may be contained on the register,	22
(b) the entry of information on the register by employers or other persons,	23
(c) making information on the register publicly available or available to particular classes of persons.	24 25
<b>[29] Section 35 Notification by reporting bodies of conduct constituting assessment requirement trigger</b>	26 27
Insert after section 35 (1):	28
(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:	29 30 31
(a) who resides for 3 weeks or more on the same property as the authorised carer, and	32 33
(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.	34 35
<b>[30] Section 35 (4), definition of "reporting body"</b>	36
Insert after paragraph (c):	37
(c1) a designated agency,	38
<b>[31] Section 37 Database functions of Children's Guardian</b>	39
Omit section 37 (c). Insert instead:	40
(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.	41 42 43 44

<b>[32]</b>	<b>Section 40A Power to audit declarations made by exempt workers</b>	1
	Omit “the Department of Family and Community Services” from section 40A (6) (f).	2
	Insert instead “the Department”.	3
<b>[33]</b>	<b>Section 48A Reports under Children and Young Persons (Care and Protection) Act 1998</b>	4
	Omit “the Director-General of the Department of Family and Community Services” from section 48A (1).	5
	Insert instead “the Secretary”.	6
<b>[34]</b>	<b>Section 48A (1A)</b>	7
	Insert after section 48A (1):	8
	(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 <i>Children and Young Persons (Care and Protection) Act 1998</i> :	9
	(a) a person who is or has been an authorised carer, a carer applicant, a prospective adoptive parent, a guardian or a prospective guardian,	10
	(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.	11
<b>[35]</b>	<b>Section 48A (3)</b>	12
	Insert after section 48A (2):	13
	(3) In this section:	14
	<i>guardian</i> has the same meaning as in section 79A of the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	15
<b>[36]</b>	<b>Section 51 Service of documents</b>	16
	Omit “working with children check number” from section 51 (2).	17
	Insert instead “working with children number”.	18
<b>[37]</b>	<b>Schedule 3 Savings, transitional and other provisions</b>	19
	Omit clause 3.	20
<b>[38]</b>	<b>Schedule 3, clause 4 (4)</b>	21
	Omit the subclause. Insert instead:	22
	(4) This clause does not apply to a person who:	23
	(a) is a disqualified person, or	24
	(b) is or has been subject to an interim bar, or	25
	(c) has had an application for a working with children check clearance refused, or	26
	(d) has had a working with children check clearance cancelled.	27



<b>[39] Schedule 3, Part 4</b>	1
Insert after clause 8:	2
<b>Part 4 Provisions consequent on enactment of Child Protection Legislation Amendment Act 2015</b>	3
<b>9 Definition</b>	5
In this Part:	6
<i>amending Act</i> means the <i>Child Protection Legislation Amendment Act 2015</i> .	7
<b>10 Restrictions on engaging in child-related work</b>	8
Section 8 (3) (c) extends to offences occurring before the commencement of that paragraph, but not if the person charged with the offence has been convicted or found guilty of the offence before that commencement.	9 10 11
<b>11 Employers must verify worker has clearance or current application</b>	12
Section 9A extends to a worker who was employed before the commencement of that section and in such a case the requirement in that section that verification occur in respect of the worker before the worker commences child-related work is taken to be a requirement that verification occur within 3 months after the commencement of that section.	13 14 15 16 17
<b>12 Governing body to ensure persons appointed to key positions hold clearance</b>	18
Section 9B does not apply in respect of the appointment of a person to a key position before the commencement of that section.	19 20
<b>13 Adult persons residing with authorised carers or home care service providers</b>	21
(1) Section 10 (5), as substituted by the amending Act, extends to offences occurring before that substitution, but not if the person charged with the offence has been convicted or found guilty of the offence before that substitution.	22 23 24 25
(2) The period of 48 hours referred to in section 10 (5) (b) (ii) commences from the commencement of section 10 (3) in the case of an interim bar imposed before that commencement.	26 27 28
<b>14 Responsible agency must verify person has clearance or current application</b>	29
An agency that becomes the responsible agency for an adult person on the commencement of section 11B is not required to carry out a verification under that section in respect of the person until 3 months after that commencement.	30 31 32
<b>15 Withdrawal of application for clearance</b>	33
Section 13, as amended by the amending Act, extends to an application that was made before that amendment.	34 35
<b>16 Request for further information</b>	36
Section 16 (2), as amended by the amending Act, does not apply in respect of a request made by the Children’s Guardian before that amendment.	37 38

