



New South Wales

Children's Guardian Amendment Bill 2025

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 *Children's Guardian Act 2019* (***the Act***) to implement a number of recommendations arising from the statutory review of the Act tabled in Parliament on 19 December 2024, including by—

- (a) providing that a guiding principle of the Act is the need to consult with the Aboriginal and Torres Strait Islander community on policies and practices that impact Aboriginal and Torres Strait Islander children, and
- (b) ensuring employees who are the subject of a reportable allegation or reportable conviction against a child, including a sexual offence, assault, ill-treatment, neglect or behaviour that causes significant emotional or psychological harm to a child (***reportable conduct***), are treated consistently with the principle of procedural fairness, and
- (c) clarifying obligations in relation to disclosure of information relating to a reportable allegation or reportable conviction, and
- (d) ensuring children employed in the entertainment and exhibition industries fall within the scope of the Act, Part 6, and
- (e) clarifying the accreditation criteria for a government agency or organisation accredited under the Act, Schedule 3A (a ***designated agency***) and adoption service providers.

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.

Schedule 1 Amendment of Children's Guardian Act 2019 No 25

Schedule 1[3] inserts as a guiding principle to be applied in administering the Act and regulations the need to consult with the Aboriginal and Torres Strait Islander community to consider the impact of policies and procedures on Aboriginal and Torres Strait Islander children and communities and Aboriginal and Torres Strait Islander community-controlled organisations.

Schedule 1[5] clarifies that the head of a child safe organisation that is a relevant entity under the Act, Part 4 must ensure the organisation implements a reportable conduct policy.

Schedule 1[6]–[14] make minor amendments to the definitions of *complaint*, *Schedule 1 entity*, *employee*, *reportable conduct*, *sexual offence* and *neglect* for the Act, Part 4, omits the definition of *visiting health practitioner* and insert a definition of *volunteer*.

Schedule 1[15] and [17] make it clear that a report is exempt from being required until 30 business days after an investigation is suspended under the Act, section 33(5), or that a report prepared under the Act, section 36(2) is required to be made within 30 business days.

Schedule 1[16] provides that an employee the subject of a reportable allegation or report about a conviction concerning reportable conduct may make a written submission to the head of the relevant entity. **Schedule 1[18]** makes a consequential amendment.

Schedule 1[19] provides that the head of a relevant entity or the Children's Guardian, when assessing conduct in relation to a reportable allegation, is no longer required to consider whether the reportable allegation relates to conduct that is in breach of established standards applying to the employee of the relevant entity.

Schedule 1[20] is a law revision amendment that clarifies that conduct exempted from being notified to the Children's Guardian under the Act, section 30 is not conduct that is excluded from the meaning of reportable conduct in the Act, Part 4, Division 6.

Schedule 1[21] provides that, in certain circumstances, the Children's Guardian and other specified persons must or may disclose certain information relating to a reportable allegation or conviction considered to be a reportable conviction to specified persons. It also provides for the circumstances in which the Children's Guardian may disclose information obtained in the course of investigating reportable conduct or a determination about a conviction considered to be a reportable conviction.

Schedule 1[22] and [23] clarify the wording of the Act, section 61(1).

Schedule 1[25] amends the definition of *child* to mean persons who are less than 16 years of age, defines *relevant activity* for the Act, Part 6 to be taking part in an entertainment or exhibition, taking part in a performance that is recorded for use in a subsequent entertainment or exhibition or an activity prescribed by the regulations, and provides that taking part in an entertainment or exhibition includes engaging in acting, dancing, playing of an instrument, modelling and promotional work. **Schedule 1[24], [26]–[28] and [51]** make consequential amendments. These amendments make it clear that the Act, Part 6 applies to children employed in entertainment or exhibition industries.

Schedule 1[30] clarifies that powers in the Act, Schedule 2 may be exercised by an authorised person for the purpose of monitoring and accreditation under Part 7 or under the regulations in relation to adoption service providers. **Schedule 1[38]** makes a consequential amendment.

Schedule 1[31] sets out additional circumstances in which the office of Children's Guardian falls vacant.

Schedule 1[32] sets out the circumstances in which the Governor may remove the Children's Guardian from office.

Schedule 1[33] provides that the Minister may appoint a person to act in the office of the Children's Guardian in certain circumstances and remove, at any time, a person acting as the

Children's Guardian. It also provides that the person acting as Children's Guardian has all the functions of the Children's Guardian.

Schedule 1[34] repeals uncommenced provisions in the Act that provide that the Children's Guardian may remove daily care and control of a child or young person from an authorised carer and apply for the review of an order of the Children's Court. **Schedule 1[1]** makes a consequential amendment.

Schedule 1[35] provides that a function of an Official Community Visitor appointed under the Act, section 144 is to provide the Secretary with information on matters relating to the conduct of places where visitable services are provided or affecting the welfare and interests of children in visitable services.

Schedule 1[36] provides that the Minister must review the Act, Part 3A. It also provides for the functions of the Parliamentary Joint Committee constituted under the *Advocate for Children and Young People Act 2014*, section 36(1) (the **Joint Committee**), including that the Joint Committee is to monitor and review the exercise by the Children's Guardian of its functions under the Act and report to Parliament on the reports of the Children's Guardian. **Schedule 1[4]** and **Schedule 3[2]–[4]** make consequential amendments.

Schedule 1[37] provides that a private health facility that provides services to children is a Schedule 1 entity.

Schedule 1[39] provides that the Children's Guardian or an appointed officer (an **authorised person**) may enter a place if it is for the purposes of exercising the functions of the Children's Guardian to accredit and monitor an adoption service provider.

Schedule 1[40]–[42] provide that an authorised person may require a person to give information to the authorised person or attend before the authorised person at a reasonable time and place to answer questions if the Children's Guardian is preparing submissions to the Supreme Court relating to the exercise of the Children's Guardian's functions relating to the employment of children. **Schedule 1[29]** makes a consequential amendment.

Schedule 1[43] provides that the **accreditation criteria** for a designated agency are set out in the code of practice for designated agencies. **Schedule 1[44]** and **[45]** make consequential amendments.

Schedule 1[46] provides that the **accreditation criteria** for an adoption service provider are set out in the code of practice for adoption service providers. **Schedule 1[47]** and **[48]** make consequential amendments.

Schedule 1[49] inserts savings and transitional provisions.

Schedule 1[50] repeals the uncommenced provision in the Act that provides that providers of family group homes are a Schedule 1 entity. **Schedule 1[2]** makes a consequential amendment.

Schedule 1[52] amends the definition of **substitute residential care**.

Schedule 2 Amendment of Children's Guardian Regulation 2022

Schedule 2[1] and **[2]** make consequential amendments.

Schedule 2[3] provides for the maximum number of days per week and hours per day children under 16 years of age may be employed in entertainment or exhibition industries and live performances.

Schedule 3 Amendment of Advocate for Children and Young People Act 2014 No 29

Schedule 3[1] provides that all of the part-time members of the Youth Advisory Council are to be under 25 years of age at the time they are appointed.