



New South Wales

Children's Guardian Bill 2019

Explanatory note

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

Overview of Bill

The objects of this Bill are to protect and promote the safety, welfare and wellbeing of children and to protect children from child abuse and exploitation.

The Bill continues the office of the Children's Guardian and provides for the appointment and functions of the Children's Guardian.

The Bill provides for the Children's Guardian to—

- (a) administer a reportable conduct scheme to prevent, identify and respond to child abuse, and
- (b) regulate the provision of out-of-home care, and
- (c) regulate the employment of children, and
- (d) accredit providers of adoption services.

The Bill also provides that the Official Community Visitor scheme, to the extent that it relates to accommodation provided to children in care, is to be administered by the Children's Guardian instead of the Ombudsman as is currently the case.

The Bill makes consequential amendments to other Acts and regulations.

Outline of provisions

Part 1 Preliminary

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.

Part 2 Application and interpretation

Part 2 provides for the application and interpretation of the proposed Act. The Dictionary in Schedule 6 to the proposed Act defines certain terms used in the proposed Act.

Part 3 Objects and principles

Part 3 sets out the main object of the proposed Act and the paramount consideration and guiding principles to be applied in administering the proposed Act.

Part 4 Reportable conduct

Division 1 sets out the objects of the proposed Part and defines certain terms used in the proposed Part. Under the proposed Part, the Children's Guardian will be responsible for the reportable conduct scheme that is currently administered by the Ombudsman under Part 3A of the *Ombudsman Act 1974* (that is repealed by Schedule 5.27 to the proposed Act).

Division 2 sets out key concepts for the reportable conduct scheme, which is a scheme for the Children's Guardian and relevant entities to investigate reportable allegations and to make determinations about reportable convictions. The scheme applies to the entities listed in proposed Schedule 1 and to public authorities (referred to as *relevant entities*). A *reportable allegation* means an allegation that an employee of a relevant entity has engaged in conduct that may be reportable conduct. *Reportable conduct* includes sexual offences, sexual misconduct, ill-treatment, neglect or assault of a child and other specified conduct. A conviction for an offence involving reportable conduct is a *reportable conviction*.

Division 3 requires an employee of a relevant entity to *report* to the head of the relevant entity a reportable allegation or a conviction the person considers to be a reportable conviction that relates to an employee of the relevant entity. If the matter relates to the head of the relevant entity, the matter is a *complaint* to be made to the Children's Guardian. The head of the relevant entity must give the Children's Guardian written notice (a *notification*) if the head of the relevant entity receives a report involving an employee or otherwise becomes aware of a reportable allegation or conviction considered to be a reportable conviction.

Division 4 contains procedural provisions relating to investigations and reviews under proposed Division 5 to allow investigations to be managed. Proposed Division 4 provides for the Children's Guardian to exempt a class or kind of conduct of employees of a relevant entity from being reportable conduct and exempt the head of a relevant entity from commencing or continuing an investigation of a reportable allegation or a conviction considered to be a reportable conviction.

Division 5 requires the head of a relevant entity who receives a report to investigate the reportable allegation or determine whether the conviction considered to be a reportable conviction is a reportable conviction.

Division 6 sets out the considerations for an investigation into a reportable allegation to assist in determining whether the investigation should result in a finding of reportable conduct.

Division 7 enables the Children's Guardian to require a relevant entity to provide further information about a reportable allegation or conviction considered to be a reportable conviction. The Children's Guardian may monitor the progress of a relevant entity's investigation or determination if it is in the public interest.

Division 8 enables the Children's Guardian to investigate a reportable allegation, make a determination about a conviction considered to be a reportable conviction and investigate a complaint or a relevant entity's management of a report or notification.

Division 9 requires the Children's Guardian to prepare a report after completing an investigation or determination and provides for the matters that must be included in the report.

Division 10 requires a relevant entity to have a code of conduct and policies and processes to prevent and detect reportable conduct by employees of the entity and provides for the notification and management in the Office of the Children's Guardian of reportable allegations against employees and convictions of employees considered to be reportable convictions.

Division 11 provides for the disclosure of information obtained in connection with an investigation into a reportable allegation or determination about a conviction considered to be a reportable conviction.

Division 12 exempts the Children's Guardian and staff of the Office of the Children's Guardian from the requirement to give evidence or produce documents in certain legal proceedings.

Division 13 makes it an offence to take or threaten to take certain action against a person because the person makes a report, complaint or notification to the head of a relevant entity or the Children's Guardian.

Division 14 contains miscellaneous provisions, including to provide for immunity from liability for persons acting in good faith.

Part 5 Out-of-home care matters regulated by Children's Guardian

Division 1 sets out the objects of the proposed Part and defines certain terms used in the proposed Part. Out-of-home care is currently administered under the *Children and Young Persons (Care and Protection) Act 1998* and certain provisions of that Act relating to the Children's Guardian's out-of-home care functions are transferred to the proposed Part.

Division 2 provides for the regulation of voluntary out-of-home care. The proposed Division sets the maximum duration of voluntary out-of-home care and provides for who may provide voluntary out-of-home care.

Division 3 makes it an offence for the principal officer of a designated agency to reside on the same property as a child who is in the care of the designated agency. If a child dies while in statutory or supported out-of-home care, the principal officer of a designated agency must immediately notify the parents of the child, the Children's Guardian and the Coroner.

Division 4 provides that the powers set out in proposed Schedule 2 may be exercised by an authorised person for the purpose of monitoring out-of-home care services.

Division 5 provides that the Children's Guardian may keep a register for authorised carers, residential care workers and organisations that provide or arrange out-of-home care.

Part 6 Child employment

Division 1 sets out the objects of the proposed Part and defines certain terms used in the proposed Part. Child employment is currently regulated under the *Children and Young Persons (Care and Protection) Act 1998* and certain provisions of that Act relating to the Children's Guardian's functions with respect to child employment are transferred to the proposed Part.

Division 2 makes it an offence to employ a child unless the person holds an employer's authority to employ children or is exempt from the requirement to hold an employer's authority.

Division 3 enables a person to apply to the Children's Guardian for an employer's authority to employ children or an exemption from the requirement to hold an employer's authority. An employer's authority remains in force for a maximum period of 12 months and may be subject to conditions prescribed by the regulations or imposed by the Children's Guardian. An employer's authority may be suspended or revoked at the request of the holder of the authority or at the discretion of the Children's Guardian.

Division 4 provides for the Children's Guardian to grant an exemption from the requirement to hold an employer's authority with or without conditions.

Division 5 sets out the Children's Guardian's powers with respect to child employment. Relying on powers in proposed Schedule 2, the Children's Guardian or an authorised person may enter and inspect premises without a warrant to investigate suspected contraventions of obligations with respect to child employment and to monitor compliance with the conditions of an employer's authority or exemption. The Children's Guardian may accept an undertaking in relation to the Children's Guardian's functions concerning the employment of children and may apply to the

Supreme Court to enforce an undertaking. The Children's Guardian may also request the production of certain information relating to the employment of children.

Division 6 makes it an offence to cause or allow a child to take part in employment that puts the child's physical or emotional wellbeing at risk. A child is taken to be a child in need of care and protection for the purposes of Chapter 4 of the *Children and Young Persons (Care and Protection) Act 1998* if the child is not immediately removed from a place of unlawful employment following a direction given by the Children's Guardian.

Part 7 Adoption service providers

Division 1 sets out the objects of the proposed Part and defines certain terms used in the proposed Part.

Division 2 provides for the accreditation of charitable and non-profit organisations as adoption service providers. These provisions are transferred from the *Adoption Act 2000*. The Minister may approve criteria for accreditation on the recommendation of the Children's Guardian.

Division 3 restricts access to records made in connection with the administration or execution of the proposed Part.

Part 8 Children's Guardian

Division 1 provides for the appointment of a Children's Guardian by the Governor and for the details of that office.

Division 2 sets out the circumstances in which the office of the Children's Guardian becomes vacant and the procedure for removing the Children's Guardian from office.

Division 3 provides for the appointment and removal from office of an acting Children's Guardian.

Division 4 provides for the appointment of a Deputy Children's Guardian and an Assistant Children's Guardian. Staff may be employed in the Public Service to assist the Children's Guardian to exercise the Children's Guardian's functions.

Division 5 specifies the functions of the Children's Guardian.

Division 6 provides for the preparation of annual and special reports by the Children's Guardian.

Part 9 Official Community Visitors

Division 1 defines certain terms used in the proposed Part. A *visitable service* means an accommodation service where a child in care is in the full-time care of the service provider or any other service prescribed by the regulations. Currently, premises at which those services are provided are visited by Official Community Visitors appointed under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*. The provisions of the proposed Part are based on the current provisions of that Act.

Division 2 provides for the appointment of Official Community Visitors by the Minister administering the proposed Act, and the functions of Official Community Visitors in relation to visitable services. The Children's Guardian has general oversight of Official Community Visitors.

Division 3 enables an Official Community Visitor to disclose certain information to the Children's Guardian.

Division 4 protects an Official Community Visitor and a person who makes a complaint to an Official Community Visitor from retribution.

Part 10 Administrative review

Part 10 enables a person to apply to the Civil and Administrative Tribunal for administrative review of certain decisions.

Part 11 Offences

Division 1 sets out obligations and offences with respect to the disclosure of information, the provision of false and misleading information and the unlawful access to information stored by the Children's Guardian.

Division 2 deals with the personal liability of a director of a corporation for offences committed by the corporation in certain circumstances.

Division 3 makes it an offence to wilfully hinder or obstruct any person in the exercise of the person's functions under the proposed Act.

Division 4 provides for the administration of offences under the proposed Act.

Part 12 Miscellaneous

Part 12 contains various provisions relating to the general operation of the proposed Act, including provisions relating to the following—

- (a) the making of guidelines by the Children's Guardian and the Secretary of the Department of Communities and Justice,
- (b) the service of notices and other instruments,
- (c) the provision and exchange of information,
- (d) the protection of officers of the Children's Guardian from personal liability if acting in good faith,
- (e) the power to make regulations.

Schedule 1 Schedule 1 entities

Schedule 1 provides a list of the entities that are referred to as a *Schedule 1 entity*. Employees of Schedule 1 entities are subject to the scheme administered by the Children's Guardian for giving notice of, investigating and monitoring reportable allegations or convictions considered to be reportable convictions.

Schedule 2 Powers of authorised persons

Schedule 2 contains provisions relating to authorised persons and the power provided to authorised persons to enter, inspect and search premises and to require a person to produce information or attend at a time and place to answer questions and produce documents.

Schedule 3 Inquiries

Schedule 3 provides that the Children's Guardian may make or hold inquiries in relation to an investigation of a reportable allegation or a report made by an Official Community Visitor to the Children's Guardian about a child in care. The proposed Schedule applies certain provisions of the *Royal Commissions Act 1923* to an inquiry and contains offences relating to the unauthorised publication of evidence and prejudicial disclosure of information.

Schedule 4 Savings, transitional and other provisions

Schedule 4 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 5 Amendment of Acts and instruments

Schedule 5 makes consequential amendments to Acts and instruments, including the following—

- (a) to amend the *Adoption Act 2000* to omit provisions relating to adoption service providers that are transferred to the proposed Act,
- (b) to make consequential amendments to the *Child Protection (Working with Children) Act 2012*,
- (c) to amend the *Children and Young Persons (Care and Protection) Act 1998* to omit provisions relating to voluntary out-of-home care, the Children's Guardian and child employment that are transferred to the proposed Act,
- (d) to amend the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to omit provisions relating to Official Community Visitors that are transferred to the proposed Act.

Schedule 5.10 amends the proposed Act to extend the reportable conduct scheme to religious bodies, providers of overnight camps, certain accommodation and respite services and providers of family group homes.

Schedule 6 Dictionary

Schedule 6 contains the Dictionary that defines certain terms used in the proposed Act.



New South Wales

Children's Guardian Bill 2019

Contents

	Page
Part 1 Preliminary	
1 Name of Act	9
2 Commencement	9
Part 2 Application and interpretation	
Division 1 Application of Act	
3 Children to whom this Act applies	10
Division 2 Interpretation	
4 Definitions	10
5 References to "commencement"	10
Part 3 Objects and principles	
6 Main object of Act	11
7 Paramount consideration	11
8 Guiding principles	11

Part 4 Reportable conduct

Division 1 Preliminary

9	Objects of Part	12
10	Definitions	12

Division 2 Key concepts for Part

11	Meaning of "reportable conduct scheme"	13
12	Meaning of "relevant entity"	13
13	Meaning of "Schedule 1 entity"	13
14	Meaning of "public authority"	14
15	Meaning of "local government authority"	14
16	Meaning of "employee"	14
17	Meaning of "head" of relevant entity	15
18	Meaning of "reportable allegation"	15
19	Meaning of "reportable conviction"	16
20	Meaning of "reportable conduct"	16
21	Meaning of "sexual offence"	16
22	Meaning of "sexual misconduct"	17
23	Meaning of "ill-treatment"	17
24	Meaning of "neglect"	17
25	Meaning of "assault"	17
26	Meaning of "finding of reportable conduct"	17

Division 3 Reports, complaints and notifications

27	Who must give report of reportable allegation or conviction	17
28	Complaints to Children's Guardian	18
29	Children's Guardian to be given notification of reports	18

Division 4 Exempt conduct, managing investigations and determinations

30	Children's Guardian may exempt conduct from reporting	19
31	Exemptions about investigations and investigation reports	19
32	Notice to require relevant entity to defer investigation	20
33	Concurrent investigations or proceedings	20

Division 5 Investigation or determination and report by relevant entity

34	Investigation or determination by head of relevant entity	21
35	Mandatory considerations	21
36	Report by relevant entity about investigation or determination	21
37	Contents of entity report	21
38	Interim report	22

Division 6 Mandatory matters for consideration for reportable allegations

39	Application of Division	22
40	Assessing conduct	22
41	Conduct that is not reportable conduct	23

Division 7 Children's Guardian's powers in relation to reportable allegations and reportable convictions

42	Children's Guardian may require further information	24
----	---	----

	Page
43 Children's Guardian may monitor relevant entity's investigation or determination	24
Division 8 Investigation and report—Children's Guardian	
44 Preliminary inquiries	24
45 Further information after receiving entity report	24
46 Children's Guardian may investigate or determine	25
47 Notice for Children's Guardian investigation or determination	25
48 Investigation by Children's Guardian	25
Division 9 Outcome of investigation or determination by Children's Guardian	
49 Children's Guardian reports	26
50 Recommendations by Children's Guardian	26
51 Notice to particular persons of reportable conduct or reportable conviction	27
52 Recommendations and provision of report	27
53 Action taken by head of relevant entity on receipt of advice	28
Division 10 Other measures about reportable conduct	
54 Relevant entities to have systems about reportable conduct	28
55 Children's Guardian may require information about systems	28
56 Reporting within the Office of the Children's Guardian	28
Division 11 Information sharing	
57 Disclosure of information	29
58 Disclosures by Children's Guardian or officer of Children's Guardian	30
59 Other States, the Commonwealth and Territories	31
60 Lawful disclosure	31
Division 12 Other proceedings	
61 Children's Guardian, officer or expert as witness	31
62 Limits on secrecy and privilege	32
Division 13 Offences for Part	
63 Retribution by employer	32
64 Protection against retribution	32
Division 14 Miscellaneous	
65 Head of relevant entity may delegate functions	33
66 Children's Guardian approval of head of relevant entity in certain circumstances	33
67 Expert assistance	33
68 Immunity from liability	33
69 Evidential immunity for individuals complying with Part	34
70 Cabinet information and proceedings	34
Part 5 Out-of-home care matters regulated by Children's Guardian	
Division 1 Preliminary	
71 Objects of Part	35

	Page
72	Meaning of "designated agency" 35
73	Meaning of "registered agency" 35
74	Meaning of "principal officer" 36
75	Actions of principal officer 36
Division 2 Voluntary out-of-home care	
76	Voluntary out-of-home care 36
77	Restrictions on voluntary out-of-home care 36
78	Contravening restrictions on voluntary out-of-home care 37
79	Only certain persons may provide or arrange voluntary out-of-home care 37
80	Children's Guardian to develop procedures 37
Division 3 Oversight of designated agencies	
81	Principal officer of designated agency must not reside with children under agency's care 37
82	Supervisory responsibility of designated agency 38
83	Notification of deaths of children in statutory out-of-home care or supported out-of-home care 38
Division 4 Monitoring and accreditation	
84	Powers of authorised persons 38
Division 5 Registers	
85	Registers to be kept 38
Part 6 Child employment	
Division 1 Preliminary	
86	Objects of Part 39
87	Definitions 39
88	Extension of employment relationship 39
Division 2 Requirement to hold employer's authority or employer's exemption	
89	Requirement to hold employer's authority for certain employment 39
90	Exemptions from requirement to hold employer's authority 40
Division 3 Employers' authorities and employers' exemptions	
Subdivision 1 Applications for authorities or exemptions	
91	How to apply 40
Subdivision 2 Employers' authorities	
92	Decision about application for authority 40
93	Term of employer's authority 41
Subdivision 3 Conditions	
94	Conditions of authority 41
95	Change in conditions 41

	Page
Subdivision 4 Suspension and revocation of employer's authority	
96 Voluntary suspension or revocation of authority	41
97 Suspension and revocation of authority	42
98 Effect of suspension	42
Division 4 Exemption	
99 Exemption by Children's Guardian	42
Division 5 Powers for matters relating to child employment	
100 Powers of authorised persons	43
101 Enforcement of undertakings	43
102 Power to compel production of information	43
Division 6 Miscellaneous	
103 Endangering children in employment	44
104 Removal of child from place of unlawful employment	44
Part 7 Adoption service providers	
Division 1 Preliminary	
105 Objects of Part	45
106 References to child	45
107 Meaning of "principal officer" of adoption service provider	45
Division 2 Adoption service providers accreditation	
108 Operation of Part	45
109 Accreditation and review of adoption service providers	45
110 Accreditation criteria	46
Division 3 Miscellaneous	
111 Restriction on inspection of records	46
Part 8 Children's Guardian	
Division 1 Appointment	
112 Appointment of Children's Guardian	47
113 Term of office	47
114 Full-time office	47
115 Eligibility for appointment	47
116 Employment and remuneration	47
117 Children's Guardian not Public Service employee	47
Division 2 Vacancy and removal from office	
118 Vacancy in office of Children's Guardian	47
119 Removal from office	48
Division 3 Acting Children's Guardian	
120 Acting Children's Guardian	48

	Page
Division 4 Office of the Children's Guardian	
121 Deputy Children's Guardian and Assistant Children's Guardian	48
122 Employment of Deputy Children's Guardian or Assistant Children's Guardian	48
123 Vacancy of office of Deputy Children's Guardian or Assistant Children's Guardian	49
124 Staff of Office	49
Division 5 Functions	
125 Functions of Children's Guardian	49
126 Restriction on functions	50
127 Appointment of advisory committees	50
128 [Provision deliberately blank for relocation]	51
129 [Provision deliberately blank for relocation]	51
130 Delegation of functions	51
131 Referral of matters to police and other investigative agencies	51
132 Protection from liability	52
Division 6 Reports	
133 References to "Presiding Officers"	52
134 Annual reports to Parliament	52
135 Special reports to Parliament and to Minister	53
136 Giving draft reports to Minister	53
137 Provisions relating to reports to Parliament	53
Part 9 Official Community Visitors	
Division 1 Preliminary	
138 Objects of Part	55
139 Definitions	55
Division 2 Appointment and functions	
140 Appointment of Official Community Visitors	55
141 Functions of Official Community Visitors	56
142 Co-ordination of Official Community Visitors	57
Division 3 Reports to the Children's Guardian	
143 Report may be made to Children's Guardian	57
144 Powers of authorised persons	58
145 Powers of Children's Guardian to conduct inquiry	58
146 Referral to other agencies	58
147 Provision of information to Children's Guardian	58
Division 4 Offences for Part	
148 Protection of complainant against retribution	58
Part 10 Administrative review	
149 Definition	60
150 Applications to Civil and Administrative Tribunal for administrative review	60

	Page	
151	Persons who may make application	61
152	Representative applications	61
153	Alternatives to Tribunal determining matter	61
154	Additional powers of Tribunal	62
Part 11	Offences	
	Division 1 Offences about use and disclosure of information	
155	Disclosure of information	63
156	Disclosure of information for research purposes	63
157	False and misleading information	64
158	Unlawful use of stored information	64
	Division 2 Directors and corporate liability	
159	Definition	64
160	Executive liability offences	65
161	Executive liability offences committed by person	65
162	Prosecution of executive liability offence	66
163	Liability of directors etc for offences by corporation—accessory to commission of offences	66
164	Evidence as to state of mind of corporation	67
	Division 3 Other offence	
165	Obstructing authorised person or other person	67
	Division 4 Administration of offences	
166	Time for instituting proceedings	67
167	Proceedings for offences	68
168	Penalty notices	68
Part 12	Miscellaneous	
169	Powers of authorised persons	69
170	Children's Guardian may make guidelines	69
171	Secretary may make guidelines	69
172	Approval of forms	69
173	Manner of giving notice	69
174	Records	70
175	Delegation by Minister	70
176	Provision and exchange of information	70
177	Personal liability	71
178	Act binds Crown	71
179	Review of Act	71
180	Regulations	71
Schedule 1	Schedule 1 entities	73
Schedule 2	Powers of authorised persons	74
Schedule 3	Inquiries	83
Schedule 4	Savings, transitional and other provisions	86
Schedule 5	Amendment of Acts and instruments	89
Schedule 6	Dictionary	106



New South Wales

Children's Guardian Bill 2019

No. , 2019

A Bill for

An Act to make provision with respect to the office of the Children's Guardian; to provide for the functions of that office; to provide for the safety, welfare and wellbeing of children; and for other purposes.

The Legislature of New South Wales enacts—	1
Part 1 Preliminary	2
1 Name of Act	3
This Act is the <i>Children's Guardian Act 2019</i> .	4
2 Commencement	5
(1) Subject to subsections (2) and (3), this Act commences on the date of assent to this Act.	6 7
(2) The following provisions commence on 30 January 2020—	8
(a) item 2 of Schedule 5.7,	9
(b) items 1–4 and 8 of Schedule 5.10.	10
(3) The following provisions commence on a day or days to be appointed by proclamation—	11 12
(a) section 128,	13
(b) section 129,	14
(c) items 5–7 of Schedule 5.10.	15

Part 2	Application and interpretation	1
Division 1	Application of Act	2
3	Children to whom this Act applies	3
	The functions conferred or imposed by this Act and the regulations may be exercised in relation to children—	4 5
	(a) who ordinarily live in New South Wales, or	6
	(b) who do not ordinarily live in New South Wales but who are present in New South Wales, or	7 8
	(c) who are—	9
	(i) for Part 4—subject to an event or circumstance occurring in New South Wales that gives rise to a report (within the meaning of Part 4), unless the event or circumstance is a sexual offence (within the meaning of Part 4) committed outside New South Wales, or	10 11 12 13
	(ii) otherwise—subject to an event or circumstance occurring in New South Wales that gives rise to a report.	14 15
Division 2	Interpretation	16
4	Definitions	17
(1)	The Dictionary in Schedule 6 defines certain terms used in this Act.	18
	Note. The <i>Interpretation Act 1987</i> also contains definitions and other provisions that affect the interpretation and application of this Act.	19 20
(2)	Notes and examples included in this Act do not form part of this Act.	21
5	References to “commencement”	22
(1)	In this Act, a reference to commencement for this Act or a provision of this Act is a reference to the time this Act or provision comes into operation.	23 24
(2)	In a provision of this Act, a reference to the commencement without indicating a particular Act or provision is a reference to the commencement of the provision in which the reference occurs.	25 26 27

Part 3	Objects and principles	1
6	Main object of Act	2
	The main object of this Act is to protect children by providing for the role and functions of the office of the Children's Guardian, including—	3 4
	(a) promoting the quality of organisations and persons providing services to children, and	5 6
	(b) regulating those organisations and persons in providing those services.	7
7	Paramount consideration	8
	The safety, welfare and wellbeing of children, including protecting children from child abuse, is the paramount consideration in decision-making under this Act and the regulations and in the operation of this Act and the regulations generally.	9 10 11
8	Guiding principles	12
	The guiding principles to be applied in administering this Act and the regulations are—	13 14
	(a) if a child is able to form views on a matter concerning the child's safety, welfare and wellbeing—	15 16
	(i) the child must be given an opportunity to express the views freely, and	17
	(ii) the views are to be given due weight in accordance with the developmental capacity of the child and the circumstances, and	18 19
	(b) in all actions taken and decisions made under this Act and the regulations that significantly affect a child, account must be taken of the culture, disability, language, religion, gender identity and sexuality of—	20 21 22
	(i) the child, and	23
	(ii) if relevant, the person with parental responsibility for the child, and	24
	(c) in deciding what action is necessary to protect a child from harm, the course to be followed must be the least intrusive intervention in the life of the child and the child's family that is also consistent with the paramount consideration, and	25 26 27 28
	(d) in decision-making under this Act and the regulations and the investigation or monitoring of persons, the Children's Guardian must observe the principles of natural justice and ensure procedural fairness, and	29 30 31
	(e) if a child is placed in out-of-home care, the child is entitled to a safe, nurturing, stable and secure environment.	32 33

Part 4	Reportable conduct	1
Division 1	Preliminary	2
9	Objects of Part	3
	The objects of this Part are for the Children's Guardian to protect children from harm by—	4
		5
	(a) administering a scheme to report and notify a reportable allegation or a conviction considered to be a reportable conviction to the head of a relevant entity and the Children's Guardian, and	6
		7
		8
	(b) providing oversight and guidance on an investigation undertaken by the head of a relevant entity, and	9
		10
	(c) conducting investigations and inquiries into reports about reportable allegations and convictions considered to be reportable convictions and the response to, and handling of, reports by relevant entities, and	11
		12
		13
	(d) ensuring appropriate action is taken by a relevant entity, and	14
	(e) monitoring a relevant entity's systems for preventing, detecting and dealing with reportable conduct and reportable convictions, and	15
		16
	(f) providing advice and education to relevant entities to assist relevant entities in detecting and dealing with reportable conduct and reportable convictions.	17
		18
10	Definitions	19
	In this Part—	20
	<i>assault</i> see section 25.	21
	<i>Children's Guardian report</i> see section 49.	22
	<i>complaint</i> means—	23
	(a) a report given to the Children's Guardian under section 27(2)(b) or (3)(b), or	24
	(b) a complaint made to the Children's Guardian under section 28(1) or (2).	25
	<i>contractor</i> includes—	26
	(a) a subcontractor, and	27
	(b) an employee of, or volunteer for, the contractor.	28
	<i>employee</i> , of a relevant entity, see section 16.	29
	<i>employment</i> includes engagement of a person as a volunteer or contractor taken to be an employee under this Part.	30
		31
	<i>entity report</i> see section 36(1).	32
	<i>finding of reportable conduct</i> see section 26.	33
	<i>head</i> , of a relevant entity, see section 17.	34
	<i>ill-treatment</i> , of a child, see section 23.	35
	<i>investigation</i> , of a matter, includes any preliminary or other inquiry into, or examination of, the matter, other than a preliminary inquiry under section 44.	36
		37
	<i>investigator</i> means a person conducting an investigation on behalf of the head of a relevant entity, including a delegate.	38
		39
	<i>local government authority</i> see section 15.	40
	<i>neglect</i> , of a child, see section 24.	41
	<i>notification</i> see section 29(2).	42
	<i>public authority</i> see section 14.	43
	<i>relevant entity</i> see section 12.	44