<b>17</b>	<b>Interim bars</b>	1
	Section 17, as amended by the amending Act, extends to an application received, or an assessment commenced, before the commencement of those amendments.	2 3 4
<b>18</b>	<b>Notification by reporting bodies</b>	5
	Subject to the regulations, section 35 (1A) extends to findings made before the commencement of that subsection.	6 7
<b>19</b>	<b>Disclosure of information to Secretary</b>	8
	Section 48A (1A) extends to information obtained or used by the Children's Guardian before the commencement of that subsection.	9 10

<b>Schedule 3</b>	<b>Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157</b>	1
		2
<b>[1] Whole Act (other than Schedule 3)</b>		3
	Omit “Director-General” and “Director-General’s” wherever occurring.	4
	Insert instead “Secretary” and “Secretary’s” respectively.	5
<b>[2] Section 3 Definitions</b>		6
	Omit the definition of <i>Director-General</i> from section 3 (1).	7
	Insert in alphabetical order:	8
	<i>accredited adoption service provider</i> has the same meaning as in the <i>Adoption Act 2000</i> .	9
	<i>carer applicant</i> 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.	10
	<i>guardian</i> —see section 79A.	11
	<i>principal officer</i> —see section 5A.	12
	<i>prospective guardian</i> 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).	13
	<i>registered agency</i> means any of the following that is registered for the time being by the Children’s Guardian in accordance with section 181 (1) (f):	14
	(a) a Public Service agency (or part of a Public Service agency),	15
	(b) an organisation (or part of an organisation) that provides or arranges voluntary out-of-home care.	16
	<i>Secretary</i> means the Secretary of the Department.	17
<b>[3] Section 5A</b>		18
	Insert after section 5:	19
<b>5A Meaning of “principal officer”</b>		20
(1)	In this Act, the <i>principal officer</i> of a designated agency means:	21
(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	22
(b)	in the case of any other designated agency:	23
(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	24
(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.	25
(2)	In this Act, the <i>principal officer</i> 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.	26

(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:	1
		2
		3
		4
(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	5
		6
		7
(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).	8
		9
(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.	10
		11
		12
		13
(5)	Nothing in subsection (4) affects any personal liability of the principal officer.	14
<b>[4]</b>	<b>Section 79 Order (other than guardianship order) allocating parental responsibility</b>	15
	Insert after section 79 (4):	16
(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).	17
		18
		19
<b>[5]</b>	<b>Section 79A Allocation of parental responsibility by guardianship order</b>	20
	Omit the definition of <i>prospective guardian</i> from section 79A (1).	21
<b>[6]</b>	<b>Section 79B Applications for guardianship orders</b>	22
	Omit section 79B (1) (c). Insert instead:	23
(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.	24
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	<b>Note.</b> An authorised carer may be such a person.	27
<b>[7]</b>	<b>Section 79B (1A)</b>	28
	Insert after section 79B (1):	29
(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.	30
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<b>[8]</b>	<b>Section 79B (9) (b)</b>	35
	Omit the paragraph. Insert instead:	36
(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),	37
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<b>[9] Section 79D</b>	1
Insert after section 79C:	2
<b>79D Prospective guardian must notify Secretary of resident</b>	3
(1) A prospective guardian must, as soon as reasonably practicable, notify the Secretary:	4
(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	5
(b) if a person residing on the same property as the prospective guardian attains the age of 18 years.	6
(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.	7
<b>Note.</b> See section 137 (3) in the case of authorised carers authorised by a designated agency.	8
(3) For the purposes of this section:	9
<i>reside on a property</i> has the same meaning as in the <i>Child Protection (Working with Children) Act 2012</i> .	10
<b>[10] Section 101A Guardian ad litem—exclusion of personal liability</b>	11
Omit “Department of Attorney General and Justice” from the definition of <i>Guardian Ad Litem Panel</i> in section 101A (3).	12
Insert instead “Department of Justice”.	13
<b>[11] Section 137 Authorised carers</b>	14
Insert after section 137 (2) (b):	15
(b1) the authorisation of persons, by designated agencies, as authorised carers on a provisional basis,	16
<b>[12] Section 137 (2) (e)</b>	17
Insert “, including prescribing events, the occurrence of which, raise a presumption that an authorisation is to be cancelled” after “authorisation”.	18
<b>[13] Section 137 (3) and (4)</b>	19
Omit the subsections. Insert instead:	20
(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:	21
(a) if any person (other than the carer) resides on the same property as the carer for 3 weeks or more, or	22
(b) if a person residing on the same property as the carer attains the age of 18 years.	23
<b>Note.</b> See section 10 of the <i>Child Protection (Working with Children) Act 2012</i> 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.	24