<i>report</i> means—	1
(a) a report made to the head of a relevant entity under section 27(2)(a) or (3)(a), or	2 3
(b) if the head of a relevant agency otherwise becomes aware of a matter under section 29(1)(b).	4 5
<i>reportable allegation</i> see section 18.	6
<i>reportable conduct</i> see section 20.	7
<i>reportable conduct scheme</i> see section 11.	8
<i>reportable conviction</i> see section 19.	9
<i>responsible Minister</i> means—	10
(a) for a relevant entity that is a government sector agency or a person employed in a government sector agency—	11 12
(i) the Minister responsible for the agency, or	13
(ii) if there is more than one Minister responsible for the agency, the Minister who, in the opinion of the Children's Guardian, is most nearly connected with the conduct of the agency, and	14 15 16
(b) for a relevant entity that is a local government authority—the Minister administering the <i>Local Government Act 1993</i> , and	17 18
(c) for a relevant entity, not referred to in paragraph (a) or (b), involved in the administration of an Act or part of an Act—the Minister administering the Act or the relevant part of the Act, and	19 20 21
(d) for a Schedule 1 entity that is not referred to in paragraphs (a)–(c)—	22
(i) the Minister whose portfolio has, in the opinion of the Children's Guardian, sufficient funding or regulatory responsibility for the entity to warrant involvement on the Minister's part in relation to the entity, or	23 24 25
(ii) otherwise—the Minister who is, in the opinion of the Children's Guardian, a Minister sufficiently concerned with the conduct of the entity, and	26 27 28
(e) for a person employed by a political office holder under Part 2 of the <i>Members of Parliament Staff Act 2013</i> —the Premier, and	29 30
(f) for any other relevant entity—the Minister who, in the opinion of the Children's Guardian, is the most closely concerned with the conduct of the entity.	31 32 33
<i>Schedule 1 entity</i> see section 13.	34
<i>sexual misconduct</i> see section 22.	35
<i>sexual offence</i> see section 21.	36

Division 2 Key concepts for Part 37

11 Meaning of “reportable conduct scheme” 38

Reportable conduct scheme means the scheme established under this Part to
investigate reportable allegations and make determinations in relation to reportable
convictions. 39
40
41

12 Meaning of “relevant entity” 42

Relevant entity means— 43

- (a) a Schedule 1 entity, or 44
- (b) a public authority. 45

13	Meaning of “Schedule 1 entity”	1
	<i>Schedule 1 entity</i> means—	2
	(a) an entity mentioned in Schedule 1, or	3
	(b) an authorised carer that is not employed by, or in, an entity mentioned in Schedule 1, or	4 5
	(c) an adult who, under section 10 of the <i>Child Protection (Working with Children) Act 2012</i> , is required to hold a working with children check clearance because the adult resides on the same property as an authorised carer for 3 weeks or more, or	6 7 8 9
	(d) an entity, or part of an entity, prescribed by the regulations for this definition.	10
14	Meaning of “public authority”	11
	<i>Public authority</i> means—	12
	(a) a government sector agency within the meaning of the <i>Government Sector Employment Act 2013</i> , or	13 14
	(b) a person specified in section 5(1)(a), (b) and (d)–(f) of the <i>Government Sector Employment Act 2013</i> , or	15 16
	(c) a local government authority, or	17
	(d) a statutory body representing the Crown, or	18
	(e) a statutory officer, or	19
	(f) a body, whether incorporated or unincorporated, established for a public purpose under the provisions of a legislative instrument, or	20 21
	(g) a State-owned corporation, or	22
	(h) a university established under an Act, or	23
	(i) an Aboriginal Land Council within the meaning of the <i>Aboriginal Land Rights Act 1983</i> , or	24 25
	(j) an entity, or part of an entity, declared by the regulations to be a public authority for this definition.	26 27
15	Meaning of “local government authority”	28
	<i>Local government authority</i> means a council, county council or joint organisation under the <i>Local Government Act 1993</i> .	29 30
16	Meaning of “employee”	31
	(1) <i>Employee</i> , of a relevant entity, means the following—	32
	(a) for a Schedule 1 entity—	33
	(i) an individual employed by, or in, the Schedule 1 entity, or	34
	(ii) if the entity is an individual—the individual, or	35
	(iii) if an individual is engaged directly, or by a third party, as a volunteer to provide services to children—the volunteer, or	36 37
	(iv) if an individual is engaged directly, or by a third party, as a contractor and the contractor holds, or is required to hold, a working with children check clearance for the purpose of the engagement—the contractor,	38 39 40
	(b) for a public authority—	41
	(i) an individual employed by, or in, the public authority, or	42
	(ii) if the public authority is an individual—the individual, or	43

- (iii) if an individual is engaged directly, or by a third party, as a volunteer to provide services to children—the volunteer, or 1
2
 - (iv) if an individual is engaged directly, or by a third party, as a contractor and the contractor holds, or is required to hold, a working with children check clearance for the purpose of the engagement—the contractor. 3
4
5
 - (2) For a public authority, a person is also an employee of the authority if— 6
 - (a) the person exercises official functions or acts in a public official capacity in the service of the authority, or 7
8
 - (b) the person is otherwise in the service of the Crown. 9
 - (3) Also, for the purposes of this Part, an employee includes— 10
 - (a) a visiting health practitioner if the visiting health practitioner holds, or is required to hold, a working with children check clearance for the purpose of appointment with the entity, and 11
12
13
 - (b) a person employed under Part 2 of the *Members of Parliament Staff Act 2013*, and the person is taken to be an employee of a public authority. 14
15
 - (4) If an employee is an employee of a Schedule 1 entity that is also a public authority, the provisions relating to the Schedule 1 entity apply to the employee for this Part. 16
17
 - (5) In this section— 18
 - health care services** means a service ordinarily provided by a health practitioner. 19
 - health practitioner** has the same meaning as in the *Health Practitioner Regulation National Law (NSW)*. 20
21
 - visiting health practitioner** means a person who is appointed, employed, contracted or otherwise engaged by a Schedule 1 entity to provide health care services. 22
23
- 17 Meaning of “head” of relevant entity** 24
 - (1) **Head**, of a relevant entity, means— 25
 - (a) for an entity that is a Department—the Secretary of that Department or the Secretary’s delegate, or 26
27
 - (b) if the regulations prescribe a person or a class of persons as the head of the entity—the prescribed person or a person belonging to the class of persons prescribed, or 28
29
30
 - (c) otherwise— 31
 - (i) the chief executive officer of the entity, however described, or 32
 - (ii) if there is no chief executive officer, the principal officer of the entity, however described, or 33
34
 - (iii) if there is no chief executive officer or principal officer, a person approved by the Children’s Guardian under section 66. 35
36
 - (2) In relation to a person employed under Part 2 of the *Members of Parliament Staff Act 2013* by a member of Parliament, the member of Parliament is taken to be a public authority and the head of the authority. 37
38
39
- 18 Meaning of “reportable allegation”** 40
 - (1) **Reportable allegation**, in relation to an employee of a Schedule 1 entity, means an allegation that the employee has engaged in conduct that may be reportable conduct, whether or not the conduct is alleged to have occurred in the course of the employee’s employment with the Schedule 1 entity. 41
42
43
44
 - (2) **Reportable allegation**, in relation to an employee of a public authority, means— 45

(a)	if the employee holds, or is required to hold, a working with children check clearance for the purpose of employment with the public authority—an allegation that the employee has engaged in conduct that may be reportable conduct, whether or not the conduct is alleged to have occurred in the course of the employee's employment, or	1 2 3 4 5
(b)	if the employee is not required to hold a working with children check clearance for the purpose of employment with the public authority—an allegation that the employee has engaged in conduct that may be reportable conduct, unless the conduct is alleged to have occurred outside the course of the employee's employment with the public authority.	6 7 8 9 10
(3)	A reference in this Part to a reportable allegation includes an allegation in respect of conduct occurring before the commencement.	11 12
19	Meaning of "reportable conviction"	13
(1)	Reportable conviction means a conviction, including a finding of guilt without the court proceeding to a conviction, in this State or elsewhere, of an offence involving reportable conduct—	14 15 16
(a)	in relation to an employee of a Schedule 1 entity—whether or not the conduct occurred in the course of the employee's employment with the Schedule 1 entity, or	17 18 19
(b)	in relation to an employee of a public authority—	20
(i)	if the employee holds, or is required to hold, a working with children check clearance for the purpose of employment with the public authority—whether or not the conduct occurred in the course of the employee's employment, or	21 22 23 24
(ii)	if the employee is not required to hold a working with children check clearance for the purpose of employment with the public authority—unless the conviction relates to conduct that occurred outside the course of the employee's employment with the public authority.	25 26 27 28
(2)	A reference in this Part to a reportable conviction includes a conviction in respect of conduct occurring before the commencement.	29 30
20	Meaning of "reportable conduct"	31
	Reportable conduct means the following conduct, whether or not a criminal proceeding in relation to the conduct has been commenced or concluded—	32 33
(a)	a sexual offence,	34
(b)	sexual misconduct,	35
(c)	ill-treatment of a child,	36
(d)	neglect of a child,	37
(e)	an assault against a child,	38
(f)	an offence under section 43B or 316A of the <i>Crimes Act 1900</i> ,	39
(g)	behaviour that causes significant emotional or psychological harm to a child.	40
	Examples of indicators of significant emotional or psychological harm for paragraph (g)—	41 42
1	displaying behaviour patterns that are out of character	43
2	regressive behaviour	44
3	anxiety or self-harm	45

21	Meaning of “sexual offence”	1
	<i>Sexual offence</i> means an offence of a sexual nature under a law of the State, another State, a Territory, or the Commonwealth, committed against, with or in the presence of a child.	2
		3
		4
	Examples of sexual offences—	5
	1 sexual touching of a child	6
	2 a child grooming offence	7
	3 production, dissemination or possession of child abuse material	8
22	Meaning of “sexual misconduct”	9
	<i>Sexual misconduct</i> means conduct with, towards or in the presence of a child that—	10
	(a) is sexual in nature and inappropriately intimate, but	11
	(b) is not a sexual offence.	12
	Examples of sexual misconduct—	13
	1 descriptions of sexual acts without a legitimate reason to provide the descriptions	14
	2 sexual comments, conversations or communications	15
	3 comments to a child that express a desire to act in a sexual manner towards the child or another child	16
		17
23	Meaning of “ill-treatment”	18
	<i>Ill-treatment</i> , of a child, means conduct towards a child that is unreasonable and seriously inappropriate, improper, inhumane or cruel.	19
		20
	Examples of ill-treatment—	21
	1 making excessive or degrading demands of a child	22
	2 a pattern of hostile or degrading comments or behaviour towards a child	23
	3 using inappropriate forms of behaviour management towards a child	24
24	Meaning of “neglect”	25
	<i>Neglect</i> , of a child, means a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for the child, that causes or is likely to cause harm to a child, by—	26
		27
		28
	(a) a person with parental responsibility for the child, or	29
	(b) an authorised carer of the child, or	30
	(c) an employee, if the child is in the employee’s care.	31
	Examples of neglect—	32
	1 failing to protect a child from abuse	33
	2 exposing a child to a harmful environment, for example, an environment where there is illicit drug use or illicit drug manufacturing	34
		35
25	Meaning of “assault”	36
	<i>Assault</i> means—	37
	(a) the intentional or reckless application of physical force without lawful justification or excuse, or	38
		39
	(b) any act which intentionally causes another to apprehend immediate and unlawful violence.	40
		41
	Examples of assault—	42
	1 hitting, striking, kicking, punching or dragging a child	43
	2 threatening to physically harm a child	44

26	Meaning of “finding of reportable conduct”	1
	<i>Finding of reportable conduct</i> means a finding, by a relevant entity or the Children’s Guardian, as a result of an investigation conducted under this Part, that a reportable allegation is sustained.	2 3 4
Division 3	Reports, complaints and notifications	5
27	Who must give report of reportable allegation or conviction	6
(1)	This section applies if a person (the <i>first person</i>) becomes aware of either of the following matters in relation to an employee of a relevant entity—	7 8
(a)	a reportable allegation,	9
(b)	a conviction the person considers is a reportable conviction.	10
(2)	If the first person is also an employee of the relevant entity, the person must, as soon as practicable after becoming aware of the matter—	11 12
(a)	report the matter to the head of the relevant entity, or	13
(b)	if the employee to whom the matter relates is the head of the relevant entity, report the matter to the Children’s Guardian.	14 15
(3)	If the first person is not also an employee of the relevant entity, the person may—	16
(a)	report the matter to the head of the relevant entity, or	17
(b)	if the employee is the head of the relevant entity, report the matter to the Children’s Guardian.	18 19
28	Complaints to Children’s Guardian	20
(1)	If a person who gives a report is dissatisfied with the response of the head of the relevant entity to the report, the person may make a complaint to the Children’s Guardian.	21 22 23
(2)	Another person or other entity dissatisfied with the response of the head of the relevant entity to the report may also make a complaint to the Children’s Guardian.	24 25
29	Children’s Guardian to be given notification of reports	26
(1)	This section applies if the head of a relevant entity—	27
(a)	receives a report in relation to an employee of the relevant entity, or	28
(b)	otherwise becomes aware of a reportable allegation in relation to an employee of the relevant entity or a conviction that is considered to be a reportable conviction.	29 30 31
(2)	The head of the relevant entity must give the Children’s Guardian a written notice (a <i>notification</i>) about the reportable allegation or conviction considered to be a reportable conviction that states—	32 33 34
(a)	that a report has been received in relation to an employee of the relevant entity, and	35 36
(b)	the type of reportable conduct the subject of the report, and	37
(c)	the name of the employee, and	38
(d)	the name and contact details of the relevant entity and the head of the relevant entity, and	39 40
(e)	for a reportable allegation—whether the Commissioner of Police has been notified of the allegation, and	41 42

- (f) if a report has been made under section 24 of the *Children and Young Persons (Care and Protection) Act 1998*—that the report has been made, and
 - (g) the nature of the relevant entity's initial risk assessment and risk management action, and
 - (h) any other information prescribed by the regulations.
- (3) The notice must also include the following, if known to the head of the relevant entity—
- (a) details of the reportable allegation or conviction considered to be a reportable conviction,
 - (b) the date of birth and working with children number, if any, of the employee the subject of the report,
 - (c) for a reportable allegation of which the Commissioner of Police has been notified—the police report reference number,
 - (d) if a report has been made under section 24 of the *Children and Young Persons (Care and Protection) Act 1998*—the report reference,
 - (e) the names of other relevant entities that employ or engage the employee, whether or not directly, to provide a service to children, including as a volunteer or contractor.
- (4) The head of the relevant entity must give the Children's Guardian the notice within 7 business days after the head of the entity is made aware of the report, unless the head of the relevant entity has a reasonable excuse.
Maximum penalty—10 penalty units.
- (5) The head of the relevant entity may give the employee the subject of the report written notice that a report about a reportable allegation or conviction considered to be a reportable conviction has been made.
- (6) In this section—
working with children number has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

Division 4 Exempt conduct, managing investigations and determinations

30 Children's Guardian may exempt conduct from reporting

- (1) The Children's Guardian may exempt a class or kind of conduct of employees of a relevant entity from being reportable conduct.
- (2) The Children's Guardian may exempt a class or kind of conduct of employees of a relevant entity from being reportable conduct only if the Children's Guardian—
 - (a) has followed the procedures for exempting a class or kind of conduct prescribed by the regulations, and
 - (b) is satisfied the relevant entity, in relation to the exempt class or kind of conduct, meets the criteria, if any, prescribed by the regulations.
- (3) For an exemption under this section, the Children's Guardian must—
 - (a) notify the relevant entity of the exemption, and
 - (b) publish the details of the class or kind of conduct and relevant entity with an exemption on the Office of the Children's Guardian's website.
- (4) The procedures and criteria referred to in subsection (2)(a) and (b) must also be published on the Office of the Children's Guardian's website.

31 Exemptions about investigations and investigation reports	1
(1) The Children's Guardian may, by written notice given to the head of a relevant entity, exempt the head from commencing or continuing either of the following—	2 3
(a) an investigation into a reportable allegation,	4
(b) a determination as to whether a conviction considered to be a reportable conviction is a reportable conviction.	5 6
(2) An exemption under subsection (1) applies until the head of the relevant entity is otherwise notified, in writing, by the Children's Guardian that the exemption is revoked.	7 8 9
(3) An exemption under subsection (1) is taken to be an exemption from the requirement for the relevant entity to provide an entity report or an interim report.	10 11
(4) Without limiting subsection (1), the Children's Guardian may exempt the head of a relevant entity if a matter is already being investigated by another relevant entity.	12 13
(5) The Children's Guardian may also exempt the relevant entity from the requirement to provide an entity report or an interim report in relation to a matter after the Children's Guardian receives the notification for the matter.	14 15 16
32 Notice to require relevant entity to defer investigation	17
(1) This section applies if, in relation to an employee of a relevant entity—	18
(a) the Children's Guardian intends to—	19
(i) investigate a reportable allegation or a matter arising from a reportable allegation, or	20 21
(ii) determine whether a conviction considered to be a reportable conviction is a reportable conviction, and	22 23
(b) an investigation or determination under section 34 has not been finalised.	24
(2) The Children's Guardian may, by written notice given to the head of the relevant entity, require the head to defer the investigation or determination.	25 26
(3) The Children's Guardian may, by further written notice to the head of the relevant entity, require the head to—	27 28
(a) commence, continue or finalise the investigation or determination deferred under this section, or	29 30
(b) end the investigation or determination and take no further action.	31
33 Concurrent investigations or proceedings	32
(1) This section applies if the Commissioner of Police or the Director of Public Prosecutions advises the Children's Guardian, or the head of a relevant entity, that an investigation or determination under this Part is likely to prejudice a police investigation or court proceeding.	33 34 35 36
(2) The Children's Guardian or head of the relevant entity must—	37
(a) suspend the investigation or a determination until otherwise advised, and	38
(b) after consulting the police officer in charge of the investigation or the Director of Public Prosecutions, take steps to manage any risks while the investigation or determination is suspended, and	39 40 41
(c) if the investigation or determination was being conducted by the head of a relevant entity—	42 43
(i) advise the Children's Guardian about the suspension under this section, and	44 45

(ii)	advise the Children's Guardian of the steps being taken to manage risks.	1
(3)	An investigation or determination by a relevant entity, suspended by operation of this section, is taken to be exempt from the requirement to provide an entity report or an interim report until the period of 30 days after the suspension has ended.	2 3 4
(4)	This section does not affect the operation of any other Act.	5
(5)	For the purposes of this section—	6
(a)	a reference to a police investigation includes a reference to an investigation by the Australian Federal Police, an international investigation the Australian Federal Police are aware of, or a police investigation in another State or Territory, and	7 8 9 10
(b)	a reference to a court proceeding includes a reference to a court proceeding in another State or Territory, and	11 12
(c)	a reference to the Commissioner of Police or the Director of Public Prosecutions includes a reference to a person holding the equivalent office in another State or Territory.	13 14 15
Division 5	Investigation or determination and report by relevant entity	16
34	Investigation or determination by head of relevant entity	17
(1)	As soon as practicable after receiving a report, the head of the relevant entity must—	18
(a)	investigate, or arrange for an investigator to investigate, the reportable allegation, or	19 20
(b)	determine whether the conviction considered to be a reportable conviction is a reportable conviction.	21 22
(2)	During an investigation or a determination, an employee the subject of a reportable allegation or a conviction considered to be a reportable conviction may give the head of the relevant entity a written submission concerning the allegation or conviction for the purpose of determining what, if any, disciplinary or other action should be taken in relation to the employee.	23 24 25 26 27
35	Mandatory considerations	28
	The head of the relevant entity, or the investigator, in conducting an investigation into a reportable allegation must have regard to the matters in Division 6.	29 30
36	Report by relevant entity about investigation or determination	31
(1)	After an investigation or determination is completed, the head of the relevant entity must prepare a report for the Children's Guardian (an <i>entity report</i>), unless—	32 33
(a)	an exemption applies under section 31, or	34
(b)	the head of the relevant entity has a reasonable excuse.	35
	Maximum penalty—10 penalty units.	36
(2)	The entity report must be provided to the Children's Guardian within 30 days after the head of the entity receiving the report of the reportable allegation or conviction considered to be a reportable conviction, unless the head of the relevant entity gives the Children's Guardian—	37 38 39 40
(a)	an interim report under section 38 within 30 days after receiving the report of the reportable allegation or conviction considered to be a reportable conviction, and	41 42 43
(b)	a reason for not providing the report within 30 days, and	44

(c)	an estimated time frame for the completion of the entity report.	1
	Maximum penalty—10 penalty units.	2
(3)	The entity may give the entity report to the employee of the relevant entity the subject of the report.	3 4
37	Contents of entity report	5
(1)	The entity report must include the following—	6
(a)	in relation to a reportable allegation—	7
(i)	information about the facts and circumstances of the reportable allegation, and	8 9
(ii)	the findings the head of the relevant entity has made about the reportable allegation after completing the investigation, including whether the head of the relevant entity has made a finding of reportable conduct, and	10 11 12 13
(iii)	an analysis of the evidence and the rationale for the findings,	14
(b)	in relation to a conviction considered to be a reportable conviction—	15
(i)	information about the conviction considered to be a reportable conviction, and	16 17
(ii)	the determination the head of the relevant entity has made about the conviction, including whether the head of the relevant entity has determined the conviction is a reportable conviction,	18 19 20
(c)	a copy of any written submission made by the employee under section 34(2),	21
(d)	information about what action has been, or will be, taken in relation to the reportable allegation or conviction considered to be a reportable conviction, including the following—	22 23 24
(i)	remedial or disciplinary action in relation to the employee,	25
(ii)	whether information about the matter has been referred to a different entity,	26 27
(iii)	changes to systems or policies,	28
(iv)	if no further action is to be taken—that no further action is to be taken,	29
(e)	the reasons for the action taken, including taking no further action,	30
(f)	any other information prescribed by the regulations.	31
(2)	The entity report must also be accompanied by any copies of documents in the relevant entity's possession that are relevant to the report, including transcripts of interviews and copies of evidence.	32 33 34
38	Interim report	35
	An interim report must—	36
(a)	include the following information—	37
(i)	in relation to a reportable allegation—if known, the facts and circumstances of the reportable allegation,	38 39
(ii)	in relation to a conviction considered to be a reportable conviction—any known information about the conviction,	40 41
(iii)	action taken since the Children's Guardian received a notification about the reportable allegation or the conviction considered to be a reportable conviction,	42 43 44
(iv)	further action the head of the relevant entity proposes to take in relation to the reportable allegation or conviction considered to be a reportable	45 46

conviction, including if the head of the relevant entity proposes to take no further action,	1
(v) the reasons for the action taken and the action proposed to be taken or the reasons for the decision to take no further action,	2
(vi) other information prescribed by the regulations, and	3
(b) be accompanied by copies of documents in the relevant entity's possession, including transcripts of interviews and copies of evidence.	4
	5
	6
	7
Division 6	8
Mandatory matters for consideration for reportable allegations	9
39 Application of Division	10
(1) This Division applies in relation to a report, complaint or notification of a reportable allegation received by the head of a relevant entity, or by the Children's Guardian.	11
(2) This Division does not apply in relation to a reportable conviction.	12
	13
40 Assessing conduct	14
(1) The head of the relevant entity or the Children's Guardian must make a finding of reportable conduct if it is satisfied that the case against the employee the subject of the reportable allegation has been proved against the employee on the balance of probabilities.	15
(2) Without limiting the matters the head of the relevant entity or the Children's Guardian may take into account in deciding whether it is satisfied the case has been proved on the balance of probabilities, the head of the relevant entity or the Children's Guardian may take into account—	16
(a) the nature of the reportable allegation and any defence, and	17
(b) the gravity of the matters alleged.	18
(3) The head of the relevant entity or the Children's Guardian must consider whether the reportable allegation relates to conduct that is in breach of established standards applying to the employee of the relevant entity, having regard to the following—	19
(a) professional standards,	20
(b) codes of conduct, including any professional or ethical codes,	21
(c) accepted community standards.	22
(4) For the purposes of determining whether an investigation into an employee's conduct should result in a finding of reportable conduct—	23
(a) a finding of reportable conduct in relation to ill-treatment may only be made if an intentional or reckless action led to or is reasonably likely to, or was reasonably likely to, lead to the physical injury, sexual abuse, emotional or psychological harm or harm to the physical development or health of the child without reasonable excuse, and	24
(b) a finding of reportable conduct in relation to neglect of a child is established only if the conduct was an intentional action or inaction, without reasonable excuse, and	25
(c) a finding of reportable conduct in relation to significant psychological or emotional harm is established only if the harm arose from conduct by a person that is intentional or reckless, without reasonable excuse.	26
	27
	28
	29
	30
	31
	32
	33
	34
	35
	36
	37
	38
	39
	40
	41
	42
	43
Note. See section 23 for the definition of <i>ill-treatment</i> and section 24 for the definition of <i>neglect</i> .	44
	45

41	Conduct that is not reportable conduct	1
	Reportable conduct does not include—	2
	(a) conduct that is reasonable for the purposes of discipline, management or care of a child, having regard to—	3
		4
	(i) the age, maturity, health or other characteristics of the child, and	5
	(ii) any relevant code of conduct or professional standard, or	6
	(b) the use of physical force if—	7
	(i) in all the circumstances, the physical force is trivial or negligible, and	8
	(ii) the circumstances in which it was used have been investigated and the result of the investigation has been recorded in accordance with appropriate procedures, or	9
		10
		11
	(c) conduct of a class or kind exempted from being reportable conduct by the Children's Guardian under section 30.	12
		13
	Example of conduct for paragraph (a)— a school teacher raising his or her voice in order to attract attention or restore order in a classroom	14
		15
	Examples of conduct for paragraph (b)—	16
	1 touching a child in order to attract the child's attention	17
	2 momentarily restraining a child to prevent the child hurting themselves or others	18
	3 touching a child to guide or comfort the child	19
Division 7	Children's Guardian's powers in relation to reportable allegations and reportable convictions	20
		21
42	Children's Guardian may require further information	22
	After receiving a notification, the Children's Guardian may require the relevant entity to provide further information in relation to—	23
		24
	(a) the reportable allegation or conviction considered to be a reportable conviction, or	25
		26
	(b) the relevant entity's response to the notification.	27
43	Children's Guardian may monitor relevant entity's investigation or determination	28
	(1) The Children's Guardian may, on the Children's Guardian's own initiative or because of a complaint, monitor the progress of an investigation or determination by the head of a relevant entity into a report if the Children's Guardian considers the monitoring is in the public interest.	29
		30
		31
		32
	(2) Without limiting subsection (1), the Children's Guardian may do the following to monitor an investigation—	33
		34
	(a) observe interviews carried out for the purposes of the investigation,	35
	(b) discuss the investigation with the head of the relevant entity,	36
	(c) provide guidance and advice to the relevant entity about the investigation,	37
	(d) by written notice, require the head of the relevant entity or the investigator to provide to the Children's Guardian documents or other information, including records of interviews, relating to the investigation,	38
		39
		40
	(e) a thing prescribed by the regulations for this section.	41

Division 8	Investigation and report—Children's Guardian	1
44	Preliminary inquiries	2
(1)	The Children's Guardian may make preliminary inquiries to decide whether to carry out an investigation or determination under section 46.	3 4
(2)	The preliminary inquiries may be made whether or not the Children's Guardian has received a complaint or notification about a matter to which the complaint or notification relates.	5 6 7
(3)	Without limiting subsection (1), the Children's Guardian may, by written notice given to the entity that made the complaint or notification, require the entity to give the Children's Guardian further written information about the matter the subject of the complaint or notification within the time stated in the notice.	8 9 10 11
(4)	Sections 16, 17, 18 and 19(1) of the <i>Privacy and Personal Information Protection Act 1998</i> do not apply to information disclosed under this section.	12 13
(5)	Despite the <i>Health Records and Information Privacy Act 2002</i> —	14
(a)	a person may disclose health information, within the meaning of that Act, to the Children's Guardian in relation to preliminary inquiries by the Children's Guardian under this section, and	15 16 17
(b)	the Children's Guardian may use the information for the purposes of this Part.	18
45	Further information after receiving entity report	19
(1)	After receiving an entity report, the Children's Guardian may require the head of the relevant entity to provide additional information the Children's Guardian considers necessary to enable the Children's Guardian to determine—	20 21 22
(a)	whether—	23
(i)	the reportable allegation was properly investigated, or	24
(ii)	the conviction considered to be a reportable conviction was properly determined, and	25 26
(b)	whether appropriate action was, or can be, taken as a result of the investigation or determination.	27 28
(2)	In this section—	29
	<i>appropriate action</i> includes a penalty for the making of a reportable allegation that is shown to be false or misleading.	30 31
46	Children's Guardian may investigate or determine	32
(1)	The Children's Guardian may, if the Children's Guardian reasonably believes it is in the public interest—	33 34
(a)	investigate a reportable allegation, or	35
(b)	make a determination about a conviction considered to be a reportable conviction, or	36 37
(c)	investigate the way in which a relevant entity has dealt with, or is dealing with, a report, complaint or notification.	38 39
(2)	An investigation or determination under subsection (1) may be carried out—	40
(a)	on the Children's Guardian's own initiative, or	41
(b)	because of a complaint or notification, or	42
(c)	because the Children's Guardian is satisfied the head of a relevant entity is unable or unwilling to—	43 44

(i)	investigate or determine a report, or	1
(ii)	engage an investigator to carry out an investigation.	2
47	Notice for Children's Guardian investigation or determination	3
(1)	On deciding to carry out an investigation or determination, the Children's Guardian must, by written notice given to the following entities, advise the entities about the decision—	4 5 6
(a)	for an investigation or determination because of a report, complaint or notification involving an employee of a relevant entity—	7 8
(i)	the employee and the relevant entity, and	9
(ii)	if a complaint has been made—the entity that made the complaint,	10
(b)	for an investigation in relation to the way in which a relevant entity has dealt with a report or notification—the relevant entity,	11 12
(c)	an entity prescribed by the regulations.	13
(2)	The notice must describe the reportable allegation or the conviction considered to be a reportable conviction the subject of the investigation or determination.	14 15
(3)	Subsection (1)(a)(i) does not apply if giving the notice to the employee or relevant entity would compromise the investigation or put a person's health or safety at serious risk.	16 17 18
48	Investigation by Children's Guardian	19
(1)	For an investigation into a reportable allegation, the Children's Guardian must have regard to the matters in Division 6.	20 21
(2)	An investigation under this Division must be carried out in the absence of the public.	22
(3)	Schedule 2 provides for powers that may be exercised by an authorised person for the purpose of conducting the investigation.	23 24
(4)	For the purposes of an investigation under this Part, the Children's Guardian may conduct an inquiry.	25 26
(5)	Schedule 3 provides for the Children's Guardian's powers to make or hold an inquiry.	27 28
Division 9	Outcome of investigation or determination by Children's Guardian	29 30
49	Children's Guardian reports	31
(1)	After completing an investigation or determination the Children's Guardian must prepare a report (a <i>Children's Guardian report</i>).	32 33
(2)	The Children's Guardian report must include the following—	34
(a)	in relation to a reportable allegation—	35
(i)	information about the facts and circumstances of the reportable allegation, and	36 37
(ii)	the findings the Children's Guardian has made about the reportable allegation after completing the investigation, including whether the Children's Guardian has made a finding of reportable conduct, and	38 39 40
(iii)	analysis of the evidence and the rationale for the findings,	41
(b)	in relation to a conviction considered to be a reportable conviction—	42

(i)	information about the conviction considered to be a reportable conviction, and	1 2
(ii)	the determination the Children's Guardian has made about the conviction, including whether the Children's Guardian has determined the conviction is a reportable conviction,	3 4 5
(c)	a copy of any written submissions made by the employee under section 34(2),	6
(d)	recommendations for action to be taken in relation to the reportable allegation or conviction considered to be a reportable conviction, including any of the following recommendations—	7 8 9
(i)	remedial or disciplinary action against—	10
(A)	the employee, or	11
(B)	if the complaint is about the head of a relevant entity—the head of the relevant entity,	12 13
(ii)	referring the matter to a different entity,	14
(iii)	changes to systems or policies,	15
(iv)	that no further action should be taken,	16
(e)	reasons for the findings or determination,	17
(f)	any other information prescribed by the regulations.	18
50	Recommendations by Children's Guardian	19
(1)	If the Children's Guardian proposes to recommend in the Children's Guardian report that the relevant entity take particular action, the Children's Guardian must consult with the relevant entity about the recommendation before finalising the report.	20 21 22
(2)	Subsection (1) does not apply to the extent the Children's Guardian reasonably believes consulting with the relevant entity would—	23 24
(a)	put a person's health or safety at serious risk, or	25
(b)	put a person who made a report, complaint or notification, or other person, at risk of being harassed or intimidated, or	26 27
(c)	prejudice an investigation or inquiry.	28
(3)	Recommendations the Children's Guardian may make include recommendations that—	29 30
(a)	the reportable conduct or reportable conviction be considered or reconsidered by the relevant entity, or by any person in a position to supervise or direct the relevant entity or employee in relation to the conduct, or	31 32 33
(b)	action be taken to rectify, mitigate or change the reportable conduct or the consequences of the reportable conduct, or	34 35
(c)	a law or practice relating to the conduct be changed, or	36
(d)	other steps be taken.	37
51	Notice to particular persons of reportable conduct or reportable conviction	38
(1)	This section applies if—	39
(a)	the Children's Guardian makes a finding of reportable conduct or a determination that a conviction is a reportable conviction in relation to an employee of a relevant entity, and	40 41 42
(b)	in the Children's Guardian report the Children's Guardian makes a recommendation for dismissal, removal or punishment of the employee.	43 44

- (2) The Children's Guardian must advise the following persons of the finding or determination, the recommendation and the reasons—
- (a) the Minister,
 - (b) the head of the relevant entity,
 - (c) if the finding or determination has been made about a person employed in, or by, a government sector agency within the meaning of the *Government Sector Employment Act 2013*—the Secretary of the Department of Premier and Cabinet,
 - (d) the employee the subject of the finding or determination.
- (3) The Children's Guardian may advise the following persons of the finding or determination, the recommendation and the reasons—
- (a) the responsible Minister for the relevant entity concerned,
 - (b) if the investigation or determination arose from a complaint—the entity that made the complaint.
- (4) Subsection (2)(d) does not apply to the extent the Children's Guardian reasonably believes advising the employee would—
- (a) put a person's health or safety at serious risk, or
 - (b) put a person who made a report, complaint or notification, or other person, at risk of being harassed or intimidated, or
 - (c) prejudice any other investigation or inquiry.

52 Recommendations and provision of report

- (1) At the conclusion of an investigation or determination by the Children's Guardian, or on a recommendation by the Children's Guardian to refer a reportable allegation, reportable conduct or a reportable conviction back to the relevant entity, the Children's Guardian must give the relevant entity and the employee the subject of the Children's Guardian report—
- (a) the recommendations for action to be taken, and
 - (b) necessary information relating to the recommendations.
- (2) The Children's Guardian may give a copy of the report to the relevant entity the subject of the Children's Guardian report or the employee the subject of the Children's Guardian report.
- (3) Subsection (1) does not apply to the extent the Children's Guardian reasonably believes giving the relevant entity or employee the information would—
- (a) put a person's health or safety at serious risk, or
 - (b) put a person who made a report, complaint or notification, or other person, at risk of being harassed or intimidated, or
 - (c) prejudice any other investigation or inquiry.

53 Action taken by head of relevant entity on receipt of advice

The head of a relevant entity may, and on request by the Children's Guardian must, notify the Children's Guardian of any action taken or proposed as a result of the recommendations provided under section 52.

Division 10	Other measures about reportable conduct	1
54	Relevant entities to have systems about reportable conduct	2
	The head of a relevant entity must ensure the entity has systems including a code of conduct, policies and processes for the following—	3 4
	(a) preventing and detecting reportable conduct by an employee of the entity,	5
	(b) requiring an employee of the relevant entity to give a report, as soon as possible, in relation to a reportable allegation or conviction considered to be a reportable conviction involving an employee of the entity,	6 7 8
	(c) enabling a person, other than an employee of the relevant entity, to give a report to the head of the relevant entity about a reportable allegation or conviction considered to be a reportable conviction involving an employee of the relevant entity,	9 10 11 12
	(d) handling or responding to a reportable allegation or conviction considered to be a reportable conviction involving an employee of the relevant entity, having regard to principles of procedural fairness,	13 14 15
	(e) receiving, handling and disclosing information relating to reportable allegations, convictions considered to be reportable convictions and information relating to investigations and determinations,	16 17 18
	(f) identifying and dealing with matters relating to the prevention of reportable conduct by employees of the relevant entity.	19 20
55	Children's Guardian may require information about systems	21
	(1) The Children's Guardian may, at any time by written notice, require the head of a relevant entity to give the Children's Guardian, within the reasonable time stated in the notice, information about the entity's systems under section 54.	22 23 24
	(2) If the relevant entity does not, without reasonable excuse, give the Children's Guardian the information required under subsection (1), the Children's Guardian may publish the following on the Children's Guardian's website—	25 26 27
	(a) the name of the relevant entity,	28
	(b) that the entity has failed to comply with the requirements for systems about reportable conduct under this Part.	29 30
56	Reporting within the Office of the Children's Guardian	31
	(1) If a finding of reportable conduct or a determination has been made that a conviction is a reportable conviction, the Children's Guardian must provide, to the Working with Children Check Unit within the Office of the Children's Guardian, a report made under this Part, if the finding relates to the following types of conduct—	32 33 34 35
	(a) sexual misconduct,	36
	(b) a sexual offence,	37
	(c) a serious physical assault.	38
	(2) Also, if the Children's Guardian is of the opinion that there is a real and appreciable risk to the safety of children during the course of an investigation, the Children's Guardian must refer information about the employee the subject of the investigation to the Working with Children Check Unit, for the purpose of considering an interim bar under section 17 of the <i>Child Protection (Working with Children) Act 2012</i> .	39 40 41 42 43
	(3) In this section—	44

Working with Children Check Unit means that part of the Office of the Children's Guardian that exercises functions in relation to working with children check clearances under the *Child Protection (Working with Children) Act 2012*.

Division 11 Information sharing

57 Disclosure of information

- (1) This section applies to a person who is, or was, any of the following persons—
- (a) the Children's Guardian,
 - (b) the head of a relevant entity or an investigator for the relevant entity, to which a report of a reportable allegation or a conviction considered to be a reportable conviction, in relation to an employee of the relevant entity, was given.
- (2) A person must not disclose the following information relating to a reportable allegation or conviction considered to be a reportable conviction unless it is allowed under subsection (3)—
- (a) information about the progress of the investigation,
 - (b) information about the findings of the investigation,
 - (c) action taken in response to the findings.
- Maximum penalty—10 penalty units or imprisonment for a period not exceeding 12 months, or both.
- (3) Information may be disclosed if—
- (a) it is for the purpose of promoting the safety, welfare or wellbeing of a child, or class of children, to whom the information relates, and
 - (b) the information is disclosed to—
 - (i) if the disclosure is made by the head of a relevant entity or investigator—the Children's Guardian, or
 - (ii) if the disclosure is made by the Children's Guardian—the head of a relevant entity, or
 - (iii) if the employee the subject of the reportable allegation or conviction considered to be a reportable conviction is a contractor—the head of an entity, other than the relevant entity, that engaged the employee as a contractor, or
 - (iv) the child against whom an employee of an entity is alleged to have committed reportable conduct, or
 - (v) the parent of the child referred to in subparagraph (iv), or
 - (vi) the authorised carer of the child referred to in subparagraph (iv), or
 - (vii) if the Secretary or Minister has parental responsibility for the child referred to in subparagraph (iv) under the *Children and Young Persons (Care and Protection) Act 1998*—the Secretary or Minister of the Department, or
 - (viii) a person who, under the *Children and Young Persons (Care and Protection) Act 1998*, has daily care and control of the child referred to in subparagraph (iv), whether or not that care involves custody of the child, or
 - (ix) the Civil and Administrative Tribunal, for the purposes of an application under Part 10, or
 - (x) a person, if necessary for the purpose of investigating the reportable allegation or determining the conviction considered to be a reportable conviction, or

(xi) a person prescribed by the regulations. 1

58 Disclosures by Children's Guardian or officer of Children's Guardian 2

- (1) The Children's Guardian must not disclose any information obtained in the course of an investigation or determination into reportable conduct or a conviction considered to be a reportable conviction, unless the disclosure is made— 3
4
5
- (a) if the person who is the subject of the investigation or determination holds, or is required to hold, a working with children check clearance—to that person, or 6
7
8
 - (b) if the information relates to a public authority, including a Schedule 1 entity that is a public authority, and where the information is obtained from a relevant entity—with the consent of the head of the relevant entity, or of the responsible Minister, or 9
10
11
12
 - (c) if the information relates to the safety, welfare or wellbeing of a particular child or class of children—to a police officer, the Department or any other public authority that the Children's Guardian considers appropriate in the circumstances, or 13
14
15
16
 - (d) if the Children's Guardian believes on reasonable grounds that disclosure to a person is necessary to prevent or reduce the likelihood of harm being done to another person—to the person, or 17
18
19
 - (e) where the information is obtained from any other person— 20
 - (i) if the information relates to the person—with the consent of the person, or 21
22
 - (ii) for the purpose of proceedings with respect to the discipline of police officers before the Commissioner of Police or the Industrial Relations Commission, or 23
24
25
 - (f) for the purpose of proceedings under section 167A of the *Police Act 1990*, or 26
 - (g) for the purpose of proceedings under section 20 or 20B of the *Public Interest Disclosures Act 1994*, or 27
28
 - (h) for the purpose of criminal proceedings resulting from an investigation under this Act, or 29
30
 - (i) for the purpose of any proceedings under section 157 or 165 of this Act or under Part 3 of the *Royal Commissions Act 1923* or Part 4 of the *Special Commissions of Inquiry Act 1983*, or 31
32
33
 - (j) to a registered medical practitioner or registered psychologist in relation to the provision by that health practitioner of medical or psychiatric care, treatment or counselling, including psychological counselling to the Children's Guardian or an officer of the Children's Guardian, or 34
35
36
37
 - (k) to an Official Community Visitor for the purpose of exercising the Official Community Visitor's functions under this Act, or 38
39
 - (l) to a complainant, for the purposes of responding to a complaint about a relevant entity's handling of a reportable allegation or conviction considered to be a reportable conviction, or 40
41
42
 - (m) for the purpose of discharging the Children's Guardian's functions under this or any other Act. 43
44
- Maximum penalty—10 penalty units. 45
- (2) Subsection (1) does not operate to make admissible in evidence in proceedings a document that would not have been admissible if this section had not been enacted. 46
47

59 Other States, the Commonwealth and Territories	1
(1) Section 58 does not prevent the Children's Guardian from giving information obtained under this Part to a relevant person in relation to—	2 3
(a) a matter relevant to the exercise of a law of any other State, the Commonwealth or a Territory, or	4 5
(b) an undertaking that is or was being carried out jointly by New South Wales and any other State, the Commonwealth or a Territory.	6 7
(2) In this section—	8
relevant person means a person exercising functions under a law of another State, the Commonwealth or a Territory, similar to those exercised by the Children's Guardian under this Act.	9 10 11
60 Lawful disclosure	12
(1) Nothing in this Division limits disclosure that is required or permitted by law.	13
(2) The <i>Privacy and Personal Information Protection Act 1998</i> and the <i>Health Records and Information Privacy Act 2002</i> do not prevent disclosure that is authorised by, or under, this Act.	14 15 16
Division 12 Other proceedings	17
61 Children's Guardian, officer or expert as witness	18
(1) In relation to an investigation under this Part, the Children's Guardian, or officer of the Children's Guardian, must not be compellable to give evidence or produce any document in legal proceedings in respect of any information obtained by the Office of the Children's Guardian.	19 20 21 22
(2) Subsection (1) does not apply to the following—	23
(a) proceedings for an offence under this Part,	24
(b) proceedings under Part 3 of the <i>Royal Commissions Act 1923</i> ,	25
(c) proceedings under Part 4 of the <i>Special Commissions of Inquiry Act 1983</i> ,	26
(d) proceedings under Part 5 of the <i>Government Information (Public Access) Act 2009</i> arising as a consequence of a decision made by the Children's Guardian in respect of an access application under that Act,	27 28 29
Note. Matters in relation to reportable conduct are prescribed as excluded information under Schedule 2 to the <i>Government Information (Public Access) Act 2009</i> .	30 31
(e) proceedings under section 167A of the <i>Police Act 1990</i> ,	32
(f) proceedings under section 20 or 20B of the <i>Public Interest Disclosures Act 1994</i> ,	33 34
(g) criminal proceedings resulting from an investigation under this Part.	35
(3) Subsection (1) applies to the following persons in the same way it applies to the Children's Guardian and an officer of the Children's Guardian—	36 37
(a) a former Children's Guardian,	38
(b) a former officer of the Children's Guardian,	39
(c) an Australian legal practitioner who is, or was, appointed under clause 1(5) of Schedule 3 to assist the Children's Guardian,	40 41
(d) a person whose services are, or were, engaged under section 67.	42

62	Limits on secrecy and privilege	1
(1)	This section applies if the Children's Guardian requires a person, under this Part, or under Schedules 2 or 3 in relation to an investigation or inquiry under this Part—	2 3
(a)	to give a statement of information, or	4
(b)	to produce a document or other thing, or	5
(c)	to give a copy of a document, or	6
(d)	to answer a question.	7
(2)	The Children's Guardian must set aside the requirement if it appears to the Children's Guardian that a person has a ground of privilege, whereby—	8 9
(a)	in proceedings in a court of law, the person might resist a similar requirement, and	10 11
(b)	it does not appear to the Children's Guardian that the person consents to compliance with the requirement.	12 13
(3)	The powers may be exercised despite—	14
(a)	a rule of law which, in proceedings in a court of law, might justify an objection to an inspection of the premises or document or thing or to production of the document or thing on grounds of public interest, or	15 16 17
(b)	any privilege of a relevant entity which the relevant entity might claim in a court of law, or	18 19
(c)	any duty of secrecy or other restriction on disclosure applying to a relevant entity.	20 21
Division 13	Offences for Part	22
63	Retribution by employer	23
(1)	An employer who dismisses an employee from his or her employment, or prejudices any employee in his or her employment, for or on account of the employee assisting the Children's Guardian is guilty of an indictable offence. Maximum penalty—200 penalty units or imprisonment for 5 years, or both.	24 25 26 27
(2)	In proceedings for an offence against subsection (1), it lies on the employer to prove that any employee shown to have been dismissed or prejudiced in his or her employment was so dismissed or prejudiced for some reason other than the reasons mentioned in subsection (1).	28 29 30 31
(3)	In this section, a reference to a person assisting the Children's Guardian is a reference to a person who—	32 33
(a)	has appeared, is appearing or is to appear as a witness before the Ombudsman, or	34 35
(b)	has complied with or proposes to comply with a requirement under Part 5 of Schedule 2, or	36 37
(c)	has assisted, is assisting or is to assist the Ombudsman in some other manner.	38
64	Protection against retribution	39
(1)	This section applies if a person, acting in good faith, gives, or proposes to give—	40
(a)	a report to the head of a relevant entity or the Children's Guardian, or	41
(b)	a complaint or notification to the Children's Guardian.	42
(2)	A person must not take, or threaten to take, detrimental action in respect of a person specified in subsection (1), because of the report, complaint or notification.	43 44

Maximum penalty—50 penalty units or imprisonment for 12 months, or both.	1
(3) For subsection (1), a report, complaint or notification is not given in good faith if—	2
(a) the report, complaint or notification was made or proposed in bad faith, or	3
(b) a material allegation was known, by the person giving the report, complaint or notification, to be false.	4
(4) In this section—	6
<i>detrimental action</i> means action causing, comprising or involving the following—	7
(a) injury, damage or loss,	8
(b) intimidation or harassment,	9
(c) discrimination, disadvantage or adverse treatment in relation to employment,	10
(d) dismissal from, or prejudice in, employment,	11
(e) prejudice in the provision of a community service,	12
(f) disciplinary proceedings.	13
Division 14 Miscellaneous	14
65 Head of relevant entity may delegate functions	15
The head of a relevant entity may delegate any of the functions of the head of the relevant entity under this Part to an employee of the entity.	16
66 Children's Guardian approval of head of relevant entity in certain circumstances	18
(1) This section applies to a relevant entity—	19
(a) that—	20
(i) is not a Department, and	21
(ii) does not have a chief executive officer or principal officer, and	22
(b) if the regulations do not prescribe a person or a class of persons as the head of the entity.	23
(2) For this Part, the relevant entity may nominate a person or the holder of a position in the entity to be the head of the entity.	25
(3) The Children's Guardian may approve, or refuse to approve, by written notice given to the entity, the person as the head of the entity.	27
(4) The approval given by the Children's Guardian under this section may be revoked by written notice, given to the entity, at any time.	29
67 Expert assistance	31
For the purposes of the exercise of the Children's Guardian's functions in relation to this Part, the Children's Guardian may engage the services of a person for the purpose of getting expert assistance.	32
68 Immunity from liability	35
(1) This section applies to—	36
(a) a person who gives a report, or	37
(b) a person who makes a complaint, or	38
(c) a person who gives the Children's Guardian a notification.	39

(2)	The person is not subject to any civil or criminal liability or any liability arising by way of administrative process, including disciplinary action, for giving the report, complaint or notification, if the person is acting in good faith.	1 2 3
69	Evidential immunity for individuals complying with Part	4
(1)	Subsection (2) applies if an individual gives or produces information or a document to the head of the relevant entity, or a person conducting an investigation on behalf of the head of the relevant entity or the Children's Guardian, under this Part.	5 6 7
(2)	Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in a proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.	8 9 10 11
(3)	Subsection (2) does not apply to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.	12 13 14
70	Cabinet information and proceedings	15
(1)	This Act does not enable the Children's Guardian—	16
(a)	to require any person—	17
(i)	to give any statement of information, or	18
(ii)	to produce any document or other thing, or	19
(iii)	to give a copy of any document, or	20
(iv)	to answer any question, or	21
(b)	to inspect any document or thing, that relates to Cabinet information.	22 23
(2)	For the purposes of this section, a certificate of the Secretary or General Counsel of the Department of Premier and Cabinet that—	24 25
(a)	information is Cabinet information, or	26
(b)	any information, document, thing or question relates to confidential proceedings of Cabinet or of a committee of Cabinet, is conclusive of that fact.	27 28 29
(3)	In this section—	30
	Cabinet information means—	31
(a)	Cabinet information under the <i>Government Information (Public Access) Act 2009</i> , or	32 33
(b)	confidential proceedings of Cabinet or a committee of Cabinet.	34

Part 5	Out-of-home care matters regulated by Children's Guardian	1
		2
Division 1	Preliminary	3
71	Objects of Part	4
	The objects of this Part are—	5
	(a) to monitor and regulate out-of-home care to ensure a high standard in the provision of out-of-home care, and	6 7
	(b) to ensure the rights of and obligations to children in out-of-home care are safeguarded and promoted, and	8 9
	(c) to provide a model for the organisation of voluntary out-of-home care, including by registering organisations that provide or arrange voluntary out-of-home care, and	10 11 12
	(d) to clarify the roles and responsibilities of agencies and persons involved in the provision of out-of-home care, and	13 14
	(e) to ensure agencies and persons providing out-of-home care to children are appropriately regulated to promote the safety, welfare and wellbeing of the children, and	15 16 17
	(f) to promote the best interests of all children in out-of-home care, and	18
	(g) to assess the suitability of agencies for accreditation and to monitor the carrying out of accredited agencies' responsibilities, and	19 20
	(h) to register agencies that provide or arrange voluntary out-of-home care and to monitor the carrying out of registered agencies' responsibilities, and	21 22
	(i) to establish and maintain a register for the purpose of the authorisation of individuals as authorised carers, and	23 24
	(j) to establish and maintain a register of residential care workers.	25
	Note. The <i>Children and Young Persons (Care and Protection) Act 1998</i> provides for the oversight of children in statutory out-of-home care and supported out-of-home care.	26 27
72	Meaning of “designated agency”	28
	(1) In this Act, designated agency means any of the following that are accredited under the regulations as a designated agency to provide or arrange out-of-home-care and the accreditation is in force—	29 30 31
	(a) a government sector agency or part of a government sector agency,	32
	(b) an organisation, or part of an organisation, that arranges the provision of out-of-home care.	33 34
	(2) The regulations may make provision for the accreditation process and the standards with which an applicant for accreditation must comply in order to be accredited as a designated agency.	35 36 37
73	Meaning of “registered agency”	38
	In this Act, registered agency means any of the following that are registered by the Children's Guardian under a regulation to provide or arrange voluntary out-of-home care—	39 40 41
	(a) a government sector agency or part of a government sector agency,	42
	(b) an organisation, or part of an organisation, that provides or arranges voluntary out-of-home care.	43 44

74	Meaning of “principal officer”	1
(1)	The <i>principal officer</i> of a designated agency means—	2
(a)	for 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	3 4 5 6
(b)	otherwise—	7
(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, or	8 9 10
(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.	11 12 13
(2)	If more than one person is the principal officer of a designated agency under subsection (1)(b), a reference in this Act or another Act to the principal officer of the designated agency is a reference to—	14 15 16
(a)	if the reference relates only to statutory out-of-home care or supported out-of-home care—the person referred to in subsection (1)(b)(i), or	17 18
(b)	if the reference relates only to voluntary out-of-home care—the person referred to in subsection (1)(b)(ii), or	19 20
(c)	otherwise—each of the persons.	21
(3)	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.	22 23 24
75	Actions of principal officer	25
(1)	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 this Act and the regulations, taken to be done by the designated agency or registered agency concerned.	26 27 28 29
(2)	Nothing in subsection (1) affects the personal liability of the principal officer.	30
Division 2	Voluntary out-of-home care	31
76	Voluntary out-of-home care	32
(1)	In this Act, <i>voluntary out-of-home care</i> is out-of-home care for a child that is arranged by a parent of the child, but does not include—	33 34
(a)	out-of-home care that is provided by an individual in a private capacity, or	35
(b)	out-of-home care that is provided outside New South Wales.	36
(2)	For subsection (1)(a), out-of-home care is provided by an individual in a private capacity if it is provided by an individual who is not acting on behalf of, or under an arrangement with, an entity or other organisation.	37 38 39
77	Restrictions on voluntary out-of-home care	40
(1)	A child may remain in voluntary out-of-home care for more than a total of 90 days in a period of 12 months only if the care is—	41 42
(a)	provided by a designated agency, or	43
(b)	supervised by a designated agency or the Children’s Guardian.	44