(4)	For the purposes of this section:	1
	<i>reside on a property</i> has the same meaning as in the <i>Child Protection (Working with Children) Act 2012</i> .	2 3
<b>[14]</b>	<b>Section 139 Designated agencies</b>	4
	Omit section 139 (1). Insert instead:	5
	(1) In this Act, <i>designated agency</i> means:	6
	(a) a Public Service agency (or part of a Public Service agency), or	7
	(b) an organisation (or part of an organisation) that arranges the provision of out-of-home care,	8 9
	if the agency or organisation (or part of the agency or organisation) is accredited for the time being in accordance with the regulations.	10 11
<b>[15]</b>	<b>Section 156 Preliminary</b>	12
	Omit the definition of <i>relevant agency</i> from section 156 (1). Insert instead:	13
	<i>relevant agency</i> means a designated agency or a registered agency.	14
<b>[16]</b>	<b>Section 156 (2) (b)</b>	15
	Omit the paragraph. Insert instead:	16
	(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 18 19
<b>[17]</b>	<b>Section 171A</b>	20
	Insert after section 171:	21
<b>171A</b>	<b>Principal officer of designated agency must not reside with children under agency's care</b>	22 23
	(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.	24 25 26
	Maximum penalty: 200 penalty units.	27
	(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.	28 29 30
	(3) In this section:	31
	<i>reside on a property</i> has the same meaning as in the <i>Child Protection (Working with Children) Act 2012</i> .	32 33
<b>[18]</b>	<b>Section 186A Referral of matters to police and other investigative agencies</b>	34
	Omit “of the Department of Family and Community Services” from section 186A (2).	35
<b>[19]</b>	<b>Section 245 Decisions that are administratively reviewable by Civil and Administrative Tribunal</b>	36 37
	Omit section 245 (1) (a) and (b). Insert instead:	38
	(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,	39 40 41

(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),	1 2 3 4 5
(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,	6 7 8
<b>[20]</b>	<b>Section 245B Interpretation</b>	9
	Omit "or organisation" from paragraph (b) of the definition of <i>prescribed body</i> in section 245B (1).	10 11
	Insert instead ", organisation or person".	12
<b>[21]</b>	<b>Section 245CA</b>	13
	Insert after section 245C:	14
<b>245CA</b>	<b>Provision of information by any person</b>	15
(1)	This section applies to the following persons:	16
(a)	an authorised carer or a carer applicant,	17
(b)	a guardian or a prospective guardian,	18
(c)	a person who resides on the same property as a person referred to in paragraph (a) or (b).	19 20
(2)	Any person (the <i>provider of information</i> ) may provide information to a designated agency about another person if the provider of information:	21 22
(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	23 24 25
(b)	otherwise reasonably believes the other person to be a person to whom this section applies.	26 27
(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.	28 29
(4)	Information may be provided under this section regardless of whether the provider has been requested to provide the information.	30 31
(5)	For the purposes of this section:	32
	<i>reside on a property</i> has the same meaning as in the <i>Child Protection (Working with Children) Act 2012</i> .	33 34
<b>[22]</b>	<b>Section 248 Provision and exchange of information</b>	35
	Omit "Division of the Government Service" from paragraph (a) of the definition of <i>prescribed body</i> in section 248 (6).	36 37
	Insert instead "Public Service agency".	38