(2)	A child may remain in voluntary out-of-home care for more than a total of 180 days in a period of 12 months only if the designated agency providing or supervising the care, or the Children's Guardian, has ensured there is a plan that addresses the child's needs under the arrangement.	1 2 3 4
78	Contravening restrictions on voluntary out-of-home care	5
(1)	A child is taken to be at risk of significant harm for the purposes of Parts 2 and 3 of Chapter 3 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> if—	6 7
(a)	the child remains in voluntary out-of-home care in contravention of section 77(1) or (2) of this Act, and	8 9
(b)	the Children's Guardian decides the contravention is a significant contravention.	10 11
(2)	In deciding whether the contravention is a significant contravention the Children's Guardian must have regard to any relevant guidelines issued by the Secretary under section 171 of this Act.	12 13 14
79	Only certain persons may provide or arrange voluntary out-of-home care	15
(1)	A person must not provide voluntary out-of-home care for a child unless the person is—	16 17
(a)	a relevant agency, or	18
(b)	an individual who is authorised by a relevant agency or the Children's Guardian to provide voluntary out-of-home care.	19 20
	Maximum penalty—200 penalty units.	21
(2)	A person, other than a relevant agency or the Children's Guardian, must not—	22
(a)	arrange with a parent of a child for the child to be placed in voluntary out-of-home care, or	23 24
(b)	advertise or hold themselves out as being willing to arrange for a child to be placed in voluntary out-of-home care.	25 26
	Maximum penalty—200 penalty units.	27
(3)	In this section—	28
	relevant agency means—	29
(a)	a designated agency, or	30
(b)	a registered agency.	31
80	Children's Guardian to develop procedures	32
	The Children's Guardian is to develop policies and procedures about voluntary out-of-home care to ensure—	33 34
(a)	children are not placed in voluntary out-of-home care if adequate services can be provided to enable the children to remain with their family, and	35 36
(b)	proper case planning occurs for all children placed in voluntary out-of-home care.	37 38
Division 3	Oversight of designated agencies	39
81	Principal officer of designated agency must not reside with children under agency's care	40 41
(1)	The principal officer of a designated agency must not reside on the same property as a child who is in statutory out-of-home care or supported out-of-home care supervised by the designated agency.	42 43 44

Maximum penalty—200 penalty units.	1
(2) Subsection (1) does not apply if the principal officer resides with the child at a facility of the designated agency at which out-of-home care is provided.	2 3
82 Supervisory responsibility of designated agency	4
A designated agency that places a child in the out-of-home care of an authorised carer has a responsibility to supervise the placement (<i>supervisory responsibility</i>).	5 6
83 Notification of deaths of children in statutory out-of-home care or supported out-of-home care	7 8
If a child dies while in statutory out-of-home care or supported out-of-home care, the principal officer of the designated agency having supervisory responsibility, within the meaning of section 82, for the child must immediately cause notice of the death to be given to the following persons—	9 10 11 12
(a) the parents of the child if the parents can reasonably be located,	13
(b) the Children's Guardian,	14
(c) the Coroner.	15
Division 4 Monitoring and accreditation	16
84 Powers of authorised persons	17
Schedule 2 provides for powers that may be exercised by an authorised person for the purpose of monitoring and accreditation under this Part or under the regulations in relation to out-of-home care.	18 19 20
Division 5 Registers	21
85 Registers to be kept	22
(1) The Children's Guardian may keep the following registers—	23
(a) a register for authorised carers,	24
(b) a register for residential care workers,	25
(c) a register for organisations that provide or arrange voluntary out-of-home care.	26
(2) The regulations may provide for the following—	27
(a) the information to be kept under each register,	28
(b) the way the information must be recorded, including amendments to the register,	29 30
(c) when information must be kept, or updated, on the register,	31
(d) the checks a person who is kept on the register is to be subject to and the ways to record the outcomes of the checks,	32 33
(e) persons who may access the register, or particular information kept on the register,	34 35
(f) how the register may be used,	36
(g) the way the register may be kept.	37

Part 6	Child employment	1
Division 1	Preliminary	2
86	Objects of Part	3
	The objects of this Part are—	4
	(a) to promote the safety, welfare and wellbeing of children under the age of 16 years in relation to employment by assessing and granting employers' authorities and exemptions, and	5 6 7
	(b) to prevent the exploitation and abuse of children in employment, and	8
	(c) to provide for the circumstances in which a child may be employed that ensure the employment does not compromise the child's personal or social development and ability to benefit from education, including the granting and revocation of exemptions from the requirement to hold an employer's authority.	9 10 11 12 13
87	Definitions	14
	In this Part—	15
	<i>child</i> means—	16
	(a) in relation to employment as a model—a person under the age of 16 years, or	17
	(b) otherwise—a person under the age of 15 years.	18
	<i>employment</i> means—	19
	(a) paid employment, or	20
	(b) employment under which a material benefit is provided.	21
88	Extension of employment relationship	22
	If a relationship of employment may not otherwise exist, a person is also taken, for this Part, to employ a child if—	23 24
	(a) the regulations declare that persons of a class to which the person belongs are taken to employ children of a class to which the child belongs, or	25 26
	(b) the Children's Guardian has, by written notice given to the person, declared that the person is, for this Part, taken to employ a child or children of the class to which the child or children belong.	27 28 29
Division 2	Requirement to hold employer's authority or employer's exemption	30 31
89	Requirement to hold employer's authority for certain employment	32
	(1) A person must not employ a child to carry out the following activities unless the person holds an employer's authority that authorises the person to employ children to carry out the activity—	33 34 35
	(a) taking part in an entertainment or exhibition,	36
	(b) taking part in a performance that is recorded for use in a subsequent entertainment or exhibition,	37 38
	(c) offering anything for sale from door-to-door,	39
	(d) an activity prescribed by the regulations for this section.	40
	Maximum penalty—100 penalty units.	41

(2)	A person must not cause or procure a child to be employed knowing the child will be employed in contravention of subsection (1). Maximum penalty—100 penalty units.	1 2 3
(3)	A person having the care of a child must not consent to or otherwise allow the child to be employed knowing the child will be employed in contravention of subsection (1). Maximum penalty—100 penalty units.	4 5 6 7
90	Exemptions from requirement to hold employer's authority	8
	A person who employs a child to carry out an activity mentioned in section 89(1) is not required to hold an employer's authority for the employment if—	9 10
(a)	the child is employed for the purpose of a fundraising appeal, within the meaning of the <i>Charitable Fundraising Act 1991</i> , by a person lawfully conducting the appeal, or	11 12 13
(b)	the child is employed for the purpose of an occasional entertainment or exhibition, the net proceeds of which are to be applied wholly for a charitable purpose, or	14 15 16
(c)	the person is exempt under the regulations from the requirement to hold an employer's authority for the employment, or	17 18
(d)	the person is exempt by the Children's Guardian under section 99 from being required to hold an employer's authority.	19 20
Division 3	Employers' authorities and employers' exemptions	21
Subdivision 1	Applications for authorities or exemptions	22
91	How to apply	23
(1)	A person may apply to the Children's Guardian for—	24
(a)	an employer's authority, or	25
(b)	an exemption from the requirement to hold an employer's authority (an <i>employer's exemption</i>).	26 27
(2)	An application for an employer's authority or employer's exemption must be—	28
(a)	made in the approved form, and	29
(b)	accompanied by the fee prescribed by the regulations for the purposes of this section.	30 31
(3)	The regulations may also provide for the waiver, reduction or refund, including part refund, of the fee.	32 33
Subdivision 2	Employers' authorities	34
92	Decision about application for authority	35
(1)	Within 14 days after receiving an application for an employer's authority, the Children's Guardian must decide to—	36 37
(a)	grant the authority to the applicant, with or without conditions, or	38
(b)	refuse the authority.	39
(2)	The Children's Guardian may grant the application if the Children's Guardian is satisfied—	40 41

(a)	the applicant has the capacity to comply with this Part and any conditions to which the proposed authority will be subject, and	1
(b)	the applicant will comply with this Part and the conditions.	2
(3)	For subsection (1), the Children's Guardian and the applicant may agree to vary the period in which the application must be decided.	3
(4)	The Children's Guardian must give the applicant written notice of the decision and, if the Children's Guardian refuses the application, state the grounds on which the application has been refused.	4
		5
		6
		7
		8
93	Term of employer's authority	9
(1)	Unless sooner revoked, an employer's authority remains in force for the period, not exceeding 12 months, stated in the authority, commencing on the date the authority is granted, or a later date stated in the authority.	10
		11
		12
(2)	If an application is made by the holder of an employer's authority for a further employer's authority while the other employer's authority is still in force, the other employer's authority remains in force until the application is finally dealt with, whether or not on appeal.	13
		14
		15
		16
Subdivision 3	Conditions	17
94	Conditions of authority	18
(1)	An employer's authority is subject to the following conditions—	19
(a)	a condition prescribed by the regulations—	20
(i)	for all employers' authorities, or	21
(ii)	for a class of employers' authorities to which the authority belongs,	22
(b)	a condition imposed by the Children's Guardian.	23
(2)	The holder of an employer's authority must not employ a child in contravention of the conditions of the authority.	24
	Maximum penalty—100 penalty units.	25
		26
95	Change in conditions	27
(1)	The Children's Guardian may, at the request of the holder of an employer's authority or on the Children's Guardian's own initiative, change the conditions to which the authority is subject by—	28
		29
		30
(a)	revoking or varying a condition of the authority, or	31
(b)	imposing a further condition on the authority.	32
(2)	If the Children's Guardian decides to change the conditions, the Children's Guardian must give the holder of the employer's authority a written notice that states—	33
		34
(a)	the Children's Guardian's decision, and	35
(b)	the reason for the decision.	36
(3)	The change to the conditions takes effect on—	37
(a)	the date stated in the notice, or	38
(b)	if no date is stated in the notice, the day the notice is given to the holder of the employer's authority.	39
		40
(4)	This section does not apply to a condition prescribed by the regulations unless the regulations provide that this section applies.	41
		42

Subdivision 4	Suspension and revocation of employer's authority	1
96	Voluntary suspension or revocation of authority	2
(1)	The Children's Guardian may suspend or revoke an employer's authority at the request of the holder of the authority.	3 4
(2)	If the holder of an employer's authority has requested the authority be suspended or revoked, the Children's Guardian may, by written notice given to the holder of the authority—	5 6 7
(a)	suspend the authority for the period, not exceeding 6 months, stated in the notice, or	8 9
(b)	revoke the authority.	10
97	Suspension and revocation of authority	11
(1)	The Children's Guardian may decide to suspend or revoke an employer's authority if the Children's Guardian believes the holder of the authority has contravened—	12 13
(a)	this Act or the regulations, or	14
(b)	a condition of the authority.	15
(2)	If the Children's Guardian believes a ground exists to suspend or revoke an employer's authority, the Children's Guardian must give the holder a show cause notice, in writing, that states—	16 17 18
(a)	the action the Children's Guardian proposes taking (the <i>proposed action</i>), and	19
(b)	the ground for the proposed action, and	20
(c)	if the proposed action is suspension of the employer's authority—the proposed period, not exceeding 6 months, for the suspension, and	21 22
(d)	that the holder may make written submissions to the Children's Guardian, within 28 days after receiving the notice, about why the proposed action should not be taken.	23 24 25
(3)	After the 28 days under subsection (2) have passed, the Children's Guardian may, after considering any submissions made during that period by the holder—	26 27
(a)	suspend the employer's authority for the period, not exceeding 6 months, stated in the notice, or	28 29
(b)	revoke the employer's authority.	30
(4)	The suspension or revocation must be given to the holder of the employer's authority by a further notice, and state the ground on which the authority is suspended or revoked.	31 32 33
98	Effect of suspension	34
(1)	This section applies to an employer's authority suspended under this Subdivision.	35
(2)	If an employer's authority has been suspended for a period, the Children's Guardian may, during the period, end the suspension by giving the person who holds the authority written notice that the suspension has ended.	36 37 38
(3)	An employer's authority is taken not to be in force during the period for which it is suspended.	39 40

Division 4	Exemption	1
99	Exemption by Children's Guardian	2
(1)	The Children's Guardian may exempt a person from being required to hold an employer's authority—	3 4
(a)	if written notice of the exemption has been given to the person setting out the conditions, if any, on which the exemption was granted, and	5 6
(b)	until the person contravenes a condition on which the exemption was granted.	7
(2)	The Children's Guardian may revoke an exemption by a written notice given to the exempt person but only after—	8 9
(a)	notice has been given to the person and the notice sets out the reason the Children's Guardian intends to revoke the exemption, and	10 11
(b)	the Children's Guardian has taken into consideration any written submission made to the Children's Guardian by the person within 28 days after the notice was given.	12 13 14
(3)	Without limiting the reasons for which an exemption may be revoked, an exemption may be revoked if a condition of the exemption is contravened.	15 16
(4)	The Children's Guardian may revoke an exemption—	17
(a)	which applies because the employer is lawfully conducting a fundraising appeal, but only with the agreement of the Minister administering the <i>Charitable Fundraising Act 1991</i> , or	18 19 20
(b)	granted by the regulations, but only if the regulations allow the Children's Guardian to revoke the exemption.	21 22
Division 5	Powers for matters relating to child employment	23
100	Powers of authorised persons	24
	Schedule 2 provides for powers that may be exercised by an authorised person for the purpose of investigating a complaint or an offence under this Part.	25 26
101	Enforcement of undertakings	27
(1)	The Children's Guardian may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to the Children's Guardian's functions under section 125 (relating to the employment of children).	28 29 30
(2)	Without limiting subsection (1), an undertaking that the Children's Guardian may accept includes an undertaking to carry out a restorative justice activity.	31 32
(3)	The person may withdraw or vary the undertaking at any time, but only with the consent in writing of the Children's Guardian.	33 34
(4)	The consent of the Children's Guardian is required even if the undertaking purports to authorise withdrawal or variation of the undertaking without that consent.	35 36
(5)	The Children's Guardian may apply to the Supreme Court for an order under subsection (6) if the Children's Guardian considers that the person who gave the undertaking has breached the terms of the undertaking.	37 38 39
(6)	The Supreme Court may make all or any of the following orders if the Court is satisfied the person has breached a term of the undertaking—	40 41
(a)	an order directing the person to comply with the term of the undertaking,	42

(b)	an order directing the person to pay to the State an amount not exceeding the amount of a financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,	1 2 3
(c)	an order the Court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach,	4 5
(d)	an order suspending or revoking an employer's authority,	6
(e)	any other order the Court considers appropriate.	7
102	Power to compel production of information	8
(1)	The Children's Guardian may, by written notice, request that a person provide the Children's Guardian with information, including documents, relevant to the exercise of the Children's Guardian's functions under section 125 relating to the employment of children.	9 10 11 12
(2)	A notice under subsection (1) may be given for the purposes of—	13
(a)	preparing submissions to the Supreme Court under this Act, or	14
(b)	investigating a complaint relating to the employment of children.	15
(3)	A person given the notice is authorised to provide the Children's Guardian with the information requested.	16 17
(4)	A notice under this section may state the day on or before which the notice must be complied with.	18 19
(5)	If documents are given to the Children's Guardian under this section, the Children's Guardian—	20 21
(a)	may take possession of, and make copies of or take extracts from, the documents, and	22 23
(b)	may keep possession of the documents for the period necessary for the purposes of preparing the submission or investigating the complaint, and	24 25
(c)	if a person would otherwise be entitled to inspect the documents if the documents were not in the possession of the Children's Guardian—must permit the person to inspect the documents at all reasonable times.	26 27 28
Division 6	Miscellaneous	29
103	Endangering children in employment	30
	A person who causes or allows a child to take part in employment, in the course of which the child's physical or emotional wellbeing is put at risk, is guilty of an offence.	31 32 33
	Maximum penalty—200 penalty units.	34
104	Removal of child from place of unlawful employment	35
	A child is taken to be a child in need of care and protection under Chapter 4 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> if—	36 37
(a)	a person (other than a relative of the child) is employing the child in contravention of this Act at any place, and	38 39
(b)	the Children's Guardian requests a person responsible for the child to remove the child from the place, and	40 41
(c)	the child is not immediately removed.	42

Part 7	Adoption service providers	1
Division 1	Preliminary	2
105	Objects of Part	3
	The objects of this Part are—	4
	(a) to provide a framework for the accreditation of adoption service providers to ensure accredited adoption service providers comply with the objects of the <i>Adoption Act 2000</i> , and	5 6 7
	(b) to emphasise that the best interests of the child concerned, both in childhood and later life, must be the principal consideration in adoption law and practice, and	8 9 10
	(c) to ensure that adoption law and practice assist the child to know and have access to the child's birth family and cultural heritage, and	11 12
	(d) to recognise the changing nature of practices of adoption, and	13
	(e) to ensure equivalent safeguards and standards that apply to children adopted from within the State apply to children adopted from overseas, and	14 15
	(f) to encourage openness in adoption, and	16
	(g) to allow access to certain information relating to adoption.	17
106	References to <i>child</i>	18
	In this Part—	19
	<i>child</i> means—	20
	(a) a person who is less than 18 years of age, or	21
	(b) a person who is 18 or more years of age in relation to whom an adoption is sought or has been made.	22 23
107	Meaning of “principal officer” of adoption service provider	24
	(1) The <i>principal officer</i> of an accredited adoption service provider is the person who has the overall supervision of the provision, by the accredited adoption service provider, of adoption services.	25 26 27
	(2) Anything done by, or with the approval of, the principal officer of an adoption service provider in relation to adoption services is, for this Act and the regulations, and the <i>Adoption Act 2000</i> and the regulations under that Act, taken to be done by the adoption service provider concerned.	28 29 30 31
	(3) Nothing in this section affects the personal liability of the principal officer.	32
Division 2	Adoption service providers accreditation	33
108	Operation of Part	34
	This Part and Chapter 3 of the <i>Adoption Act 2000</i> , provide—	35
	(a) that individuals must not make their own adoption arrangements, either personally or through private institutions, and	36 37
	(b) for the accreditation of charitable and non-profit organisations to provide adoption services.	38 39

109 Accreditation and review of adoption service providers	1
(1) A charitable or non-profit organisation may apply to the Children's Guardian for accreditation as an adoption service provider to provide adoption services specified by the Children's Guardian.	2 3 4
(2) The Children's Guardian is to monitor whether the Secretary and accredited adoption service providers are carrying out their responsibilities with respect to the provision of adoption services in accordance with this Act and the regulations, and the <i>Adoption Act 2000</i> and the regulations under that Act.	5 6 7 8
Note. Section 11 of the <i>Adoption Act 2000</i> provides that it is an offence for a person to provide an adoption service unless the person is the Secretary or accredited under this Act as an adoption service provider.	9 10 11
(3) A person who makes a statement, orally or in writing, that the person knows to be false for the purposes of or in connection with subsection (1) or (2) is guilty of an offence.	12 13 14
Maximum penalty—25 penalty units or imprisonment for 12 months, or both.	15
(4) Subsection (3) does not apply to a document if the person, when giving the document—	16 17
(a) tells the Children's Guardian or an officer of the Children's Guardian, to the best of the person's ability, how it is false or misleading, and	18 19
(b) if the person has, or can reasonably obtain, the correct information—gives the correct information.	20 21
110 Accreditation criteria	22
(1) On the recommendation of the Children's Guardian, the Minister may, from time to time by order published in the Gazette, approve standards and other criteria for use in determining—	23 24 25
(a) whether to grant an application for accreditation as an accredited adoption service provider, and	26 27
(b) the period for which accreditation is to be granted.	28
(2) Standards and criteria may be approved under subsection (1) in relation to a class of applicants.	29 30
(3) Without limiting subsection (1), the criteria approved under subsection (1) are to be integrated, to the greatest extent practicable, with the criteria for accreditation of a designated agency under this Act.	31 32 33
(4) Failure to comply with subsection (3) does not affect the validity of a decision of the Children's Guardian to accredit or not to accredit an applicant.	34 35
Division 3 Miscellaneous	36
111 Restriction on inspection of records	37
(1) Except as provided by this Act or the regulations, records made in connection with the administration or execution of this Part are not to be open to inspection by, or made available to, any person, including any party to proceedings before the Court under this Act.	38 39 40 41
(2) Subsection (1) does not apply to any record or report if so ordered by the Court.	42
(3) In this section—	43
Court means the Supreme Court of New South Wales.	44

record means any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means.

1
2
3

Part 8	Children's Guardian	1
Division 1	Appointment	2
112	Appointment of Children's Guardian	3
(1)	There is to be a Children's Guardian.	4
(2)	The Children's Guardian is appointed by the Governor.	5
113	Term of office	6
(1)	The Children's Guardian holds office for the term, not more than 5 years, stated in the instrument of appointment.	7 8
(2)	The Children's Guardian is eligible for re-appointment.	9
(3)	However, a person may not be appointed for more than 2 terms of office as Children's Guardian, whether or not the terms are consecutive.	10 11
114	Full-time office	12
	The office of Children's Guardian is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Minister.	13 14
115	Eligibility for appointment	15
	A person is not eligible for appointment as Children's Guardian if the person is a member of the Legislative Council or the Legislative Assembly or is a member of a House of Parliament of another State or of the Commonwealth.	16 17 18
116	Employment and remuneration	19
(1)	Subject to this Part, the employment of the Children's Guardian is on the terms and conditions stated in the instrument of appointment.	20 21
(2)	The following provisions (the <i>relevant provisions</i>) of, or made under, the <i>Government Sector Employment Act 2013</i> relating to the employment of Public Service senior executives apply to the Children's Guardian—	22 23 24
(a)	provisions relating to the band in which an executive is to be employed,	25
(b)	provisions relating to the contract of employment of an executive,	26
(c)	provisions relating to the remuneration, employment benefits and allowances of an executive.	27 28
(3)	For subsection (2), in applying the relevant provisions to the Children's Guardian, a reference to the employer of a Public Service senior executive is taken to be a reference to the Minister.	29 30 31
117	Children's Guardian not Public Service employee	32
(1)	The office of Children's Guardian is a statutory office.	33
(2)	The provisions of the <i>Government Sector Employment Act 2013</i> relating to the employment of Public Service employees do not apply to the office.	34 35
Division 2	Vacancy and removal from office	36
118	Vacancy in office of Children's Guardian	37
(1)	The office of Children's Guardian becomes vacant if the holder—	38
(a)	attains the age of 65 years, or	39

(b)	engages in any paid employment outside the duties of the office, or	1
(c)	is nominated for election as a member of the Legislative Council or the Legislative Assembly or as a member of a House of Parliament of another State or of the Commonwealth, or	2 3 4
(d)	resigns the office by instrument in writing addressed to the Governor and the Governor accepts the resignation.	5 6
(2)	If the office of Children's Guardian becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.	7 8
119	Removal from office	9
(1)	The Governor may, at any time, remove the Children's Guardian from office upon the address of both Houses of Parliament.	10 11
(2)	To remove any doubt, the Children's Guardian cannot be removed from office under Part 6 of the <i>Government Sector Employment Act 2013</i> .	12 13
Division 3	Acting Children's Guardian	14
120	Acting Children's Guardian	15
(1)	If a person is appointed to act in the office of Children's Guardian, the acting Children's Guardian is entitled to be paid the remuneration and allowances decided by the Minister.	16 17 18
(2)	The Governor may remove a person from the office of acting Children's Guardian.	19
Division 4	Office of the Children's Guardian	20
121	Deputy Children's Guardian and Assistant Children's Guardian	21
(1)	The Children's Guardian may appoint one or more Deputy Children's Guardian and Assistant Children's Guardian.	22 23
(2)	Section 115 applies to and in respect of a Deputy Children's Guardian and an Assistant Children's Guardian in the same way the provision applies to and in respect of the Children's Guardian.	24 25 26
(3)	The offices of Deputy Children's Guardian and Assistant Children's Guardian—	27
(a)	are statutory offices, and	28
(b)	except as applied by section 122(2), the provisions of the <i>Government Sector Employment Act 2013</i> relating to the employment of Public Service employees do not apply to the offices.	29 30 31
(4)	A Deputy Children's Guardian or an Assistant Children's Guardian holds office for the term, not exceeding 5 years, stated in an instrument of appointment, and is eligible for re-appointment.	32 33 34
122	Employment of Deputy Children's Guardian or Assistant Children's Guardian	35
(1)	The employment of a Deputy Children's Guardian and an Assistant Children's Guardian is to be governed by a contract of employment between the Deputy Children's Guardian or Assistant Children's Guardian and the Children's Guardian.	36 37 38
(2)	The following provisions (the <i>relevant provisions</i>) of, or made under, the <i>Government Sector Employment Act 2013</i> relating to the employment of Public Service senior executives apply to a Deputy Children's Guardian or an Assistant Children's Guardian—	39 40 41 42
(a)	provisions relating to the band in which an executive is to be employed,	43

(b)	provisions relating to the contract of employment of an executive,	1
(c)	provisions relating to the remuneration, employment benefits and allowances of an executive,	2 3
(d)	provisions relating to the termination of employment of an executive.	4
(3)	For subsection (2), in applying the relevant provisions to a Deputy Children's Guardian or an Assistant Children's Guardian, a reference to the employer of a Public Service senior executive is taken to be a reference to the Children's Guardian.	5 6 7
123	Vacancy of office of Deputy Children's Guardian or Assistant Children's Guardian	8
(1)	The office of a Deputy Children's Guardian or an Assistant Children's Guardian becomes vacant if the holder—	9 10
(a)	dies, or	11
(b)	completes a term of office and is not re-appointed, or	12
(c)	resigns the office by instrument in writing addressed to the Children's Guardian, or	13 14
(d)	becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with the holder's creditors or makes an assignment of the holder's remuneration for the holder's benefit, or	15 16 17
(e)	becomes a mentally incapacitated person, or	18
(f)	is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted of an offence that, if committed in New South Wales, would be an offence punishable by imprisonment for 12 months or more, or	19 20 21 22
(g)	is nominated for election as a member of the Legislative Council or the Legislative Assembly or as a member of a House of Parliament of another State or of the Commonwealth, or	23 24 25
(h)	is removed from office under section 122(2).	26
(2)	A Deputy Children's Guardian or an Assistant Children's Guardian appointed as acting Children's Guardian under section 120, does not, on that account, cease to be Deputy Children's Guardian or an Assistant Children's Guardian.	27 28 29
124	Staff of Office	30
	Persons may be employed in the Public Service under the <i>Government Sector Employment Act 2013</i> to enable the Children's Guardian to exercise the Children's Guardian's functions.	31 32 33
	Note. Section 59 of the <i>Government Sector Employment Act 2013</i> provides that a person employed may be referred to as an officer or employee, or member of staff, of the Children's Guardian. Section 47A of the <i>Constitution Act 1902</i> precludes the Children's Guardian from employing staff.	34 35 36 37
Division 5	Functions	38
125	Functions of Children's Guardian	39
(1)	The principal functions of the Children's Guardian are as follows—	40
(a)	to exercise functions relating to persons engaged in child-related work, including working with children check clearances, under the <i>Child Protection (Working with Children) Act 2012</i> ,	41 42 43
(b)	to promote the best interests of all children in out-of-home care,	44
(c)	to ensure the rights of all children in out-of-home care are safeguarded and promoted,	45 46

- (d) to establish a register for the purpose of the authorisation of individuals as authorised carers, and to maintain that register, 1
2
 - (e) to accredit designated agencies and to monitor the carrying out of the agencies' responsibilities under this Act, the regulations, the *Children and Young Persons (Care and Protection) Act 1998* and the regulations under that Act, 3
4
5
6
 - (f) to register organisations that provide or arrange voluntary out-of-home care and to monitor the carrying out of the organisations' responsibilities under this Act and the regulations, 7
8
9
 - (g) to exercise functions relating to the employment of children, including the making and revoking of exemptions from the requirement to hold an employer's authority, 10
11
12
 - (h) to develop and administer a voluntary accreditation scheme for persons working with persons who have committed sexual offences against children, 13
14
 - (i) to develop and administer a voluntary accreditation scheme for programs for persons who have committed sexual offences against children, 15
16
 - (j) to encourage organisations to develop the organisations' capacity to be safe for children under the Children's Guardian's public awareness and advice functions specified in the *Child Protection (Working with Children) Act 2012*, 17
18
19
 - (k) to accredit adoption service providers under this Act and the regulations and to monitor the carrying out of the responsibilities, with respect to the provision of adoption services under the *Adoption Act 2000* and the regulations under that Act, of the providers and the Secretary, 20
21
22
23
 - (l) to establish and maintain a register for the application and engagement of individuals as residential care workers, 24
25
 - (m) to administer a reportable conduct scheme and work with relevant entities to prevent, identify and respond to reportable conduct and promote compliance with the scheme, 26
27
28
 - (n) to educate and provide advice to relevant entities, monitor investigations by relevant entities, make recommendations to relevant entities and investigate reportable allegations or make determinations about convictions considered to be reportable convictions, 29
30
31
32
 - (o) to co-ordinate the Official Community Visitor scheme in relation to Official Community Visitors. 33
34
- (2) Also, the Children's Guardian has any other functions conferred or imposed on the Children's Guardian by or under this Act or any other Act. 35
36
- (3) The Children's Guardian is not subject to the control or direction of the Minister. 37

126 Restriction on functions 38

The Children's Guardian must not carry out the following functions— 39

- (a) an investigation into the death of a child that is or has been subject to— 40
 - (i) an investigation under the *Coroners Act 2009*, or 41
 - (ii) a review or an investigation under the *Ombudsman Act 1974*, 42
- (b) the investigation or resolution of a matter that is, or was, the subject of a community services complaint within the meaning of Part 4 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, unless the Ombudsman has agreed. 43
44
45
46

127	Appointment of advisory committees	1
(1)	The Children's Guardian may appoint advisory committees to assist in the exercise of the Children's Guardian's functions.	2 3
(2)	The procedure of an advisory committee is to be decided by—	4
(a)	the Children's Guardian, or	5
(b)	if directed by the Children's Guardian—the committee.	6
(3)	A member of an advisory committee is entitled to the allowances decided by the Minister.	7 8
(4)	The Children's Guardian may disband an advisory committee at any time.	9
128	[Provision deliberately blank for relocation]	10
	Note. Schedule 5.8, item 18 provides for section 182 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> to be relocated.	11 12
129	[Provision deliberately blank for relocation]	13
	Note. Schedule 5.8, item 19 provides for section 184 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> to be relocated.	14 15
130	Delegation of functions	16
(1)	Subject to subsection (2), the Children's Guardian may delegate to an officer of the Children's Guardian the exercise of a function of the Children's Guardian.	17 18
(2)	The Children's Guardian may not delegate the exercise of—	19
(a)	a function to make a report under this Act, other than to an Assistant Children's Guardian, or	20 21
(b)	a function conferred by clause 1(2) of Schedule 3, other than to an Assistant Children's Guardian, or	22 23
(c)	the power of delegation under subsection (1).	24
(3)	An officer to whom the exercise of a function has been delegated under subsection (1) may subdelegate the exercise of the function to—	25 26
(a)	another officer of the Children's Guardian, or	27
(b)	a person, or a member of a class of persons, prescribed by the regulations or approved by the Children's Guardian.	28 29
131	Referral of matters to police and other investigative agencies	30
(1)	This section applies if information obtained by the Children's Guardian in the course of exercising the Children's Guardian's functions is—	31 32
(a)	information relating to a possible criminal offence under an Act or other law, or	33 34
(b)	information relating to grounds for possible disciplinary action under an Act or other law.	35 36
(2)	The Children's Guardian may refer the information to—	37
(a)	the Commissioner of Police, or	38
(b)	the Ombudsman, or	39
(c)	the Secretary, or	40
(d)	a NSW, interstate or Commonwealth investigative or disciplinary government agency the Children's Guardian considers appropriate.	41 42

(3)	However, this section does not apply to information obtained in the course of exercising functions under section 40A of the <i>Child Protection (Working with Children) Act 2012</i> .	1 2 3
(4)	Nothing in this section limits or affects the operation of Chapter 16A of the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	4 5
132	Protection from liability	6
(1)	This section applies to the following entities—	7
(a)	the Children's Guardian,	8
(b)	an advisory committee,	9
(c)	a member of an advisory committee,	10
(d)	a person acting under the direction of the Children's Guardian,	11
(e)	an Official Community Visitor.	12
(2)	A matter or thing done, or omitted to be done, by an entity in good faith for the purposes of executing this or any other Act, does not subject the entity personally to any action, liability, claim or demand.	13 14 15
	Note. See also section 177 for protection from liability for an officer of the Children's Guardian.	16
Division 6	Reports	17
133	References to "Presiding Officers"	18
(1)	In this Division, a reference to a Presiding Officer of a House of Parliament is a reference to the President of the Legislative Council or the Speaker of the Legislative Assembly.	19 20 21
(2)	If there is a vacancy in the office of President, the reference to the President is taken to be a reference to the Clerk of the Legislative Council.	22 23
(3)	If there is a vacancy in the office of Speaker, the reference to the Speaker is taken to be a reference to the Clerk of the Legislative Assembly.	24 25
134	Annual reports to Parliament	26
(1)	The Children's Guardian must—	27
(a)	prepare, within the period of 4 months after 30 June in each year, a report about the Children's Guardian's operations during the year ending on 30 June, and	28 29 30
(b)	give the report to the Presiding Officer of each House of Parliament.	31
(2)	A report by the Children's Guardian under this section must include the following—	32
(a)	a description of the activities of the Children's Guardian in relation to the functions of the Children's Guardian,	33 34
(b)	any recommendations for changes in the laws of the State, or for administrative action, the Children's Guardian considers should be made as a result of the exercise of the functions of the Children's Guardian,	35 36 37
(c)	an evaluation of the response of relevant entities to the recommendations of the Children's Guardian,	38 39
(d)	a description of matters relating to reportable conduct, including trends, investigations and reports,	40 41
(e)	a description of the work and activities of Official Community Visitors, including information about—	42 43

(i)	the number of referrals made by the Children's Guardian under section 146, and	1 2
(ii)	the outcome of an investigation by the Children's Guardian arising from a report by an Official Community Visitor.	3 4
(3)	Despite subsection (2), the report on the work and activities of Official Community Visitors may be a separate annual report.	5 6
135	Special reports to Parliament and to Minister	7
(1)	The Children's Guardian may—	8
(a)	prepare a special report on a matter relating to the functions of the Children's Guardian, and	9 10
(b)	give the report to the Presiding Officer of each House of Parliament.	11
(2)	Also, the Children's Guardian, if requested by the Minister—	12
(a)	must prepare a special report on a matter relating to a function of the Children's Guardian, other than a function under Part 4, and	13 14
(b)	may prepare a special report on a matter relating to a function of the Children's Guardian under Part 4.	15 16
(3)	A special report prepared at the request of the Minister may be given by the Children's Guardian to the Presiding Officer of each House of Parliament.	17 18
136	Giving draft reports to Minister	19
(1)	The Children's Guardian—	20
(a)	must give the Minister a draft of each of the reports to be given to the Presiding Officers under this Division, other than a special report mentioned in section 135(2)(b), and	21 22 23
(b)	may give the Minister a draft of a special report to be given to the Presiding Officers mentioned in section 135(2)(b).	24 25
(2)	A draft report that is required to be given to the Minister under subsection (1) must be given to the Minister at least one month, or other period agreed by the Minister, before the report is given to the Presiding Officers.	26 27 28
(3)	The Minister may—	29
(a)	give the Children's Guardian comments about a draft report, and	30
(b)	require the Children's Guardian to consult further in relation to the report.	31
(4)	The Children's Guardian is not required to amend the report because of comments made by the Minister but must, before finalising the report and giving it to the Presiding Officers, consider the comments.	32 33 34
137	Provisions relating to reports to Parliament	35
(1)	A copy of a report, given to the Presiding Officer of a House of Parliament under this Division, is to be laid before the House within 15 sitting days of the House after it is received by the Presiding Officer.	36 37 38
(2)	The Children's Guardian may include a recommendation that the report be made public.	39 40
(3)	If a report includes a recommendation by the Children's Guardian that the report be made public, a Presiding Officer of a House of Parliament may make it public whether or not the House is in session and whether or not the report has been laid before the House.	41 42 43 44

- | | | |
|-----|--|-------------|
| (4) | If a report is made public by a Presiding Officer of a House of Parliament before it is laid before the House, it attracts the same privileges and immunities as if it had been laid before the House. | 1
2
3 |
| (5) | A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied in relation to a report given to the Presiding Officer under this Division. | 4
5
6 |
| (6) | The <i>Annual Reports (Departments) Act 1985</i> is, in its application to the annual report of the Children's Guardian, modified to the extent necessary for the purposes of this Division. | 7
8
9 |

Part 9 Official Community Visitors

Division 1 Preliminary

138 Objects of Part

The objects of this Part are—

- (a) to protect and promote the rights of children in visitable services, and
- (b) to protect children from abuse, neglect and exploitation.

139 Definitions

In this Part—

child in care means a child under the age of 18 years—

- (a) under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*, or
- (b) for whom the Secretary or a designated agency has responsibility due to the operation of section 49 of the *Children and Young Persons (Care and Protection) Act 1998*, or
- (c) who is a protected person under section 135A(3) of the *Children and Young Persons (Care and Protection) Act 1998*, or
- (d) who is the subject of an out-of-home care arrangement under this Act or under the *Children and Young Persons (Care and Protection) Act 1998*, or
- (e) who is the subject of a sole parental responsibility order made under section 149 of the *Children and Young Persons (Care and Protection) Act 1998*, as in force immediately before its repeal by the *Child Protection Legislation Amendment Act 2014*, or
- (f) who is otherwise in the care of a service provider.

service includes a statutory or other function, and **providing** a service includes exercising such a function.

service provider means—

- (a) the Department, or
- (b) an implementation company under the *National Disability Insurance Scheme (NSW Enabling) Act 2013* while the company is a public sector agency of the State under that Act, or
- (c) the Minister, or
- (d) an authorised carer or designated agency, or
- (e) a person or organisation funded, authorised or licensed by the Children's Guardian or the Minister to provide a service, or
- (f) a person or organisation prescribed by the regulations.

visitable service means—

- (a) an accommodation service where a child in care using the service is in the full-time care of the service provider, or
- (b) a service prescribed by the regulations as a visitable service.

Division 2	Appointment and functions	1
140	Appointment of Official Community Visitors	2
(1)	The Minister may, on the recommendation of the Children's Guardian, appoint a person as an Official Community Visitor if the person, in the opinion of the Minister—	3
(a)	has appropriate knowledge and expertise in the matters relating to children in care, and	4
(b)	has a commitment to the objects of this Act and the following Acts—	5
(i)	the <i>Adoption Act 2000</i> ,	6
(ii)	the <i>Children and Young Persons (Care and Protection) Act 1998</i> ,	7
(iii)	the <i>Children (Education and Care Services) Supplementary Provisions Act 2011</i> ,	8
(iv)	the <i>Disability Inclusion Act 2014</i> ,	9
(v)	the <i>Community Welfare Act 1987</i> ,	10
(vi)	the <i>Community Services (Complaints, Reviews and Monitoring) Act 1993</i> ,	11
(vii)	the <i>Guardianship Act 1987</i> , and	12
(c)	has skills in the solving of problems about access to, and the use of, services for children in care, and	13
(d)	is not employed within the Department or the Office of the Children's Guardian.	14
(2)	An Official Community Visitor holds office for the term, not exceeding 3 years, stated in the instrument of appointment, and is eligible for re-appointment.	15
(3)	A person may not be appointed as an Official Community Visitor for consecutive terms totalling more than 6 years.	16
(4)	The provisions of the <i>Government Sector Employment Act 2013</i> relating to the employment of Public Service employees do not apply to an Official Community Visitor.	17
(5)	An Official Community Visitor is not a separate public sector agency and is to be regarded as part of the Department for the purposes of the <i>Privacy and Personal Information Protection Act 1998</i> and the <i>Health Records and Information Privacy Act 2002</i> .	18
(6)	The Minister may, on the recommendation of the Children's Guardian, remove an Official Community Visitor from office for incompetence, incapacity or misbehaviour.	19
(7)	To remove any doubt, an Official Community Visitor who has a disability (other than mental incapacity) may not be removed from office under subsection (6) on the ground of incapacity unless the disability renders the Official Community Visitor incapable of performing the functions of an Official Community Visitor.	20
141	Functions of Official Community Visitors	21
(1)	An Official Community Visitor may—	22
(a)	enter and inspect a place where a visitable service is provided at a reasonable time, and	23
(b)	confer alone with a child who is resident or person employed at the visitable service, and	24

(c)	inspect a document held at a visitable service, if the document relates to the operation of a visitable service, having regard to the wishes of a child resident at the visitable service to whom the document relates, and	1 2 3
(d)	provide the Minister and the Children's Guardian with advice or reports on any matters relating to the conduct of a visitable service, and	4 5
(e)	inform the Minister and the Children's Guardian on matters affecting the welfare, interests and conditions of children using visitable services, and	6 7
(f)	encourage the promotion of legal and human rights of children using visitable services, including the right to privacy, confidentiality, adequate information and consultation in relation to visitable services and the right to complain, and	8 9 10
(g)	consider matters raised by children using visitable services, staff of providers of visitable services and people having a genuine concern for the welfare, interests and conditions of children using visitable services, and	11 12 13
(h)	provide information about independent advocacy services to help children in the presentation of a grievance or matter of concern and, in appropriate cases, assist children to obtain the services, and	14 15 16
(i)	facilitate, if reasonable and practicable, the early and speedy resolution of grievances or matters of concern affecting children using visitable services by referring grievances or matters to the providers of the relevant services or other appropriate bodies, and	17 18 19 20
(j)	exercise functions prescribed by the regulations for the purposes of this section.	21 22
(2)	An Official Community Visitor must, in exercising a function under this section, act in a manner that preserves, as far as possible, the privacy of each child resident at the premises at which a visitable service is provided.	23 24 25
142	Co-ordination of Official Community Visitors	26
(1)	The Children's Guardian has a general oversight and co-ordination role in relation to Official Community Visitors and may determine priorities for the services to be provided by Official Community Visitors.	27 28 29
(2)	The Children's Guardian may convene meetings of Official Community Visitors, and take other action, as may be necessary for the exercise of the Children's Guardian's functions.	30 31 32
(3)	At least one meeting is to be held each calendar year.	33
Division 3	Reports to the Children's Guardian	34
143	Report may be made to Children's Guardian	35
(1)	An Official Community Visitor may make a report to the Children's Guardian about a child in care if the Official Community Visitor reasonably suspects the child's safety, welfare or wellbeing is at risk.	36 37 38
(2)	The report does not need to be in writing.	39
(3)	The Children's Guardian may make preliminary inquiries for the purposes of deciding how to deal with a report and may request further information from the Official Community Visitor making the report.	40 41 42
(4)	The Children's Guardian may, in respect of a report—	43
(a)	conduct an investigation, or	44
(b)	make a referral to an entity, or	45

(c)	decline to take action on the report.	1
(5)	If an Official Community Visitor, acting in good faith, makes a report to the Children's Guardian under this section, the person is not liable to civil or criminal action, or disciplinary action, for making the report.	2 3 4
(6)	The Children's Guardian may, at the Children's Guardian's own initiative, decide to deal with a matter as a report under this section if the matter relates to a child in care that the Children's Guardian reasonably suspects is not safe, or if the Children's Guardian has concerns for the welfare or wellbeing of the child.	5 6 7 8
144	Powers of authorised persons	9
	Schedule 2 provides for powers that may be exercised by the Children's Guardian or an authorised person under this Act in relation to an investigation under this Part.	10 11
145	Powers of Children's Guardian to conduct inquiry	12
(1)	For the purposes of an investigation of a report under section 143, the Children's Guardian may conduct an inquiry.	13 14
(2)	Schedule 3 provides for powers that may be exercised by the Children's Guardian for the inquiry.	15 16
146	Referral to other agencies	17
(1)	This section applies if the Children's Guardian is of the opinion that a report, or part of a report, given under section 143 constitutes a report, complaint or other matter that may be made to one or more of the following entities—	18 19 20
(a)	the Commissioner of the NDIS Quality and Safeguards Commission under the <i>National Disability Insurance Scheme Act 2013</i> of the Commonwealth,	21 22
(b)	the Ageing and Disability Commissioner under the <i>Ageing and Disability Commissioner Act 2019</i> ,	23 24
(c)	the Secretary,	25
(d)	the Ombudsman,	26
(e)	an entity prescribed by the regulations.	27
(2)	The Children's Guardian must refer the report, or the part of the report, to the entity.	28
(3)	The Children's Guardian must determine, with the entity the report is referred to, the most appropriate entity to conduct the investigation of the report.	29 30
(4)	Despite subsection (3), if the Children's Guardian is of the opinion that conducting an investigation may be necessary to protect the safety, welfare or wellbeing of a child, or class of children, the Children's Guardian may conduct an investigation of the report referred to the entity, including in consultation with the entity.	31 32 33 34
147	Provision of information to Children's Guardian	35
(1)	This section applies to information of a class that the Children's Guardian has determined is information 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.	36 37 38 39
(2)	An Official Community Visitor is required to provide to the Children's Guardian, and the Children's Guardian is authorised to collect and use, information belonging to a class referred to in subsection (1), if the Children's Guardian has notified the Official Community Visitor the information belongs to the class.	40 41 42 43

- (3) A provision of an Act or law that prohibits or restricts the disclosure of information does not operate to prevent the provision of information, or affect a duty to provide information, under this section. 1
2
3

Division 4 Offences for Part 4

148 Protection of complainant against retribution 5

- (1) A person must not take or threaten to take detrimental action— 6
(a) against an Official Community Visitor, or 7
(b) in respect of a person because that person, in good faith, makes, or proposes to make, a complaint under this Part. 8
9
Maximum penalty—50 penalty units or imprisonment for 12 months, or both. 10
- (2) For subsection (1)(b), a complaint is not made in good faith if— 11
(a) the report, complaint or notification was made or proposed in bad faith, or 12
(b) a material allegation was known, by the person giving the report, complaint or notification, to be false. 13
14
- (3) In this section— 15
community service has the same meaning as in the *Community Services (Complaints, Reviews and Monitoring) Act 1993*. 16
17
complaint includes providing information, documents or evidence in relation to a complaint under this Part. 18
19
detrimental action means action causing, comprising or involving any of the following— 20
21
(a) injury, damage or loss, 22
(b) intimidation or harassment, 23
(c) discrimination, disadvantage or adverse treatment in relation to employment, 24
(d) dismissal from, or prejudice in, employment, 25
(e) prejudice in the provision of a community service, 26
(f) disciplinary proceedings. 27

Part 10 Administrative review

149 Definition

In this Part—

service provider has the same meaning as in section 139, and also means a relevant entity under Part 4.

150 Applications to Civil and Administrative Tribunal for administrative review

- (1) An application may be made to the Civil and Administrative Tribunal under the *Administrative Decisions Review Act 1997* for administrative review of the following decisions—
 - (a) a decision of a person, authorised by or under this Act or the regulations to make the decision, not being the Children's Court, to accredit or not to accredit a government sector agency or an organisation, or part of a government sector agency or organisation, as a designated agency,
 - (b) a decision of the Children's Guardian—
 - (i) to grant an employer's authority, or
 - (ii) to impose a condition or further conditions on, or to vary or revoke a condition of, an employer's authority, or
 - (iii) to suspend or revoke an employer's authority,
 - (c) a decision of the Children's Guardian to declare under section 88(b) that a person is taken to be the employer of a child,
 - (d) a decision of the Children's Guardian to grant an exemption under section 99, to revoke the exemption or to impose conditions on the exemption,
 - (e) a decision to grant or refuse an application for accreditation as an adoption service provider,
 - (f) a decision as to the specification of the adoption services that may be provided by an accredited adoption service provider, or a variation of the decision,
 - (g) a decision in relation to the process of accreditation as an adoption service provider,
 - (h) a decision to impose or not to impose a condition on the accreditation of an adoption service provider or a decision to vary or revoke a condition imposed,
 - (i) a decision to shorten the accreditation period, or suspend or cancel the accreditation, of an accredited adoption service provider, other than a decision requested by an accredited adoption service provider,
 - (j) a decision to refuse to make a decision referred to in paragraphs (a)–(i) that the Children's Guardian is empowered and has been requested to make,
 - (k) a decision made by the Children's Guardian in relation to an investigation by the Children's Guardian, arising from a reportable allegation or a conviction considered to be a reportable conviction under Part 4, if the investigation has been finalised and a finding under section 49(2) has been made,
 - (l) a decision of the Children's Guardian belonging to a class of decisions prescribed by the regulations for this section.
- (2) The Minister is not to recommend the making of a regulation containing provisions for the purposes of subsection (1)(l) unless the Minister certifies that the Minister administering the *Civil and Administrative Tribunal Act 2013* has agreed to the provisions.
- (3) Section 53 of the *Administrative Decisions Review Act 1997* does not apply to a decision under Part 4 that may be reviewed by the Tribunal.

151	Persons who may make application	1
(1)	An application may be made by a person who demonstrates to the satisfaction of the Civil and Administrative Tribunal a genuine concern in the subject-matter of the decision.	2 3 4
(2)	Without limiting subsection (1), an application may be made by a person who is responsible for, is a next friend of or is appointed by the Civil and Administrative Tribunal to represent the person to whom the application relates.	5 6 7
(3)	The Tribunal may, on application, grant leave to apply for a review of a decision to any person who was entitled to, but did not, apply for a review of the decision within the time allowed for an application.	8 9 10
(4)	A person found by the Civil and Administrative Tribunal to be unjustifiably interfering in a matter is not entitled to apply to the Civil and Administrative Tribunal for a review in relation to the matter.	11 12 13
(5)	In determining whether a person is unjustifiably interfering in a matter, the Tribunal is to take into account, to the extent practicable, the wishes and interests of persons who have an interest in the matter.	14 15 16
152	Representative applications	17
(1)	The Civil and Administrative Tribunal may, on application, give leave for an application for a review of a decision to be dealt with as a representative application if it is satisfied—	18 19 20
(a)	3 or more persons are entitled to apply to the Civil and Administrative Tribunal for a review of a decision arising from the same, similar or related circumstances to which the application relates but a joinder of the applicants is impracticable, and	21 22 23 24
(b)	the applicant is one of the persons and the others consent to a representative application, and	25 26
(c)	the application is made in good faith, and	27
(d)	the applicant is capable of adequately advocating the interests of the persons entitled to apply for a review, and	28 29
(e)	a representative application would be to the advantage of the persons entitled to apply for a review, and	30 31
(f)	a representative application would be an efficient and effective means of dealing with the claims of the persons entitled to apply for a review.	32 33
(2)	The Civil and Administrative Tribunal may make orders about the making, notification, conduct and determination of a representative application.	34 35
(3)	The decision of the Civil and Administrative Tribunal on a representative application is binding on the persons.	36 37
153	Alternatives to Tribunal determining matter	38
(1)	The Civil and Administrative Tribunal must take reasonable steps to encourage the parties to an application for review to effect an amicable agreement.	39 40
(2)	The Tribunal may, before it hears an application, or before it determines a matter the subject of an application, refer the application or matter—	41 42
(a)	to the service provider for resolution at a local level, or	43
(b)	to the Children's Guardian recommending that consideration be given to investigation or resolution of the matter under this Act, or	44 45
(c)	for investigation by any other appropriate investigative authority.	46

(3)	The powers conferred on the Tribunal by this section are in addition to any other powers that the Tribunal has under the <i>Civil and Administrative Tribunal Act 2013</i> with respect to the use of resolution processes.	1 2 3
154	Additional powers of Tribunal	4
(1)	The Civil and Administrative Tribunal may decline to hear or determine an application if, in the opinion of the Tribunal—	5 6
(a)	the applicant has available an alternative and satisfactory means of redress, or	7
(b)	the applicant has not made appropriate attempts to have the matter to which the application relates otherwise resolved, or	8 9
(c)	the ground for the application is unacceptable having regard to the frequency of applications previously made by or on behalf of the applicant in respect of the same subject-matter.	10 11 12
(2)	In giving a decision on an application, the Tribunal may make recommendations for consideration by the person who made the decision concerned or the Minister, if the decision was made by a service provider.	13 14 15
(3)	If recommendations are made, the parties affected by the decision are entitled to be informed—	16 17
(a)	of action taken in relation to the recommendations, or	18
(b)	that it is not proposed to take any action.	19
(4)	Nothing in this section limits the powers of the Tribunal under Division 3 (Powers on administrative review) of Part 3 of Chapter 3 of the <i>Administrative Decisions Review Act 1997</i> .	20 21 22

Part 11 Offences 1

Division 1 Offences about use and disclosure of information 2

155 Disclosure of information 3

- (1) A person who discloses information obtained in connection with the administration or execution of this Act is guilty of an offence unless the disclosure is made— 4
- (a) with the consent of the person from whom the information was obtained, or 6
 - (b) in connection with the administration or execution of this Act or the regulations, or 7
 - (c) for the purposes of legal proceedings, or a report about legal proceedings, arising out of this Act or the regulations, or 9
 - (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or 11
 - (e) with a lawful excuse. 12

Maximum penalty—10 penalty units or imprisonment for a period not exceeding 12 months, or both. 13

- (2) It is not an offence under this section for the Children's Guardian to disclose information to an Official Community Visitor, who has made a report under section 143, concerning action taken as a consequence of the report if the Children's Guardian is of the opinion that disclosure of the information is not inconsistent with the objects and principles of this Act. 15

156 Disclosure of information for research purposes 20

- (1) The Children's Guardian may enter into arrangements with a researcher or a research organisation for the purposes of permitting the disclosure of information to the researcher or research organisation (including health information and personal information) that is held by the Children's Guardian, a designated agency or an accredited adoption service provider. 21

- (2) The Children's Guardian is not to enter into arrangements under this section unless satisfied that the arrangements will ensure— 26

- (a) reasonable steps will be taken to de-identify information disclosed under the arrangements, and 28
- (b) information disclosed under the arrangements will be treated by the researcher or research organisation as confidential, and 30
- (c) as far as reasonably practicable, no publication that uses or is based on information disclosed under the arrangements will enable the identity of an affected person to be ascertained, and 32
- (d) as far as is reasonably practicable, personal information disclosed under the arrangements will be used or dealt with in accordance with the information protection principles set out in sections 12, 17, 18 and 19 of the *Privacy and Personal Information Protection Act 1998* as those principles would apply if the researcher or research organisation were a public sector agency. 35

Note. The *Privacy and Personal Information Protection Act 1998* requires public sector agencies to deal with personal information in accordance with the information protection principles set out in that Act. 40

- (3) A disclosure of information made in good faith under the arrangements does not— 43
- (a) constitute a contravention of a provision as to confidentiality in this Act, and 44
 - (b) constitute a contravention of the *Health Records and Information Privacy Act 2002* or the *Privacy and Personal Information Protection Act 1998*. 45

(4)	The provisions of the <i>Health Records and Information Privacy Act 2002</i> apply to health information disclosed under the arrangements as if the researcher or research organisation were a private sector person (within the meaning of that Act).	1 2 3
	Note. The <i>Health Records and Information Privacy Act 2002</i> requires a private sector person that collects, holds or uses health information to comply with the health privacy principles set out in that Act.	4 5 6
(5)	In this section—	7
	health information has the same meaning as in the <i>Health Records and Information Privacy Act 2002</i> .	8 9
	personal information has the same meaning as in the <i>Privacy and Personal Information Protection Act 1998</i> .	10 11
	research organisation means an organisation prescribed by the regulations or under the <i>Adoption Act 2000</i> .	12 13
157	False and misleading information	14
(1)	A person must not, in relation to the administration of this Act or the regulations, give information that the person knows is false or misleading in a material particular to the Children's Guardian, an officer of the Children's Guardian or an authorised person.	15 16 17 18
	Maximum penalty—10 penalty units.	19
(2)	Subsection (1) applies whether or not the information was given in response to a specific power under this Act.	20 21
(3)	Subsection (1) does not apply to a document if the person, when giving the document—	22 23
	(a) tells the Children's Guardian, officer of the Children's Guardian or authorised person, to the best of the person's ability, how it is false or misleading, and	24 25
	(b) if the person has, or can reasonably obtain, the correct information, gives the correct information.	26 27
(4)	Also, subsection (1) does not apply to information given under section 109.	28
	Note. See section 109(3) in relation to false and misleading information given under that provision.	29 30
(5)	In this section—	31
	information includes a statement, document or notification.	32
158	Unlawful use of stored information	33
(1)	A person must not access information stored by the Children's Guardian unless the person is authorised, approved or delegated to perform a function of the Children's Guardian.	34 35 36
	Maximum penalty—10 penalty units.	37
(2)	Subsection (1) does not apply to—	38
	(a) stored information that cannot be used to discover the identity of a person, or	39
	(b) accessing stored information if the access is authorised under another law.	40
Division 2	Directors and corporate liability	41
159	Definition	42
	In this Division—	43

director has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

160 Executive liability offences

For this Division, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation—

- (a) section 79(1),
- (b) section 79(2),
- (c) section 89(1),
- (d) section 89(2),
- (e) section 89(3),
- (f) section 94(2),
- (g) section 103,
- (h) section 155(1),
- (i) section 157(1),
- (j) section 158(1),
- (k) section 176(2),
- (l) Schedule 2, clause 15(1),
- (m) Schedule 2, clause 16(1).