<b>[23] Section 248B</b>	1
Insert after section 248A:	2
<b>248B Disclosure of information to bodies in other jurisdictions</b>	3
(1) In this section:	4
<i>assessment information</i> means information relevant to assessing the suitability of a person to be an adoptive parent (within the meaning of the <i>Adoption Act 2000</i> ), 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.	5
<i>reside on a property</i> has the same meaning as in the <i>Child Protection (Working with Children) Act 2012</i> .	6
<i>State child protection body</i> means the following:	7
(a) the Department,	8
(b) the Children’s Guardian,	9
(c) each designated agency,	10
(d) each accredited adoption service provider.	11
(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.	12
(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.	13
(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.	14
(5) The Minister is to consult with the Privacy Commissioner in the preparation of the protocols.	15
(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.	16
(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.	17
(8) Nothing in this section limits an exchange of assessment information that is otherwise permitted under any Act or law.	18
<b>Note.</b> See for example section 231V.	19
<b>[24] Section 264 Regulations</b>	20
Omit section 264 (1A) (k). Insert instead:	21
(j) the appointment of principal officers and other officers by designated agencies and registered agencies and the licensing of those principal officers,	22
(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	23



	of, information on the register and any requirements for consultation with the Ombudsman in relation to the register or information held on the register.	1 2 3
<b>[25]</b>	<b>Schedule 3 Savings, transitional and other provisions</b>	4
	Omit “that authorised person and his or her spouse” from clause 35 (1).	5
	Insert instead “that relative or kin”.	6
<b>[26]</b>	<b>Schedule 3, clause 35 (1A)</b>	7
	Insert after clause 35 (1):	8
	(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.	9 10 11
<b>[27]</b>	<b>Schedule 3, clause 36</b>	12
	Omit “clause 34”. Insert instead “clause 35”.	13
<b>[28]</b>	<b>Schedule 3, Part 11</b>	14
	Insert after clause 39:	15
	<b>Part 11 Provisions consequent on enactment of Child Protection Legislation Amendment Act 2015</b>	16 17
<b>40</b>	<b>Definition</b>	18
	In this Part:	19
	<i>amending Act</i> means the <i>Child Protection Legislation Amendment Act 2015</i> .	20
<b>41</b>	<b>Principal officer</b>	21
	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.	22 23 24 25
<b>42</b>	<b>Notification of other residents</b>	26
	(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.	27 28 29 30
	(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.	31 32 33 34
<b>43</b>	<b>Reviews by NCAT</b>	35
	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.	36 37 38

<b>Schedule 4</b>	<b>Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2</b>	1
		2
<b>[1] Section 8A Provision of information to Children’s Guardian</b>		3
Omit section 8A (1). Insert instead:		4
(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 <i>Children and Young Persons (Care and Protection) Act 1998</i> .	5 6 7 8 9
(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.	10 11 12 13 14
<b>[2] Section 22 Complaints about service providers</b>		15
Insert at the end of the section:		16
(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 <i>Children and Young Persons (Care and Protection) Act 1998</i> .	17 18 19 20
<b>[3] Schedule 1 Savings and transitional provisions</b>		21
Insert after clause 18:		22
<b>Part 6</b>	<b>Child Protection Legislation Amendment Act 2015</b>	23
<b>19</b>	<b>Provision of information to Children’s Guardian</b>	24
	Section 8A (1A) extends to information obtained by an Official Community Visitor before the commencement of that subsection.	25 26