161 Executive liability offences committed by person

- (1) A person commits an executive liability offence if—
 - (a) a corporation commits an executive liability offence, and
 - (b) the person is—
 - (i) a director of the corporation, or
 - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
 - (c) the person—
 - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
 - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.
- Maximum penalty—
- (a) for an offence under section 157(1)—100 penalty units, or
 - (b) for an offence under section 158(1)—50 penalty units, or
 - (c) otherwise—the maximum penalty for the executive liability offence if committed by an individual.
- (2) This section does not affect the following—
 - (a) the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence,
 - (b) the application of any other law relating to the criminal liability of persons, whether or not directors or other managers of the corporation, who are accessories to the commission of the executive liability offence or are

otherwise concerned in, or party to, the commission of the executive liability offence.	1 2
(3) In this section—	3
<i>reasonable steps</i> , in relation to the commission of an executive liability offence, includes, but is not limited to, action of the following kinds that is reasonable in all the circumstances—	4 5 6
(a) action towards—	7
(i) assessing the corporation's compliance with the provision creating the executive liability offence, and	8 9
(ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,	10 11
(b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,	12 13 14 15 16
(c) action towards ensuring that—	17
(i) the plant, equipment and other resources, and	18
(ii) the structures, work systems and other processes,	19
relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,	20 21
(d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.	22 23 24
162 Prosecution of executive liability offence	25
(1) The prosecution bears the legal burden of proving the elements of an executive liability offence.	26 27
(2) An executive liability offence can only be prosecuted by a person who can bring a prosecution for the executive liability offence.	28 29
163 Liability of directors etc for offences by corporation—accessory to commission of offences	30 31
(1) For the purposes of this section, a <i>corporate offence</i> is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence.	32 33 34
(2) A person commits an offence against this section if—	35
(a) a corporation commits a corporate offence, and	36
(b) the person is—	37
(i) a director of the corporation, or	38
(ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and	39 40 41
(c) the person—	42
(i) aids, abets, counsels or procures the commission of the corporate offence, or	43 44
(ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or	45 46

(iii)	conspires with others to effect the commission of the corporate offence, or	1 2
(iv)	is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.	3 4
	Maximum penalty—the maximum penalty for the corporate offence if committed by an individual.	5 6
(3)	This section does not affect the following—	7
(a)	the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence,	8 9
(b)	the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.	10 11 12
164	Evidence as to state of mind of corporation	13
(1)	Without limiting a law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation, while acting in that capacity, had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.	14 15 16 17
(2)	In this section— <i>state of mind</i> , of a person, includes—	18 19
(a)	the knowledge, intention, opinion, belief or purpose of the person, and	20
(b)	the person's reasons for the intention, opinion, belief or purpose.	21
Division 3	Other offence	22
165	Obstructing authorised person or other person	23
(1)	A person must not obstruct—	24
(a)	an authorised person, or a person helping an authorised person, exercising a function under Schedule 2, unless the person has a reasonable excuse, or	25 26
(b)	a person in the exercise of the person's functions under this Act.	27
	Maximum penalty—10 penalty units.	28
(2)	If a person has obstructed an authorised person, a person helping an authorised person, or a person exercising a function under this Act (each a <i>relevant person</i>), and the relevant person decides to proceed with the exercise of the function, or to continue to perform the functions, the relevant person must give a warning to the person obstructing the relevant person that—	29 30 31 32 33
(a)	it is an offence to cause an obstruction unless the person has a reasonable excuse, and	34 35
(b)	the relevant person considers the person's conduct an obstruction.	36
(3)	In this section— <i>obstruct</i> includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.	37 38
Division 4	Administration of offences	39
166	Time for instituting proceedings	40
(1)	Proceedings for an offence under this Act or the regulations may be commenced not later than 6 months after the offence was alleged to have been committed.	41 42

(2)	Proceedings for an offence against this Act or the regulations may also be commenced within but not later than 6 months after the Children's Guardian became aware of the alleged offence.	1 2 3
(3)	If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice or application must contain particulars of the date on which evidence of the alleged offence first came to the attention of the Children's Guardian and need not contain particulars of the date on which the offence was alleged to have been committed.	4 5 6 7 8
(4)	The date on which evidence first came to the attention of the Children's Guardian is the date stated in the court attendance notice or application, unless the contrary is established.	9 10 11
(5)	This section applies despite anything in the <i>Criminal Procedure Act 1986</i> or any other Act.	12 13
(6)	In this section— evidence of an offence means evidence of an act or omission constituting the offence.	14 15
167	Proceedings for offences	16
(1)	Proceedings for an offence against this Act or the regulations may be dealt with summarily before the Local Court or before the Supreme Court in its summary jurisdiction.	17 18 19
(2)	If proceedings for an offence against this Act or the regulations are taken before the Local Court, the maximum monetary penalty the Local Court may impose is, despite any provision of this Act to the contrary, 200 penalty units or the maximum monetary penalty provided by this Act for the offence, whichever amount is the smaller.	20 21 22 23
(3)	If proceedings for an offence against this Act or the regulations are taken before the Supreme Court, the Supreme Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations for the offence.	24 25 26
168	Penalty notices	27
(1)	An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.	28 29
(2)	A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.	30 31
(3)	The <i>Fines Act 1996</i> applies to a penalty notice issued under this section. Note. The <i>Fines Act 1996</i> provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount stated in the notice and is not liable to any further proceedings for the alleged offence.	32 33 34 35
(4)	The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations, not exceeding the maximum amount of penalty that could be imposed for the offence by a court.	36 37 38
(5)	This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.	39 40
(6)	In this section— authorised officer means—	41 42
(a)	a police officer, or	43
(b)	a person employed in the Office of the Children's Guardian who is authorised in writing by the Children's Guardian as an authorised officer for the purposes of this section.	44 45 46

Part 12 Miscellaneous	1
169 Powers of authorised persons	2
Schedule 2 provides for powers that may be exercised by the Children's Guardian or an authorised person under this Act.	3 4
170 Children's Guardian may make guidelines	5
(1) The Children's Guardian may make guidelines for the purpose of exercising the Children's Guardian's functions.	6 7
(2) Without limiting subsection (1), the Children's Guardian may make guidelines about the following—	8 9
(a) in relation to a placement of a child with a designated agency—	10
(i) particular classes of people, in addition to parents and including persons significant to the child, who should normally receive information concerning the placement, and	11 12 13
(ii) particular types of information concerning the placement that should normally be disclosed, and	14 15
(iii) guidance as to persons who should not receive information concerning the placement,	16 17
(b) guidance as to how the child concerned is to participate in any decision-making processes relating to the disclosure of information concerning the authorised carer of the child,	18 19 20
(c) information sharing within the Office of the Children's Guardian.	21
(3) A guideline issued by the Children's Guardian must be published on the Office of the Children's Guardian's website.	22 23
171 Secretary may make guidelines	24
(1) The Secretary may make guidelines for the purposes of this Act.	25
(2) Without limiting subsection (1), the Secretary may make guidelines about voluntary out-of-home care, including guidance about what constitutes a significant contravention of section 78.	26 27 28
(3) A guideline issued by the Secretary must be published on the Department's website.	29
172 Approval of forms	30
(1) The Children's Guardian may approve forms for use under this Act.	31
(2) A form approved under subsection (1) must be published on the Office of the Children's Guardian's website.	32 33
173 Manner of giving notice	34
(1) A notice or other instrument required or authorised by this Act to be given to a person may be—	35 36
(a) given personally or by prepaid post, or	37
(b) left with a person who is apparently of or above the age of 16 years at the address last known to the Children's Guardian of the person, or	38 39
(c) given by email to an email address specified by the person for the service of documents of that kind, or	40 41

(d)	if no address of the person is known to the Children's Guardian—published or otherwise given by a method prescribed by the regulations for the notice or instrument.	1 2 3
(2)	If the notice or instrument is—	4
(a)	sent by post, the notice or instrument is taken to have been given at the time the notice or instrument would be delivered in the ordinary course of post, or	5 6
(b)	published or otherwise given under subsection (1)(d), the notice or instrument is taken to have been given at a time prescribed by the regulations.	7 8
174	Records	9
(1)	A record made under this Act or the regulations may be kept in written or electronic form.	10 11
(2)	A record under this Act for an Aboriginal child or Torres Strait Islander child must be kept permanently.	12 13
(3)	The regulations may make provision for or with respect to the keeping of and access to records.	14 15
175	Delegation by Minister	16
	The Minister may delegate to the Secretary, or any other person, the exercise of any of the Minister's powers under this Act or the regulations, other than this power of delegation.	17 18 19
176	Provision and exchange of information	20
(1)	The Children's Guardian may, for the purpose of exercising the functions of the Children's Guardian—	21 22
(a)	give a relevant body information relating to the safety, welfare and wellbeing of a particular child or class of children, and	23 24
(b)	direct a relevant body to give the Children's Guardian information relating to the safety, welfare and wellbeing of a particular child or class of children.	25 26
(2)	A relevant body, other than the Secretary or a government sector agency, must comply with the direction under subsection (1)(b) within the reasonable time specified in the direction. Maximum penalty—10 penalty units.	27 28 29 30
(3)	Information given under subsection (1)—	31
(a)	is not, in proceedings before a court, tribunal or committee, to be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and	32 33 34
(b)	does not incur liability for defamation, and	35
(c)	does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy.	36 37
(4)	A reference in subsection (3) to information given extends to information given in good faith and with reasonable care for the purposes of that subsection.	38 39
(5)	A provision of an Act or law that prohibits or restricts the disclosure of information does not operate to prevent the information being given, or affect a duty to give information, under this section.	40 41 42
(6)	Nothing in subsection (5) affects an obligation or power to provide information.	43

(7)	Information given or directed to be given under subsection (1) must be done in a way, or in accordance with requirements, if any, prescribed by the regulations.	1 2
(8)	In this section—	3
	<i>relevant body</i> means—	4
(a)	a prescribed body under section 248 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> , and	5 6
(b)	a body, including an unincorporated body, or a class of bodies, prescribed by the regulations for the purposes of this section.	7 8
177	Personal liability	9
	A matter or thing done, or omitted to be done, by an officer of the Children's Guardian, does not, if the matter or thing was done or omitted to be done in good faith, for the purposes of executing this Act, subject the officer acting personally to any action, liability, claim or demand.	10 11 12 13
	Note. See also section 132 for protection from liability for other entities.	14
178	Act binds Crown	15
	This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.	16 17 18
179	Review of Act	19
(1)	The Minister is to review this Act to determine whether—	20
(a)	the policy objectives of the Act remain valid, and	21
(b)	the terms of the Act remain appropriate for achieving the objectives.	22
(2)	The review is to be undertaken as soon as practicable after the period of 2 years from the commencement.	23 24
(3)	A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.	25 26
180	Regulations	27
(1)	The Governor may make regulations, not inconsistent with this Act, for or with respect to a matter that, by this Act, is required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.	28 29 30 31
(2)	Without limiting subsection (1), the regulations may provide for the following—	32
(a)	arrangements for voluntary out-of-home care,	33
(b)	the establishment or continuance of a register to monitor the carrying out of the responsibilities of organisations providing or arranging voluntary out-of-home care,	34 35 36
(c)	the registration of a government sector agency or an organisation, or part of a government sector agency or organisation, as a registered agency for the purpose of providing or arranging voluntary out-of-home care,	37 38 39
(d)	the regulation, monitoring and oversight of entities providing or arranging voluntary out-of-home care,	40 41
(e)	the authorisation of persons, by designated agencies, as authorised carers on a provisional basis,	42 43
(f)	the accreditation of organisations as adoption service providers and the provision of adoption services by adoption service providers,	44 45

- | | | |
|-----|--|----|
| (g) | requirements to be observed in relation to the conduct of an internal review of decisions made by the Children's Guardian under this Act, | 1 |
| | | 2 |
| (h) | the oversight and co-ordination of the Official Community Visitor scheme in relation to Official Community Visitors under this Act, | 3 |
| | | 4 |
| (i) | the payment of fees for a service provided under this Act, including the waiver, reduction or refund, including part refund, of fees payable under this Act. | 5 |
| | | 6 |
| (3) | A regulation may create an offence punishable by a penalty not exceeding 50 penalty units. | 7 |
| | | 8 |
| (4) | The regulations may apply, adopt or incorporate, wholly or in part and with or without modifications, any standard, rule, code, specification or other document prescribed or published by any entity (whether of New South Wales or elsewhere) and as in force at a particular time or from time to time. | 9 |
| | | 10 |
| | | 11 |
| | | 12 |

Schedule 1	Schedule 1 entities	1
	section 13	2
1	the Department of Education, including a government school within the meaning of the <i>Education Act 1990</i>	3 4
2	the Ministry of Health	5
3	a local health district within the meaning of the <i>Health Services Act 1997</i>	6
4	a non-government school within the meaning of the <i>Education Act 1990</i>	7
5	a designated agency	8
6	an approved education and care service within the meaning of the <i>Children (Education and Care Services) National Law (NSW)</i> or the <i>Children (Education and Care Services) Supplementary Provisions Act 2011</i>	9 10 11
7	that part of Youth Justice within the Department of Communities and Justice comprising the group of staff who are principally involved in the administration of an Act administered by the Attorney General, and Minister for the Prevention of Domestic Violence and the Minister for Families, Communities and Disability Services	12 13 14 15 16
8	that part of the Department of Communities and Justice comprising the group of staff who are principally involved in the administration of an Act administered by the Minister for Families, Communities and Disability Services	17 18 19
9	a statutory health corporation within the meaning of the <i>Health Services Act 1997</i>	20
10	an affiliated health organisation within the meaning of the <i>Health Services Act 1997</i>	21
11	the Ambulance Service of NSW within the meaning of the <i>Health Services Act 1997</i>	22
12	the TAFE Commission within the meaning of the <i>Technical and Further Education Commission Act 1990</i>	23 24
13	an agency providing substitute residential care for children	25

Schedule 2 Powers of authorised persons

sections 48, 84, 100, 144 and 169

Part 1 General provisions about authorised persons

1 Interpretation

In this Schedule—

authorised officer has the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

authorised person see clauses 3 and 4.

film includes photograph, videotape and record an image in any way.

general power see clause 13(1).

inspect, in relation to a thing, includes open the thing and examine its contents.

occupier, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons,
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place,
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

of, in relation to a place, includes at or on the place.

place includes premises.

premises includes—

- (a) a building or other structure, and
- (b) part of a building or other structure, and
- (c) a caravan or vehicle, and
- (d) premises held under more than 1 title or by more than 1 owner.

public place means a place, or part of a place—

- (a) that the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money, or
- (b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

2 Functions

An authorised person has the following functions—

- (a) to facilitate the exercise of powers under this Act,
- (b) for Part 5 of the Act—to monitor and accredit agencies and persons providing out-of-home care,
- (c) otherwise—to investigate, monitor and enforce compliance with this Act.

3 Children's Guardian is authorised person

The Children's Guardian is an **authorised person**.

4 Children's Guardian may appoint authorised persons

The Children's Guardian may appoint an officer of the Children's Guardian as an **authorised person**.

Part 2	Miscellaneous provisions	1
5	References to exercise of powers	2
	If—	3
	(a) a provision of this Act refers to the exercise of a power by an authorised person, and	4
		5
	(b) there is no reference to a specific power,	6
	the reference is to the exercise of all or any authorised persons' powers under this Act	7
	or a warrant, to the extent the powers are relevant.	8
6	Reference to document includes reference to reproductions from electronic document	9
	A reference in this Schedule to a document includes a reference to an image or text—	10
		11
	(a) produced from an electronic document, or	12
	(b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of an article or device.	13
		14
Part 3	Entry of places by authorised persons	15
Division 1	Power to enter	16
7	General power to enter places	17
(1)	An authorised person may enter a place if—	18
	(a) an occupier at the place consents under Division 2 to the entry and clause 10 has been complied with by the authorised person, or	19
		20
	(b) it is a public place and the entry is made when the place is open to the public, or	21
	(c) it is for the purposes of the exercise of the functions the Children's Guardian to accredit designated agencies and to monitor their responsibilities under this Act or the regulations, or	22
		23
		24
	(d) for entry for an investigation under Part 4 of this Act—the entry is to premises occupied or used by a relevant entity being investigated by the Children's Guardian, or	25
		26
		27
	(e) for entry to investigate a complaint or an offence under Part 6 of this Act—the entry is authorised under Part 8 of this Schedule, or	28
		29
	(f) for entry for a matter under Part 9 of this Act—the entry is authorised under a warrant issued under clause 31.	30
		31
(2)	If the power to enter arises only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.	32
		33
		34
(3)	The consent may provide for re-entry and is subject to the conditions of the consent.	35
Division 2	Entry by consent	36
8	Application of Division	37
	This Division applies if an authorised person intends to ask an occupier of a place to consent to the authorised person entering the place.	38
		39

9	Entry to request access	1
	For the purpose of asking the occupier for the consent, an authorised person may, without the occupier's consent or a warrant—	2 3
	(a) enter land around premises at the place to the extent that is reasonable to contact the occupier, or	4 5
	(b) enter part of the place the authorised person reasonably considers members of the public are ordinarily allowed to enter when they wish to contact an occupier of the place.	6 7 8
10	Matters authorised person must tell occupier	9
	Before asking for the consent, the authorised person must—	10
	(a) explain to the occupier the purpose of the entry, including the powers intended to be exercised, and	11 12
	(b) tell the occupier that—	13
	(i) the occupier is not required to consent, and	14
	(ii) the consent may be given subject to conditions and may be withdrawn at any time.	15 16
11	Consent acknowledgement	17
(1)	If the consent is given, the authorised person may ask the occupier to sign an acknowledgement of the consent.	18 19
(2)	The acknowledgement must state—	20
	(a) the purpose of the entry, including the powers to be exercised, and	21
	(b) that the occupier has been given an explanation about the purpose of the entry, including the powers intended to be exercised, and	22 23
	(c) that the occupier has been told—	24
	(i) that the occupier is not required to consent, and	25
	(ii) that the consent may be given subject to conditions and may be withdrawn at any time, and	26 27
	(d) that the occupier gives the authorised person consent to enter the place and exercise the powers, and	28 29
	(e) the day and time the consent was given, and	30
	(f) any conditions of the consent.	31
(3)	If the occupier signs the acknowledgement, the authorised person must, as soon as practicable but no later than 1 business day after the acknowledgement is signed, give a copy to the occupier.	32 33 34
(4)	If—	35
	(a) an issue arises in a proceeding about whether the occupier consented to the entry, and	36 37
	(b) a signed acknowledgement complying with subclause (2) for the entry is not produced in evidence,	38 39
	the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.	40 41

Part 4	General powers of authorised persons after entering places	1
		2
12	Application of Part	3
(1)	The powers under this Part may be exercised if an authorised person enters a place.	4
(2)	However, if the authorised person enters under clause 7(1)(a), the powers under this Part are subject to any conditions of the consent.	5 6
13	General powers	7
(1)	The authorised person may do any of the following (each a <i>general power</i>)—	8
(a)	search any part of the place,	9
(b)	inspect, examine or film any part of the place or anything at the place,	10
(c)	take an extract from, or copy, a document at the place or take the document to another place to copy,	11 12
(d)	remain at the place for the time necessary to achieve the purpose of the entry.	13
(2)	The authorised person may take any necessary steps to allow the exercise of a general power.	14 15
(3)	If the authorised person takes a document from the place to copy it, the authorised person must copy the document and return the document to the place as soon as practicable.	16 17 18
Part 5	Other information-obtaining powers of authorised persons	19
		20
14	Power to require information or attendance	21
(1)	This clause applies if—	22
(a)	an authorised person reasonably believes—	23
(i)	an offence against this Act has been committed, and	24
(ii)	a person may be able to give information about the offence, or	25
(b)	the Children's Guardian is monitoring a person, entity or organisation in the exercise of the Children's Guardian's functions, or	26 27
(c)	an authorised person reasonably believes a person may be able to give information about a matter being investigated by the Children's Guardian in the exercise of the Children's Guardian's functions.	28 29 30
(2)	The authorised person may, by written notice given to the person, require the person to—	31 32
(a)	give the authorised person stated information related to an offence, a matter being monitored or a matter being investigated, at a stated reasonable time and place, or	33 34 35
(b)	attend before the authorised person at a stated reasonable time and place to answer questions, or produce a document or thing, related to the offence, matter being monitored or matter being investigated.	36 37 38
(3)	The notice must—	39
(a)	specify or describe the document or thing the person must produce, and	40
(b)	state the time and place the person must attend.	41

(4)	For information that is an electronic document, the requirement is satisfied by giving a clear image or written version of the electronic document.	1 2
15	Offence to contravene information requirement	3
(1)	A person of whom a requirement is made under clause 14(2)(a) must comply with the requirement unless the person has a reasonable excuse. Maximum penalty—10 penalty units.	4 5 6
(2)	It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.	7 8 9
16	Offence to contravene attendance requirement	10
(1)	A person of whom a requirement is made under clause 14(2)(b) must not fail, without reasonable excuse, to—	11 12
(a)	attend as required by the notice, and	13
(b)	continue to attend as required by the authorised person until excused from further attendance, and	14 15
(c)	answer a question the person is required to answer by the authorised person, and	16 17
(d)	produce a document the person is required by the notice to produce. Maximum penalty—10 penalty units.	18 19
(2)	It is a reasonable excuse for an individual to fail to answer a question or produce a document if answering the question or producing the document might tend to incriminate the individual or expose the individual to a penalty.	20 21 22
Part 6	Miscellaneous provisions relating to authorised persons	23 24
17	Duty to avoid inconvenience and minimise damage	25
	In exercising a power, an authorised person must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.	26 27
18	Impersonating authorised person	28
	A person must not impersonate an authorised person. Maximum penalty—10 penalty units.	29 30
19	Observing and conversing with persons, including children	31
(1)	An authorised person, and any police officer or medical practitioner accompanying the person, may observe and converse with any person present in any premises or at any place entered by the person.	32 33 34
(2)	Nothing in subclause (1) authorises the examination of a person.	35
Part 7	Entry without warrant for a reportable conduct investigation	36 37
20	Application of Part	38
(1)	This Part applies if the entry to premises is for premises occupied or used by a relevant entity being investigated by the Children's Guardian under Part 4 of this Act.	39 40

(2)	This Part does not limit the operation of Parts 1–6 of this Schedule.	1
21	Entry to premises and inspection	2
	An authorised person may—	3
(a)	enter and inspect the premises occupied or used by a relevant entity, and	4
(b)	inspect any document or thing in the premises.	5
22	Privilege as regards entry and inspections on public premises	6
	The authorised person must not exercise powers under clause 21 if it appears to the authorised person that section 62 of this Act would apply as if the entry and inspection were a requirement under section 62(1).	7 8 9
Part 8	Entry in relation to employment matters	10
23	Application of Part	11
(1)	This Part applies in relation to an inspection of premises under Part 6 of this Act.	12
(2)	This Part does not limit the operation of Parts 1–6 of this Schedule.	13
(3)	Nothing in this Part authorises the entry of a dwelling.	14
24	Entry without warrant into premises—places of employment	15
	An authorised person may, at any time, enter and inspect premises without the need for any authority other than that conferred by this clause for the purpose of—	16 17
(a)	ensuring that the provisions of Part 6 of this Act and the regulations, and of any conditions imposed on an employer's authority, are being complied with at premises that are a place of employment of a person who is the holder of an employer's authority, or	18 19 20 21
(b)	ensuring that the conditions of any employer's exemption are being complied with at premises that are a place of employment of an employer exempt from holding an employer's authority.	22 23 24
25	Entry without warrant into premises—suspected employment of children	25
(1)	This clause applies to any premises that an authorised person reasonably suspects is a place at which a person is employing a child in contravention of Part 6 of this Act.	26 27
(2)	An authorised person may, at any time, enter and inspect any premises to which this clause applies without the need for any authority other than that conferred by this clause for the purpose of ensuring that the provisions of Part 6 are being complied with.	28 29 30 31
26	Powers exercisable on entry under Part	32
	A person who is authorised under this Part to enter and inspect any premises may also exercise the powers specified in clause 29.	33 34
Part 9	Entry of premises subject to control or regulation	35
27	Application of Part	36
(1)	This Part applies to any premises that are subject to control or regulation under this Act or the regulations, whether by means of a licence or otherwise.	37 38
(2)	This Part does not limit the operation of Parts 1–6 of this Schedule.	39

28	Entry without warrant into premises subject to control or regulation	1
(1)	The Children's Guardian may, at any time, enter and inspect any premises to which this Part applies without the need for any authority other than that conferred by this clause for the following purposes—	2 3 4
(a)	making an inquiry in relation to an application under this Act with respect to the premises,	5 6
(b)	ensuring that the provisions of this Act and the regulations with respect to the premises, and of any conditions imposed on a licence or other authority with respect to the premises, are being complied with,	7 8 9
(c)	ensuring that the conditions of any exemption relating to the premises are being complied with.	10 11
(2)	This clause does not apply to premises to which Part 8 of this Schedule applies.	12
29	Powers exercisable on entry and inspection	13
(1)	An authorised person acting on an authority under this Part, or under a search warrant issued under this Act, to enter and inspect any premises, may do any one or more of the following—	14 15 16
(a)	enter the premises,	17
(b)	inspect the premises,	18
(c)	make such examination and inquiry as the authorised person thinks necessary in order to exercise functions under this Act and the regulations,	19 20
(d)	take such photographs, films and audio, video and other recordings, as the authorised person considers necessary,	21 22
(e)	make copies of, or take extracts or notes from, any records, books, documents or other things,	23 24
(f)	for the purpose of further examination, take possession of, and remove, any of those records, books, documents or other things,	25 26
(g)	require the owner or occupier of the premises to provide the authorised person with such assistance and facilities as is or are reasonably necessary to enable the authorised person to exercise functions under this Act or the regulations,	27 28 29
(h)	require any person in or about the premises to answer questions or otherwise furnish information,	30 31
(i)	require any person to produce any records, books, documents or other things in the possession or under the control of the person that relate to, or that the authorised person making the entry and inspection believes on reasonable grounds relate to, the operation or administration of the premises or any activity conducted on or from the premises,	32 33 34 35 36
(j)	if the authorised person making the entry and inspection considers it necessary to do so for the purpose of obtaining evidence of the commission of an offence, seize any document or other thing inspected.	37 38 39
(2)	A person must comply with any requirement of the authorised person making the entry and inspection under this clause. Maximum penalty—10 penalty units.	40 41 42
(3)	Despite subclause (2), for a requirement made in relation to the exercise of a power under Part 8 of this Schedule, a person must comply with any requirement under this clause of the authorised person making the entry and inspection. Maximum penalty—200 penalty units.	43 44 45 46

Part 10 Search warrants

30 Application of Part

- (1) This Part does not limit the operation of Parts 1–6 of this Schedule.
- (2) This Part applies to an investigation under Part 9 of this Act.