<b>Schedule 5</b>	<b>Amendment of Ombudsman Act 1974 No 68</b>	1
<b>[1] Section 25A Definitions</b>		2
Insert in alphabetical order in section 25A (1):		3
<i>parent</i> of a child means a person having parental responsibility (within the meaning of the <i>Children and Young Persons (Care and Protection) Act 1998</i> ) for the child.		4 5 6
<b>[2] Section 25AAA</b>		7
Insert after section 25A:		8
<b>25AAA Part extends to persons who reside with authorised carers</b>		9
(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.		10 11 12 13 14
(2) In this section:		15
<i>authorised carer</i> means a person who is authorised as an authorised carer by a designated agency under section 137 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> and who cares for children or young persons in his or her private capacity.		16 17 18 19
<i>reside on a property</i> has the same meaning as in the <i>Child Protection (Working with Children) Act 2012</i> .		20 21
<b>[3] Section 25GA</b>		22
Insert after section 25G:		23
<b>25GA Disclosure of information about investigations to children, parents and carers</b>		24
(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:		25 26 27
(a) information about the progress of the investigation,		28
(b) the findings of the investigation,		29
(c) any action taken in response to those findings.		30
(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:		31 32 33
(a) the child who was allegedly the subject of the reportable conduct or misconduct forming the basis of the reportable allegation,		34 35
(b) any parent of the child,		36
(c) if the child is in out-of-home care (within the meaning of the <i>Children and Young Persons (Care and Protection) Act 1998</i> )—any authorised carer (within the meaning of that Act) that provides that out-of-home care.		37 38 39 40
(3) Nothing in this section limits any disclosure that may otherwise be made under any Act or law.		41 42
<b>Note.</b> See Chapter 16A of the <i>Children and Young Persons (Care and Protection) Act 1998</i> , which authorises agencies to exchange information to facilitate the provision of services to children and young persons.		43 44 45

(4)	In this section:	1
	<i>reportable allegation</i> includes an allegation of conduct or misconduct that may involve any of the following conduct:	2
		3
(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,	4
		5
		6
		7
(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,	8
		9
		10
(c)	conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.	11
		12
<b>[4]</b>	<b>Section 25WA</b>	13
	Insert after section 25W:	14
<b>25WA</b>	<b>Disclosure of information about investigations to persons with disability</b>	15
(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:	16
		17
		18
(a)	information about the progress of the investigation,	19
(b)	the findings of the investigation,	20
(c)	any action taken in response to those findings.	21
(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:	22
		23
		24
(a)	the person with a disability who was allegedly the subject of the reportable incident or behaviour forming the basis of the reportable allegation,	25
		26
		27
(b)	any person nominated by the person with a disability to receive the information,	28
		29
(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):	30
		31
		32
		33
(i)	a guardian (within the meaning of the <i>Guardianship Act 1987</i> ) of the person with a disability, or	34
		35
(ii)	a person who holds an enduring power of attorney in respect of the person with a disability, or	36
		37
(iii)	a person who is authorised to make legal or financial decisions on behalf of the person with a disability, or	38
		39
(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).	40
		41
		42
		43
		44
		45
(3)	Nothing in this section limits any disclosure that may otherwise be made under any other Act or law.	46
		47

(4)	In this section:	1
	<i>reportable allegation</i> includes an allegation against a person of an incident	2
	that is exempt under section 25S from being a reportable incident or an	3
	allegation of behaviour that may involve such an incident.	4
<b>[5]</b>	<b>Schedule 2 Savings and transitional provisions</b>	5
	Insert after clause 5:	6
<b>6</b>	<b>Child Protection Legislation Amendment Act 2015</b>	7
(1)	Section 25GA extends to information in relation to an investigation that	8
	commenced before the commencement of that section.	9
(2)	Section 25WA extends to information in relation to an investigation that	10
	commenced before the commencement of that section.	11