31 Search warrants

- (1) For the purposes of an investigation, the Children's Guardian may apply to an authorised officer for a search warrant if the Children's Guardian has reasonable grounds for believing that there is on any premises a risk to the safety, welfare and wellbeing of a child.
- (2) If the authorised officer is satisfied there are reasonable grounds, the authorised officer may issue a search warrant authorising the Children's Guardian, or an officer of the Children's Guardian named in the warrant, to enter premises specified in the warrant and do any or all of the following—
 - (a) examine and inspect any part of the premises for evidence a child is not safe, or evidence indicating the welfare or wellbeing of the child is at risk,
 - (b) take any photographs, films and audio, video or other recordings that the Children's Guardian or officer of the Children's Guardian considers necessary,
 - (c) require documents to be produced for inspection,
 - (d) examine and inspect any documents,
 - (e) copy or take notes from any documents,
 - (f) for the purpose of further examination, take possession of, and remove, any documents or other things,
 - (g) require the owner or occupier of the premises to provide the Children's Guardian or officer of the Children's Guardian named in the warrant with any assistance or facilities that are reasonably necessary to enable the Children's Guardian or officer to conduct an investigation,
 - (h) require any person in or about the premises to answer questions or otherwise provide information.
- (3) If the person executing a warrant under this clause is accompanied by a relevant health practitioner, the relevant health practitioner may inspect the premises and observe and speak with any child or adult apparently residing at the premises.
- (4) If the Children's Guardian, or officer of the Children's Guardian named in the warrant, removes any goods from the premises when executing a warrant under this clause, the Children's Guardian or officer of the Children's Guardian must provide a written receipt to the person apparently in charge of the premises.
- (5) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this clause.
Note. Under Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, a person may execute a search warrant with the aid of any assistants the person considers necessary (including a police officer or health practitioner).
- (6) In this clause—
relevant health practitioner means a medical practitioner or other health practitioner of a class prescribed by the regulations.

Part 11 Immunity for particular compliance	1
32 Evidential immunity for individuals complying with Schedule	2
(1) Subclause (2) applies if an individual gives or produces information or a document to an authorised person under this Schedule.	3 4
(2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.	5 6 7 8
(3) Subclause (2) does not apply to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.	9 10 11

Schedule 3 Inquiries

1 Inquiries

- sections 48(5) and 145(2)
- (1) The Children's Guardian may make or hold inquiries in relation to—
- (a) an investigation by the Children's Guardian under Division 8 of Part 4 of this Act, or
 - (b) an investigation of a report by an Official Community Visitor to the Children's Guardian, or a matter dealt with as a report on the Children's Guardian's own initiative, under Part 9 of this Act.
- (2) For the purposes of any inquiry under this clause—
- (a) the Children's Guardian has the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the *Royal Commissions Act 1923*, and
 - (b) the *Royal Commissions Act 1923*, other than section 13 and Division 2 of Part 2 of that Act, applies to a witness summoned by or appearing before the Children's Guardian in the same way as it applies to a witness summoned by or appearing before a commissioner.
- (3) However, section 11(2) of the *Royal Commissions Act 1923* has effect subject to section 62 of and clause 22 of Schedule 2 to this Act.
- (4) A witness appearing before the Children's Guardian is to be paid an amount prescribed by the regulations that does not exceed the amount that would be payable to the witness if the witness were a Crown witness subpoenaed by the Crown to give evidence.
- (5) The Children's Guardian may appoint an Australian legal practitioner to assist the Children's Guardian for the purposes of an inquiry held by the Children's Guardian and the Australian legal practitioner may appear before the inquiry.
- (6) For the purposes of conducting an inquiry under this Schedule, the Children's Guardian is not bound by the rules of evidence and may be informed on any matter in issue at the inquiry in the manner the Children's Guardian considers appropriate.
- (7) The Children's Guardian may give directions as to the procedure to be followed at, or in connection with, the inquiry.

2 Restriction on publication of evidence

- (1) The Children's Guardian may direct that the following must not be published, or must not be published except in a manner, and to particular persons, as the Children's Guardian specifies—
- (a) evidence given before an inquiry held by the Children's Guardian,
 - (b) the contents of a document, or a description of a thing, produced to the Children's Guardian,
 - (c) information that might enable a person who has given or may be about to give evidence before an inquiry to be identified or located,
 - (d) the fact that any person has given or may be about to give evidence before an inquiry.
- (2) The Children's Guardian is not to give a direction under this clause unless satisfied that the direction is necessary or desirable in the public interest.

(3)	A person must not make a publication in contravention of a direction given under this clause.	1
	Maximum penalty—50 penalty units or imprisonment for 12 months, or both.	2
(4)	It is not a contravention of a direction given under this clause to publish any evidence, contents of a document or information to a registered medical practitioner or registered psychologist for the purposes of that health practitioner providing medical or psychiatric care, treatment or counselling, including psychological counselling, to a person who has given or may be about to give evidence before an inquiry.	3
		4
		5
		6
		7
		8
		9
3	Publication of evidence given at inquiry	10
(1)	A person present at an inquiry must not publish, or permit to be published, evidence given before the inquiry or the contents of a document produced at the inquiry, except to the Children's Guardian, an officer of the Children's Guardian or an Australian legal practitioner appointed under clause 1(5) or as permitted by the Children's Guardian or the regulations.	11
	Maximum penalty—50 penalty units or imprisonment for 12 months, or both.	12
		13
		14
		15
(2)	Nothing in this clause affects clause 2, but a person cannot be punished under both clauses for the same publication.	16
(3)	This clause does not apply to an officer of the Children's Guardian or an Australian legal practitioner appointed under clause 1(5).	17
		18
(4)	It is not a contravention of this clause to publish evidence or contents of a document to a registered medical practitioner or registered psychologist for the purposes of that health practitioner providing medical or psychiatric care, treatment or counselling, including psychological counselling, to a person who has given or may be about to give evidence before an inquiry.	19
		20
		21
		22
		23
		24
		25
4	Disclosures prejudicing investigations	26
(1)	A person who is, by a summons under clause 1, required to give evidence or produce a document or other thing, must not disclose information about the summons that is likely to prejudice the investigation to which it relates.	27
	Maximum penalty—50 penalty units or imprisonment for 12 months, or both.	28
		29
(2)	Subclause (1) does not apply to a summons unless it specifies that information about the summons must not be disclosed.	30
(3)	A person does not contravene this clause if—	31
	(a) the disclosure is made to an employee, agent or other person in order to obtain information to comply with the summons and the employee, agent or other person is directed not to inform the person to whom the information relates about the matter, or	32
		33
	(b) the disclosure is made to obtain legal advice or representation in relation to the summons, or	34
		35
		36
		37
	(c) the disclosure is made for the purposes of, or in the course of, legal proceedings, or	38
		39
		40
		41
	(d) the disclosure is made to a registered medical practitioner or registered psychologist in relation to the provision by that health practitioner of medical or psychiatric care, treatment or counselling, including psychological counselling, to the person required to give evidence by the summons, or	42
		43
		44
		45
	(e) the disclosure is made in accordance with guidelines issued by the Children's Guardian or in accordance with the regulations.	46
		47

- (4) A reference in this clause to the disclosure of any information about a summons includes a reference to—
 - (a) a disclosure about the existence or nature of the summons or of the investigation to which it relates, and
 - (b) a disclosure of any information to a person from which the person could reasonably be expected to infer the existence or nature of the summons or of the investigation to which it relates.

1
2
3
4
5
6
7

Schedule 4	Savings, transitional and other provisions	1
Part 1	General	2
1	Transitional regulation-making power	3
(1)	A regulation (a <i>transitional regulation</i>) may make provision about a matter for which—	4 5
(a)	it is necessary to make provision to allow or facilitate the doing of any thing to achieve the transition from the operation of the relevant provisions to the operation of this Act, and	6 7 8
(b)	this Act does not make provision or sufficient provision.	9
(2)	A transitional regulation may have retrospective operation to a day not earlier than the day of commencement.	10 11
(3)	A transitional regulation must declare it is a transitional regulation.	12
(4)	This clause and any transitional regulations expire 2 years after the day of commencement.	13 14
(5)	In this clause—	15
	<i>relevant provisions</i> means a provision of the following Acts omitted or amended by this Act—	16 17
(a)	the <i>Adoption Act 2000</i> ,	18
(b)	the <i>Children and Young Persons (Care and Protection) Act 1998</i> ,	19
(c)	the <i>Community Services (Complaints, Reviews and Monitoring) Act 1993</i> ,	20
(d)	the <i>Ombudsman Act 1974</i> .	21
2	Regulations continued	22
(1)	This clause applies to regulations made under the following Acts—	23
(a)	the <i>Adoption Act 2000</i> ,	24
(b)	the <i>Children and Young Persons (Care and Protection) Act 1998</i> ,	25
(c)	the <i>Community Services (Complaints, Reviews and Monitoring) Act 1993</i> ,	26
(d)	the <i>Ombudsman Act 1974</i> .	27
(2)	A provision of a regulation made under an Act listed in subclause (1) continues in force despite the commencement of this Act or a regulation under this Act, as if the provision of the regulation were made under a provision of this Act, with the necessary modifications.	28 29 30 31
(3)	This clause expires on 30 June 2020.	32
Part 2	Provisions consequent on enactment of this Act	33
3	Appointment of Children's Guardian continued	34
	The appointment of the Children's Guardian under the <i>Children and Young Persons (Care and Protection) Act 1998</i> is continued as if the appointment were made under this Act.	35 36 37
4	Existing accreditation and applications for accreditation	38
(1)	An organisation that, immediately before the commencement, was accredited as an adoption service provider under Part 2 of Chapter 3 of the <i>Adoption Act 2000</i> is taken	39 40

to have been accredited under this Act for the period and subject to the conditions to which it was subject.	1 2
(2) An application for accreditation made by an organisation under Part 2 of Chapter 3 of the <i>Adoption Act 2000</i> before the commencement of this Act, and not finally dealt with, is to continue to be dealt with under that Part unless the applicant elects to have the application dealt with under this Act.	3 4 5 6
5 Criteria for accreditation under Adoption Act 2000	7
The standards and other criteria, approved under section 13 of the <i>Adoption Act 2000</i> , are taken to be standards and other criteria under section 110 of this Act.	8 9
6 Principal officers	10
Section 75 of this Act extends to things done by, or with the approval of, a principal officer under section 5A of the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	11 12 13
7 Existing Official Community Visitors	14
(1) A person who, immediately before the commencement, was an Official Community Visitor for the purposes of Part 2 of the <i>Community Services (Complaints, Reviews and Monitoring) Act 1993</i> , is taken to have been appointed as an Official Community Visitor under section 140 of this Act for the term for which the person was appointed under section 7 of the <i>Community Services (Complaints, Reviews and Monitoring) Act 1993</i> .	15 16 17 18 19 20
(2) Nothing in this clause limits any function an Official Community Visitor may have under any other Act.	21 22
8 Existing approvals for out-of-home care	23
(1) This clause applies to the following entities registered or otherwise authorised to arrange or provide voluntary out-of-home care in accordance with the <i>Children and Young Persons (Care and Protection) Act 1998</i> (each a voluntary out-of-home care agency)—	24 25 26 27
(a) a designated agency,	28
(b) a registered agency,	29
(c) an individual authorised by a relevant agency (within the meaning of section 156 of that Act) or the Children's Guardian to provide voluntary out-of-home care.	30 31 32
(2) A voluntary out-of-home care agency, registered under the <i>Children and Young Persons (Care and Protection) Act 1998</i> and the regulations under that Act to arrange or provide voluntary out-of-home care, is, on commencement, taken to be—	33 34 35
(a) the equivalent type of voluntary out-of-home care agency under this Act, and	36
(b) registered under this Act for the period and subject to the conditions to which it was subject under the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	37 38 39
(3) An application for registration as a voluntary out-of-home care agency made under the <i>Children and Young Persons (Care and Protection) Act 1998</i> and the regulations under that Act is, on commencement, taken to be an application for registration as the equivalent type of voluntary out-of-home care agency registration and is to be determined in accordance with this Act.	40 41 42 43 44

9	Records to be transferred	1
(1)	Records kept in relation to Part 3A of the <i>Ombudsman Act 1974</i> are to be transferred to the Office of the Children's Guardian on commencement.	2 3
(2)	A transferred record is to be treated for the purposes of a law of the State as if it were a record that the Children's Guardian had lawfully obtained in the performance of the Children's Guardian's functions.	4 5 6
(3)	However, the provisions of the <i>Ombudsman Act 1974</i> , as in force immediately before the commencement of this Schedule, continue to apply to records transferred by operation of this clause, as if they had not been transferred.	7 8 9
(4)	This clause has effect despite section 21 of the <i>State Records Act 1998</i> and section 34 of the <i>Ombudsman Act 1974</i> .	10 11
(5)	Nothing in this Act prevents the Ombudsman from accessing records transferred under this clause, in the way agreed to by the Children's Guardian.	12 13
10	Reportable allegations and reportable convictions under the Ombudsman Act 1974	14
(1)	On commencement, an existing matter is taken to be a reportable allegation or reportable conviction made to the Children's Guardian under this Act.	15 16
(2)	In this clause— <i>existing matter</i> means an investigation, notification or disclosure in relation to a reportable allegation or reportable conviction under Part 3A of the <i>Ombudsman Act 1974</i> that is not finally dealt with on commencement.	17 18 19 20
Part 3	Provisions with delayed application	21
11	Offences under Part 4	22
	If an entity commits an offence against a provision of Part 4 of this Act, other than an offence under Division 13 or Part 11 of this Act, the entity is taken not to have committed the offence for the period starting on commencement and ending 3 months after commencement.	23 24 25 26
12	Annual reports not required in first 12 months of commencement	27
	Division 6 of Part 8 of this Act does not apply, in relation to an annual report, until 12 months after commencement of this Act.	28 29

Schedule 5	Amendment of Acts and instruments	1
5.1	Adoption Act 2000 No 75	2
[1]	Chapter 3 Adoption service providers	3
	Omit “accredited adoption service providers” from the Introduction.	4
	Insert instead “adoption service providers accredited in accordance with the <i>Children’s Guardian Act 2019</i> ”.	5 6
[2]	Chapter 3, Introduction	7
	Omit “The Chapter provides for the accreditation of charitable and non-profit organisations to provide adoption services.”.	8 9
[3]	Section 11 Unauthorised arrangements for adoption	10
	Omit “in accordance with the regulations” wherever occurring.	11
	Insert instead “under the <i>Children’s Guardian Act 2019</i> ”.	12
[4]	Chapter 3, Part 2 Accreditation of adoption service providers	13
	Omit the Part.	14
[5]	Section 91 Report required before order made for adoption of child	15
	Omit the definition of <i>designated agency</i> from section 91(7).	16
	Insert instead—	17
	<i>designated agency</i> has the same meaning as in the <i>Children’s Guardian Act 2019</i> .	18 19
[6]	Section 124A Guardian ad litem—exclusion of personal liability	20
	Insert “Communities and” after “Department of” in the definition of <i>Guardian Ad Litem Panel</i> in section 124A(3).	21 22
[7]	Section 208 Regulations	23
	Omit “or the Children’s Guardian” from section 208(2)(b).	24
[8]	Section 208(2)(d) and (e)	25
	Omit the paragraphs.	26
[9]	Dictionary	27
	Omit the definitions of <i>accredited adoption service provider</i> , <i>Children’s Guardian, Department</i> and <i>principal officer</i> .	28 29
	Insert in alphabetical order—	30
	<i>accredited adoption service provider</i> has the same meaning as in the <i>Children’s Guardian Act 2019</i> .	31 32
	<i>Children’s Guardian</i> means the Children’s Guardian appointed under section 112 of the <i>Children’s Guardian Act 2019</i> .	33 34
	<i>Department</i> means the Department of Communities and Justice.	35
	<i>principal officer</i> has the same meaning as in the <i>Children’s Guardian Act 2019</i> .	36 37

[10] Dictionary, definitions of “designated person” and “information source”	1
Omit “Family and Community Services” from paragraph (a) in each of the definitions.	2
Insert instead “Communities and Justice”.	3
5.2 Advocate for Children and Young People Act 2014 No 29	4
[1] Section 37 Functions of Committee	5
Omit “under the <i>Child Protection (Working with Children) Act 2012</i> ,” from section 37(1)(b).	6
Insert instead—	7
under—	8
(i) the <i>Child Protection (Working with Children) Act 2012</i> , or	9
(ii) the <i>Children’s Guardian Act 2019</i> in relation to the reportable conduct scheme and working with relevant entities to prevent, identify and respond to reportable conduct and promote compliance with the scheme,	10
	11
	12
	13
	14
[2] Section 37(1)(c)	15
Omit “under the <i>Child Protection (Working with Children) Act 2012</i> ”.	16
Insert instead “specified in paragraph (b)”.	17
[3] Section 37(2)	18
Omit the subsection. Insert instead—	19
(2) Nothing in this Part authorises the Parliamentary Joint Committee—	20
(a) to investigate a matter relating to particular conduct, including conduct under Part 4 of the <i>Children’s Guardian Act 2019</i> , or	21
(b) to review a decision to investigate, not to investigate or to discontinue investigation of a particular matter, or	22
(c) to review the findings, recommendations or other decisions of the Children’s Guardian in relation to a particular matter.	23
	24
	25
	26
5.3 Ageing and Disability Commissioner Act 2019 No 7	27
Section 13 Reports may be made to Commissioner	28
Insert after section 13(8)(c)—	29
(c1) the Children’s Guardian under the <i>Children’s Guardian Act 2019</i> ,	30
5.4 Child Protection (International Measures) Act 2006 No 12	31
[1] Section 5 Definitions	32
Omit “Family and Community Services” from the definition of <i>Department</i> in section 5(1).	33
Insert instead “Communities and Justice”.	34
[2] Section 5(1), definition of “designated agency”	35
Omit “ <i>Children and Young Persons (Care and Protection) Act 1998</i> ”.	36
Insert instead “ <i>Children’s Guardian Act 2019</i> ”.	37

5.5 Child Protection (Offenders Registration) Act 2000 No 42	1
Section 16 NCAT may exempt persons from compliance with reporting obligations	2
Omit “section 178 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> ” from section 16(12).	3 4
Insert instead “section 112 of the <i>Children’s Guardian Act 2019</i> ”.	5
5.6 Child Protection (Working with Children) Act 2012 No 51	6
[1] Section 3 Object of Act	7
Omit “ <i>Children and Young Persons (Care and Protection) Act 1998</i> . In particular, see section 181 and Chapter 13 of that Act” from the note.	8 9
Insert instead “ <i>Children’s Guardian Act 2019</i> . In particular, see section 125 and Part 6 of that Act”.	10 11
[2] Section 5 Definitions	12
Omit the definitions of <i>Children’s Guardian</i> , <i>Department</i> , <i>designated agency</i> , <i>principal officer</i> and <i>registered agency</i> from section 5(1).	13 14
Insert in alphabetical order—	15
<i>Children’s Guardian</i> means the Children’s Guardian appointed under section 112 of the <i>Children’s Guardian Act 2019</i> .	16 17
<i>Department</i> means the Department of Communities and Justice.	18
<i>designated agency</i> has the same meaning as in the <i>Children’s Guardian Act 2019</i> .	19 20
<i>principal officer</i> of—	21
(a) an accredited adoption service provider—has the same meaning as in the <i>Children’s Guardian Act 2019</i> , or	22 23
(b) a designated agency or a registered agency—has the same meaning as in the <i>Children’s Guardian Act 2019</i> .	24 25
<i>registered agency</i> has the same meaning as in the <i>Children’s Guardian Act 2019</i> .	26 27
[3] Section 35 Notification by reporting bodies of conduct constituting assessment requirement trigger	28 29
Omit section 35(1A).	30
[4] Section 35(4), definition “reporting body”, paragraphs (a), (b), (c1) and (d)	31
Omit the paragraphs.	32
[5] Section 38 Children’s Guardian public awareness and advice functions	33
Omit “Chapter 13 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> ” from the note.	34 35
Insert instead “Part 6 of the <i>Children’s Guardian Act 2019</i> ”.	36
5.7 Child Protection (Working with Children) Regulation 2013	37
[1] Clause 3 Definitions	38
Omit the definition of <i>registered agency</i> from clause 3(1).	39

[2] Clause 25	1
Omit clause 25. Insert instead—	2
25 Additional reporting bodies	3
For paragraph (e) of the definition of <i>reporting body</i> in section 35(4) of the Act, the following are prescribed as reporting bodies—	4
(a) the Scout Association of Australia, New South Wales Branch,	5
(b) members of the Association of Independent Schools of NSW.	6
5.8 Children and Young Persons (Care and Protection) Act 1998 No 157	7
[1] Section 3 Definitions	8
Omit the definitions of <i>child</i> , <i>Children's Guardian</i> , <i>Department</i> , <i>designated agency</i> , <i>employer's authority</i> and <i>registered agency</i> from section 3(1).	9
Insert in alphabetical order—	10
<i>child</i> means a person who is under the age of 16 years.	11
<i>Children's Guardian</i> means the Children's Guardian appointed under section 112 of the <i>Children's Guardian Act 2019</i> .	12
<i>Department</i> means the Department of Communities and Justice.	13
<i>designated agency</i> has the same meaning as in the <i>Children's Guardian Act 2019</i> .	14
<i>voluntary out-of-home care</i> has the same meaning as in Part 5 of the <i>Children's Guardian Act 2019</i> .	15
[2] Section 5A Meaning of "principal officer"	16
Omit section 5A(1)–(3). Insert instead—	17
(1) In this Act, <i>principal officer</i> , in relation to a registered agency or a designated agency has the same meaning as in the <i>Children's Guardian Act 2019</i> .	18
[3] Section 23 Child or young person at risk of significant harm	19
Omit "sections 154 (2) (a) and 156A (3) for other circumstances" from the note to section 23(2).	20
Insert instead "section 154(2)(a) for another circumstance".	21
[4] Section 27 Mandatory reporting	22
Insert at the end of section 27(1)(b)—	23
, and	24
(c) a person in religious ministry, or a person providing religion-based activities to children, and	25
(d) a registered psychologist providing a professional service as a psychologist.	26
[5] Section 27(2)(b)	27
Insert "or role specified in subsection (1)" after "work".	28
[6] Section 27A Alternative reporting arrangements	29
Omit "Family and Community Services" from paragraph (g) of the definition of <i>relevant agency</i> in section 27A(1).	30

Insert instead “Communities and Justice”.	1
[7] Section 29 Protection of persons who make reports or provide certain information	2
Omit section 29(1)(c).	3
Insert instead—	4
(c) the making of the report does not constitute a ground for civil or criminal liability against the person making the report, and	5 6
[8] Section 29(6), definition of “reportable conduct”	7
Omit “Part 3A of the <i>Ombudsman Act 1974</i> ”.	8
Insert instead “Part 4 of the <i>Children’s Guardian Act 2019</i> ”.	9
[9] Section 29AAA	10
Insert after section 29—	11
29AAA Protection of persons who make reports or provide information to particular institutions	12 13
(1) If, in relation to a child or young person or a class of children or young persons, a person makes a report in good faith to an institution engaging in child-related work about a child or young person that the person making the report reasonably suspects is at risk of significant harm in the institution—	14 15 16 17
(a) the making of the report does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and	18 19 20
(b) no liability for defamation is incurred because of the report, and	21
(c) the making of the report does not constitute a ground for civil or criminal liability against the person making the report.	22 23
(2) The protections given by this section to a person who makes a report apply to—	24 25
(a) a person who provided information on the basis of which the report was made in good faith to the institution, and	26 27
(b) a person who otherwise was in good faith concerned in making such a report or causing such a report to be made,	28 29
in the same way as they apply in respect of the person who actually made the report.	30 31
Note. It is an offence under section 254 for a person to disclose any information obtained in connection with the administration or execution of this Act, except in certain circumstances. The maximum penalty is 10 penalty units (currently \$1,100) or imprisonment for up to 12 months, or both.	32 33 34 35
[10] Section 29AB	36
Insert after section 29AA—	37
29AB Protection against retribution	38
(1) A person must not take, or threaten to take, detrimental action in respect of a person acting in good faith, who makes, or proposes to make, a report under this Part.	39 40 41
Maximum penalty—50 penalty units or imprisonment for 12 months, or both.	42
(2) For subsection (1), a report is not made in good faith if—	43

(a)	the report was made or proposed in bad faith, or	1
(b)	a material allegation was known by the person giving the report to be false.	2 3
(3)	In this section—	4
	detrimental action means action causing, comprising or involving any of the following—	5 6
(a)	injury, damage or loss,	7
(b)	intimidation or harassment,	8
(c)	discrimination, disadvantage or adverse treatment in relation to employment,	9 10
(d)	dismissal from, or prejudice in, employment,	11
(e)	prejudice in the provision of a service,	12
(f)	disciplinary proceedings.	13
[11]	Section 78A Permanency planning	14
	Omit “Minister for Family and Community Services and the Minister for Aboriginal Affairs” from section 78A(4)(e).	15 16
	Insert instead “Minister for Families, Communities and Disability Services and the Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts”.	17 18 19
[12]	Section 101A Guardian ad litem—exclusion of personal liability	20
	Insert “Communities and” after “Department of” in the definition of <i>Guardian Ad Litem Panel</i> in section 101A(3).	21 22
[13]	Section 135 Definition and types of “out-of-home care”	23
	Omit “—see section 135C” from section 135(2)(c).	24
	Insert instead “within the meaning of the <i>Children’s Guardian Act 2019</i> ”.	25
[14]	Sections 135C, 139 and 140	26
	Omit the sections.	27
[15]	Chapter 8, Part 3A Voluntary out-of-home care	28
	Omit the Part.	29
[16]	Sections 171A and 172	30
	Omit the sections.	31
[17]	Chapter 10 Children’s Guardian	32
	Omit the Chapter (except as otherwise amended by this Schedule).	33
[18]	Section 182 Removal of responsibility for daily care and control from an authorised carer	34 35
	Relocate and renumber section 182 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> as section 128 of the <i>Children’s Guardian Act 2019</i> .	36 37

[19] Section 184 Application for review of order of the Children's Court	1
Omit "this Act". Insert instead "the <i>Children and Young Persons (Care and Protection) Act 1998</i> ". Relocate and renumber amended section 184 as section 129 of the <i>Children's Guardian Act 2019</i> .	2 3 4
[20] Chapter 13 Children's employment	5
Omit the Chapter.	6
[21] Section 235 Entry without warrant into premises	7
Omit ", other than premises to which section 236 applies" from section 235(1).	8
[22] Sections 236 and 236A	9
Omit the sections.	10
[23] Section 245 Decisions that are administratively reviewable by Civil and Administrative Tribunal	11 12
Omit section 245(1)(b) and (d)–(f).	13
[24] Section 245(1)(g)	14
Omit "Minister, the Children's Guardian". Insert instead "Minister".	15
[25] Section 245H Interaction with other laws	16
Omit "sections 185 and" from section 245H(2). Insert instead "section".	17
[26] Section 258 Liability of directors etc for offences by corporation—offences attracting executive liability	18 19
Omit section 258(1)(e) and (h)–(j).	20
[27] Section 264 Regulations	21
Omit section 264(1A)(i) and (k).	22
[28] Section 264(1B)	23
Omit the subsection.	24
[29] Schedule 2 Provisions relating to employers' authorities	25
Omit the Schedule.	26
5.9 Children (Education and Care Services National Law Application) Act 2010 No 104	27 28
Section 5 Exclusion of legislation of this jurisdiction	29
Omit "Part 3A of the <i>Ombudsman Act 1974</i> " from section 5(3). Insert instead "Part 4 of the <i>Children's Guardian Act 2019</i> ".	30 31
5.10 Children's Guardian Act 2019	32
[1] Section 10 Definitions	33
Insert in alphabetical order— <i>religious body</i> see section 15A.	34 35

[2] Section 12 Meaning of “relevant entity”	1
Insert at the end of section 12(b)—	2
, or	3
(c) a religious body.	4
[3] Section 15A	5
Insert after section 15—	6
15A Meaning of “religious body”	7
<i>Religious body</i> means—	8
(a) a body established for a religious purpose, and	9
(b) an entity that establishes, or directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs or principles.	10 11 12
[4] Section 16 Meaning of “employee”	13
Insert at the end of section 16(1)(b)—	14
, or	15
(c) for a religious body—an individual who holds, or is required by the religious body to hold, a working with children check clearance for the purpose of engagement with the religious body.	16 17 18
[5] Schedule 1 Schedule 1 entities	19
Insert at the end of the Schedule, with appropriate item numbering—	20
providers of overnight camps	21
[6] Schedule 1	22
Insert at the end of the Schedule, with appropriate item numbering—	23
accommodation and respite services for children that provide overnight beds for children, including housing and homelessness services	24 25
[7] Schedule 1	26
Insert at the end of the Schedule, with appropriate item numbering—	27
providers of family group homes	28
[8] Schedule 6 Dictionary	29
Insert in alphabetical order—	30
<i>religious body</i> , for Part 4, see section 15A.	31
5.11 Civil Liability Act 2002 No 22	32
Section 6E Individuals who are associated with organisations	33
Omit “ <i>Children and Young Persons (Care and Protection) Act 1998</i> ” from section 6E(1)(b).	34 35
Insert instead “ <i>Children’s Guardian Act 2019</i> ”.	36

5.12 Commonwealth Powers (Family Law—Children) Act 1986 No 182	1
Schedule 1 Statutory provisions	2
Omit “182,” from the matter relating to the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	3 4
5.13 Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2	5 6
[1] Long title	7
Omit “to provide for Official Community Visitors and their functions;”.	8
[2] Section 4 Definitions	9
Insert “or the <i>Children’s Guardian Act 2019</i> ” after “ <i>Children and Young Persons (Care and Protection) Act 1998</i> ” in paragraph (d) of the definition of <i>child in care</i> in section 4(1).	10 11
[3] Section 4(1), paragraph (d) of definition of “relevant Minister”	12
Omit “Minister for Family and Community Services”.	13
Insert instead “Attorney General, and Minister for the Prevention of Domestic Violence”.	14
[4] Section 4(1), paragraph (a) of definition of “service provider”	15
Omit “Family and Community Services”. Insert instead “Communities and Justice”.	16
[5] Section 4(1), paragraphs (c) and (d) of definition of “service provider”	17
Omit “Minister for Family and Community Services, the Minister for Ageing or the Minister for Disability Services” wherever occurring.	18 19
Insert instead “Attorney General, and Minister for the Prevention of Domestic Violence”.	20
[6] Section 4(1), paragraph (g) of definition of “service provider”	21
Omit “or designated agency”.	22
[7] Section 4(1), paragraph (g1) of definition of “service provider”	23
Insert after paragraph (g)—	24
(g1) a designated agency within the meaning of the <i>Children’s Guardian Act 2019</i> , or	25 26
[8] Section 4(1), definition of “visitable service”	27
Omit the definition.	28
[9] Section 5 Administration of community welfare legislation	29
Omit “Minister for Family and Community Services, the Minister for Ageing, the Minister for Disability Services or the Secretary of the Department of Family and Community Services” from section 5(1)(b).	30 31 32
Insert instead “Attorney General, and Minister for the Prevention of Domestic Violence or the Secretary of the Department of Communities and Justice”.	33 34
[10] Section 5(1)(c)	35
Omit “Minister for Family and Community Services, the Minister for Ageing or the Minister for Disability Services”.	36 37

	Insert instead “Attorney General, and Minister for the Prevention of Domestic Violence”.	1
[11]	Part 2 Official Community Visitors	2
	Omit the Part.	3
[12]	Section 11 Community services functions of Ombudsman	4
	Omit “and visitable services” and “or services provided by visitable services” from section 11(1)(e).	5 6
[13]	Section 15 Application of provisions of the Ombudsman Act 1974 to reviews and other functions	7 8
	Omit section 15(2).	9
	Insert instead—	10
	(2) For that purpose, those provisions apply to or in respect of a service provider or an employee, or a person acting on behalf of a service provider, in the same way as they apply to a public authority.	11 12 13
[14]	Section 28 Applications to Tribunal for administrative reviews of decisions	14
	Insert “section 150 of the <i>Children’s Guardian Act 2019</i> ,” after “ <i>Adoption Information Act 1990</i> ,” in section 28(1)(a).	15 16
[15]	Section 28(2), paragraphs (a)–(d) of definition of “relevant decision maker”	17
	Omit the paragraphs. Insert instead—	18
	(a) the Attorney General, and Minister for the Prevention of Domestic Violence,	19 20
	(b) the Secretary of the Department of Communities and Justice,	21
	(c) the Children’s Guardian appointed under the <i>Children’s Guardian Act 2019</i> ,	22 23
[16]	Sections 34C(4)(a) and (g), 34L(1)(c)(ii) and 37(4), definition of “Chief Executive of ADHC”	24 25
	Omit “Family and Community Services” wherever occurring.	26
	Insert instead “Communities and Justice”.	27
[17]	Section 34C Establishment and composition of the Team	28
	Insert “Communities and” after “Department of” in section 34C(4)(f).	29
[18]	Section 45 Reasons to be given for certain decisions	30
	Omit paragraphs (a)–(d) of the definition of <i>relevant decision maker</i> in section 45(4).	31
	Insert instead—	32
	(a) the Attorney General, and Minister for the Prevention of Domestic Violence,	33 34
	(b) the Secretary of the Department of Communities and Justice,	35
[19]	Section 47 Protection of complainant against retribution	36
	Omit “, an Official Community Visitor” from section 47(1)(a).	37
[20]	Section 47(1)(c)	38
	Omit “an Official Community Visitor,”.	39

[21] Section 48 Exclusion of personal liability	1
Omit section 48(a).	2
[22] Section 48	3
Omit “the Official Community Visitor.”	4
5.14 Coroners Act 2009 No 41	5
[1] Sections 13(1), 51(3) and 103A(6)	6
Insert “Communities and” after “Department of” wherever occurring.	7
[2] Section 24 Jurisdiction concerning deaths of children and disabled persons	8
Insert “or the <i>Children’s Guardian Act 2019</i> ” after “ <i>Children and Young Persons (Care and Protection) Act 1998</i> ” in paragraph (d) of the definition of child in care in section 24(3).	9 10
[3] Sections 79(4)(c) and (5) and 103A(7)–(9)	11
Insert “, and Minister for the Prevention of Domestic Violence” after “Attorney General” wherever occurring.	12 13
[4] Section 101E Members of Team	14
Omit section 101E(3)(c) and (d). Insert instead—	15
(c) the Department of Communities and Justice,	16
[5] Section 101M Confidentiality of information	17
Omit “Family and Community Services” from section 101M(1)(c)(ii).	18
Insert instead “Communities and Justice”.	19
[6] Schedule 1 Provisions relating to coronial officers	20
Insert “Communities and” after “Department of” in clause 5(1)(g)(ii).	21
5.15 Crimes Act 1900 No 40	22
[1] Section 316A Concealing child abuse offence	23
Insert “or Part 4 of the <i>Children’s Guardian Act 2019</i> ” after “ <i>Children and Young Persons (Care and Protection) Act 1998</i> ” in section 316A(2)(b).	24 25
[2] Section 316A(2)(c)	26
Omit the paragraph.	27
Insert instead—	28
(c) immediately before the repeal of Part 3A of the <i>Ombudsman Act 1974</i> by the <i>Children’s Guardian Act 2019</i> , the person had reported the information to the Ombudsman under that Part, or believed on reasonable grounds that another person had done so, or	29 30 31 32
5.16 Crimes (Appeal and Review) Act 2001 No 120	33
[1] Section 113 Applications and appeals in relation to children	34
Omit section 113(1)(c). Insert instead—	35

(c)	if the Secretary of the Department of Communities and Justice or a designated agency has the care responsibility for the child, by the Secretary.	1 2 3
[2]	Section 113(2)	4
	Omit the subsection. Insert instead—	5
(2)	In this section—	6
	<i>care responsibility</i> and <i>parental responsibility</i> have the same meanings as in the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	7 8
	<i>designated agency</i> has the same meaning as in the <i>Children's Guardian Act 2019</i> .	9 10
5.17	Education Act 1990 No 8	11
[1]	Section 26C Relevant agencies from which information may be obtained about students	12 13
	Omit section 26C(1)(f) and (g). Insert instead—	14
(f)	the Department of Communities and Justice,	15
[2]	Section 47 Registration requirements for non-government schools	16
	Omit “Part 3A of the <i>Ombudsman Act 1974</i> ” from section 47(1)(g)(iii).	17
	Insert instead “Part 4 of the <i>Children's Guardian Act 2019</i> ”.	18
5.18	Entertainment Industry Act 2013 No 73	19
	Section 13 Performer representatives to provide information to performers	20
	Omit “ <i>Children and Young Persons (Care and Protection) Act 1998</i> ” from section 13(3).	21
	Insert instead “ <i>Children's Guardian Act 2019</i> ”.	22
5.19	Evidence Act 1995 No 25	23
[1]	Section 19 Compellability of spouses and others in certain criminal proceedings	24
	Omit section 19(a)(i) and (ii).	25
[2]	Section 19(c)	26
	Insert at the end of section 19(b)—	27
	, or	28
(c)	in proceedings for an offence against or referred to in the following provisions of the <i>Children's Guardian Act 2019</i> —	29 30
(i)	section 90,	31
(ii)	section 104.	32
5.20	Government Information (Information Commissioner) Act 2009 No 53	33
	Section 31A	34
	Insert after section 31—	35

31A Commissioner may furnish information to Children's Guardian	1
(1) The Commissioner may, at any time, furnish to the Children's Guardian, information obtained by the Commissioner in discharging functions under this or any other Act if the Commissioner is of the opinion that the information relates to the conduct of an agency that could be the subject of a complaint under the <i>Children's Guardian Act 2019</i> .	2 3 4 5 6
(2) However, the Commissioner must not disclose information that could not otherwise be disclosed under this Act or could not be obtained by the Children's Guardian under the <i>Children's Guardian Act 2019</i> .	7 8 9
5.21 Government Information (Public Access) Act 2009 No 52	10
[1] Schedule 2 Excluded information of particular agencies	11
Insert at the end of clause 2—	12
The Office of the Children's Guardian—reportable conduct matters under Part 4 of the <i>Children's Guardian Act 2019</i> (including report handling, investigative and reporting functions, and any functions of the Children's Guardian relating to Official Community Visitors appointed under the <i>Children's Guardian Act 2019</i>).	13 14 15 16 17
[2] Schedule 4 Interpretative provisions	18
Insert after clause 13(1)(d)—	19
(d1) the Children's Guardian, or	20
5.22 Government Sector Finance Legislation (Repeal and Amendment) Act 2018 No 70	21 22
Schedule 4.16	23
Omit the subschedule. Insert instead—	24
4.16 Children's Guardian Act 2019	25
Section 137 Provisions relating to reports to Parliament	26
Omit section 137(6). Insert instead—	27
(6) The <i>Government Sector Finance Act 2018</i> is, in its application to annual reporting information prepared for the Children's Guardian, modified to the extent necessary for the purposes of this Part.	28 29 30
5.23 Health Records and Information Privacy Act 2002 No 71	31
[1] Section 4 Definitions	32
Insert after paragraph (g1) of the definition of <i>investigative agency</i> in section 4(1)—	33
(g2) the Children's Guardian,	34
[2] Sections 40(4) and 62(3)(b)	35
Insert “, and Minister for the Prevention of Domestic Violence” after “Attorney General” wherever occurring.	36 37

5.24 Industrial Relations (Child Employment) Act 2006 No 96	1
Section 19 Relationship with other legislation	2
Omit “ <i>Children and Young Persons (Care and Protection) Act 1998</i> ” from section 19(c).	3
Insert instead “ <i>Children’s Guardian Act 2019</i> ”.	4
5.25 Law Enforcement Conduct Commission Act 2016 No 61	5
[1] Section 4 Definitions	6
Insert in alphabetical order in section 4(1)—	7
<i>officer of the Children’s Guardian</i> includes the following—	8
(a) an acting Children’s Guardian,	9
(b) a Deputy Children’s Guardian,	10
(c) an Assistant Children’s Guardian.	11
[2] Sections 28, 77 and 86	12
Insert “, and Minister for the Prevention of Domestic Violence” after “Attorney General” wherever occurring.	13 14
[3] Section 33 Duty to notify Commission of possible officer misconduct and serious maladministration	15 16
Insert after section 33(1)(e)—	17
(e1) the Children’s Guardian,	18
[4] Sections 77(5) and 189(2)(d)	19
Insert “Communities and” after “Department of” wherever occurring.	20
[5] Section 147 Offence of making false complaint or giving false information	21
Insert after section 147(2)(i)—	22
(i1) the Children’s Guardian, or	23
[6] Section 161 Co-operation with other agencies	24
Insert after paragraph (a) of the definition of <i>investigative agency</i> in section 161(5)—	25
(a1) the Children’s Guardian,	26
[7] Section 165 Relationship with Ombudsman and Children’s Guardian	27
Insert “or the <i>Children’s Guardian Act 2019</i> ” after “ <i>Ombudsman Act 1974</i> ” wherever occurring in section 165(1) and (2).	28 29
[8] Section 165(1)	30
Insert “or the Children’s Guardian” after “to the Ombudsman”.	31
[9] Section 165(3) and (3A)	32
Omit section 165(3). Insert instead—	33
(3) The Ombudsman must give the Commission notice in writing of any complaint received by the Ombudsman (or misconduct information of which the Ombudsman becomes aware) under the <i>Ombudsman Act 1974</i> concerning the NSW Police Force or members of the NSW Police Force that consists of or involves a reportable allegation or reportable conviction (within the	34 35 36 37 38

	meaning of Part 3C of the <i>Ombudsman Act 1974</i>), or the inappropriate handling or response to such an allegation or conviction.	1 2
(3A)	The Children's Guardian must give the Commission notice in writing of any complaint received by the Children's Guardian (or misconduct information of which the Children's Guardian becomes aware) under the <i>Children's Guardian Act 2019</i> concerning the NSW Police Force or members of the NSW Police Force that consists of or involves—	3 4 5 6 7
	(a) a reportable allegation or a conviction considered to be a reportable conviction (within the meaning of the <i>Children's Guardian Act 2019</i>), or	8 9 10
	(b) the inappropriate handling or response to the allegation or conviction.	11
	Note. The Ombudsman and the Children's Guardian are under a duty under section 33 to report possible officer misconduct or serious maladministration to the Commission and may refer a complaint received by the Ombudsman or Children's Guardian to the Commission.	12 13 14 15
[10]	Section 165(4)	16
	Insert “, or the Commission and the Children's Guardian,” after “Ombudsman” where firstly occurring.	17 18
[11]	Section 165(4)(b)	19
	Omit the paragraph. Insert instead—	20
	(b) notifiable matters that the Ombudsman or the Children's Guardian may, with the consent of the Commission, deal with or continue to deal with under the <i>Ombudsman Act 1974</i> or the <i>Children's Guardian Act 2019</i> , as appropriate, or	21 22 23 24
[12]	Section 165(4)(c)	25
	Insert “or the Children's Guardian” after “Ombudsman”.	26
[13]	Section 165(5), definition of “notifiable matter”	27
	Insert “or (3A)” after “subsection (3)”.	28
[14]	Section 181A	29
	Insert after section 181—	30
181A	Disclosure of information and giving of evidence by Children's Guardian to Commission	31 32
	(1) The Children's Guardian, and any officer of the Children's Guardian acting with the approval of the Children's Guardian, may—	33 34
	(a) disclose to the Commission information obtained by the Children's Guardian or an officer of the Children's Guardian in exercising functions under the <i>Children's Guardian Act 2019</i> or any other Act, or	35 36 37
	(b) give evidence before the Commission and produce any document to the Commission in respect of the information.	38 39
	(2) Neither the Children's Guardian nor any officer of the Children's Guardian can be compelled to give any evidence before the Commission or produce any document before the Commission in respect of information obtained by the Children's Guardian or officer of the Children's Guardian in exercising functions as referred to in subsection (1).	40 41 42 43 44

(3)	This section applies despite sections 59 and 62 of the <i>Children's Guardian Act 2019</i> .	1 2
(4)	Section 62 of the <i>Children's Guardian Act 2019</i> does not apply in respect of proceedings for an offence under this Act.	3 4
[15]	Section 197 Regulations	5
	Insert "the Children's Guardian," after "Ombudsman," in section 197(2)(a).	6
5.26	Law Enforcement (Powers and Responsibilities) Act 2002 No 103	7
	Schedule 2 Search warrants under other Acts	8
	Insert in alphabetical order—	9
	<i>Children's Guardian Act 2019</i> , clause 31 of Schedule 2	10
5.27	Ombudsman Act 1974 No 68	11
[1]	Part 3A Child protection	12
	Omit the Part.	13
[2]	Section 250 Definitions	14
	Omit "Family and Community Services" from the definition of <i>Department</i> .	15
	Insert instead "Communities and Justice".	16
[3]	Section 34 Disclosures by Ombudsman or officer	17
	Omit "Family and Community Services" from section 34(1)(b1).	18
	Insert instead "Communities and Justice".	19
[4]	Schedule 1 Excluded conduct of public authorities	20
	Insert after item 1(h)—	21
	(i) the Children's Guardian or an officer of the Children's Guardian in relation to a matter—	22 23
	(i) that is an inquiry, complaint, notification or investigation under Part 3A of this Act, as in force immediately before its repeal, and	24 25
	(ii) that was transferred to the Children's Guardian under the <i>Children's Guardian Act 2019</i> .	26 27
[5]	Schedule 1, item 12(d)	28
	Omit the paragraph.	29
[6]	Schedule 1, item 13	30
	Omit the item. Insert instead—	31
	13 Conduct of the NSW Police Force or a member of the NSW Police Force unless the conduct relates to a reportable incident or reportable conviction (within the meaning of Part 3C), or the inappropriate handling or response to such an incident or conviction.	32 33 34 35
[7]	Schedule 1A Agencies	36
	Insert in alphabetical order—	37
	Children's Guardian	38

5.28 Ombudsman Regulation 2016	1
Clauses 4–7	2
Omit the clauses.	3
5.29 Police Act 1990 No 47	4
Section 167A Offence of making false complaint about conduct of police officer or giving false information about misconduct matter	5
Insert after section 167A(2)(g)—	6
(g1) the Children’s Guardian,	7
	8
5.30 Privacy and Personal Information Protection Act 1998 No 133	9
[1] Section 3 Definitions	10
Insert after paragraph (a)(viiia) of the definition of <i>investigative agency</i> in section 3(1)—	11
(viib) the Children’s Guardian,	12
[2] Section 28 Other exemptions	13
Insert “Children’s Guardian,” after “Ombudsman’s Office,” in section 28(1).	14
5.31 Public Interest Disclosures Act 1994 No 92	15
Section 4 Definitions	16
Insert after paragraph (c) of the definition of <i>investigating authority</i> in section 4(1)—	17
(c1) the Children’s Guardian, or	18

Schedule 6 Dictionary

	1
	2
	3
	4
	5
	6
	7
	8
	9
	10
	11
	12
	13
	14
	15
	16
	17
	18
	19
	20
	21
	22
	23
	24
	25
	26
	27
	28
	29
	30
	31
	32
	33
	34
	35
	36
	37
	38
	39
	40
	41
	42
	43
	44

employment —	1
(a) for Part 4—see section 10, or	2
(b) for Part 6—see section 87.	3
entity includes a person and an unincorporated body.	4
entity report , for Part 4, see section 36(1).	5
executive liability offence , for Division 2 of Part 11, see section 160.	6
film , for Schedule 2, see clause 1.	7
finding of reportable conduct , for Part 4, see section 26.	8
general power , for Schedule 2, see clause 1.	9
head , of a relevant entity, for Part 4, see section 17.	10
ill-treatment , of a child, for Part 4, see section 23.	11
inspect , in relation to a thing, for Schedule 2, see clause 1.	12
investigation , for Part 4, see section 10.	13
investigator , for Part 4, see section 10.	14
kin , of a child, means a person who shares a cultural, tribal or community connection with the child that is recognised by that child's family or community.	15 16
local government authority , for Part 4, see section 15.	17
married means—	18
(a) 2 persons who are legally married to each other, or	19
(b) 2 Aboriginal or Torres Strait Islander persons who are living together in a relationship that is recognised as a marriage according to the traditions of an Aboriginal community or Aboriginal or Torres Strait Islander group to which they belong.	20 21 22
neglect , for Part 4, see section 24.	23
notification , for Part 4, see section 29(2).	24
occupier , for Schedule 2, see clause 1.	25
of , in relation to a place, for Schedule 2, see clause 1.	26
Official Community Visitor means an Official Community Visitor appointed under section 140.	27
out-of-home care has the same meaning as in the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	28 29
parent , of a child, means a person having parental responsibility for the child.	30
parental responsibility , in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to their children.	31 32
place , for Schedule 2, see clause 1.	33
premises , for Schedule 2, see clause 1.	34
principal officer —	35
(a) for an adoption service provider—see section 107, or	36
(b) for a designated agency or a registered agency—see section 74.	37
public authority , for Part 4, see section 14.	38
public place , for Schedule 2, see clause 1.	39
registered agency see section 73.	40
relative of a child means any of the following—	41
(a) a parent, step-parent, or spouse of a parent or step-parent, of the child,	42
(b) a grandparent, brother, sister, step-brother, step-sister, cousin, niece or nephew, uncle or aunt (whether by blood, marriage, affinity or adoption) of the child,	43 44

(c) a person who has parental responsibility for the child (not being the Minister, the Secretary or a person who has parental responsibility other than in his or her personal capacity),	1 2
(d) a person who has care responsibility for the child under the <i>Adoption Act 2000</i> (not being the Minister, the Secretary or a person who has care responsibility other than in his or her personal capacity),	3 4 5
(e) for an Aboriginal child or a Torres Strait Islander child—a person who is part of the extended family or kin of the child.	6 7
relevant entity , for Part 4, see section 12.	8
report , for Part 4, see section 10.	9
reportable allegation see section 18.	10
reportable conduct see section 20.	11
reportable conduct scheme see section 11.	12
reportable conviction see section 19.	13
reside , on a property, has the same meaning as reside on a property in the <i>Child Protection (Working with Children) Act 2012</i> .	14 15
responsible Minister , for Part 4, see section 10.	16
Schedule 1 entity , for Part 4, see section 13.	17
Secretary means the Secretary of the Department.	18
service , for Part 9, see section 139.	19
service provider —	20
(a) for Part 9—see section 139, or	21
(b) for Part 10—see section 149.	22
sexual misconduct , for Part 4, see section 22.	23
sexual offence , for Part 4, see section 21.	24
spouse , of a person, means the following but, if more than one person would qualify as the person's spouse, means only the latest person to qualify—	25 26
(a) a person to whom the person is legally married (including a husband or wife of the person),	27
(b) the person's de facto partner.	28
statutory out-of-home care has the same meaning as in the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	29 30
step-parent , in relation to a particular person, means a person who—	31
(a) is not a birth parent, parent or adoptive parent of the particular person, and	32
(b) is married to the particular person's birth parent or adoptive parent or is the de facto partner of the birth parent or adoptive parent.	33 34
substitute residential care means care—	35
(a) involving the provision of accommodation together with food, care and other support, and	36
(b) in the State for more than 2 nights, and	37
(c) of a type ordinarily provided to children in a home environment, provided by persons other than the child's parents or relatives.	38 39
supported out-of-home care has the same meaning as in the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	40 41
the commencement see section 5(2).	42
Torres Strait Islander child —	43
(a) means a child descended from a Torres Strait Islander person, and	44
(b) includes a child the Children's Court has determined is a Torres Strait Islander child under section 5(3) of the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	45 46

Torres Strait Islander person means a person who—	1
(a) is descended from a Torres Strait Islander person, and	2
(b) identifies as a Torres Strait Islander person, and	3
(c) is accepted as a Torres Strait Islander person by a Torres Strait Islander community.	4
under , for an Act or a provision of an Act, includes—	5
(a) by, and	6
(b) for the purposes of, and	7
(c) in accordance with, and	8
(d) within the meaning of.	9
visitable service , for Part 9, see section 139.	10
voluntary out-of-home care see section 76.	11
working with children check clearance has the same meaning as in the <i>Child Protection (Working with Children) Act 2012</i> .	12
	13