

CHILDREN'S GUARDIAN BILL 2019

Schedule of the amendments referred to in the Legislative Council's message of 20 November 2019.

- No. 1 **GRNS No. 1 [c2019-172J]**
Page 9, proposed section 2, lines 6–10. Omit all words on those lines. Insert instead—
 (1) Subject to subsection (2), this Act commences on 1 March 2020.
- No. 2 **GRNS No. 2 [c2019-172J]**
Page 10, proposed section 3, lines 10–13. Omit all the words on those lines. Insert instead—
 (i) for Part 4—subject to an event or circumstance, whether occurring in New South Wales or elsewhere, that is committed by a person who is an employee of a relevant entity (within the meaning of Part 4) and that gives rise to a report (within the meaning of Part 4), or
- No. 3 **GRNS No. 3 [c2019-172J]**
Page 11, proposed section 8. Insert after line 31—
 (e) in decision-making under this Act and the regulations in relation to an Aboriginal child or a Torres Strait Islander child, the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles set out in section 13 of the *Children and Young Persons (Care and Protection) Act 1998*, and
- No. 4 **GRNS**
Page 17, proposed section 22, line 11. Omit "and inappropriately intimate".
- No. 5 **GRNS No. 7 [c2019-172J]**
Page 17, proposed section 25, line 40. Insert "or recklessly" after "intentionally".
- No. 6 **GRNS No. 8 [c2019-172J]**
Page 19, proposed section 29. Insert after line 25—
 (6) The Children's Guardian may publish guidelines in relation to the matters that are appropriate for the head of a relevant entity to have regard to in deciding whether to provide the employee with written notice under subsection (5).
- No. 7 **GRNS No. 9 [c2019-172J]**
Page 20, proposed section 33, line 37. Omit "must". Insert instead "may".
- No. 8 **GRNS No. 10 [c2019-172J]**
Page 21, proposed section 33. Insert after line 1—
 (3) Before making a decision about whether or not to suspend an investigation or determination, the Children's Guardian, or head of the relevant entity, must consult with the Commissioner of Police, or the Director of Public Prosecutions, who provided the

advice under subsection (1).

- (4) If the Children's Guardian or head of the relevant entity decides not to suspend the investigation or determination, the Children's Guardian must ensure the investigation is conducted in a way that does not prejudice the police investigation or the court proceeding.

No. 9 **OPP No. 1 [c2019-228I]**

Page 21, proposed section 34. Insert after line 27—

- (3) The investigation or determination must be completed within a reasonable time.

Note. Section 134 requires information to be reported in particular circumstances.

No. 10 **GRNS No. 11 [c2019-172J]**

Page 21, proposed section 36. Insert at the end of line 35—

, or

- (c) the Children's Guardian consents to an extension of time for the head of the relevant entity to prepare the report.

No. 11 **GRNS No. 12 [c2019-172J]**

Page 22, proposed section 36. Insert after line 2—

- (3) Despite subsection (2), if the Children's Guardian consents to an extension of time under subsection (1)(c), the report is due by the date granted under the extension.

No. 12 **GRNS No. 13 [c2019-172J]**

Page 23, proposed section 40, lines 31–45. Omit all words on those lines.

No. 13 **OPP No. 2 [c2019-228I]**

Page 26, proposed section 46. Insert after line 2—

- (3) The investigation or determination must be completed within a reasonable time.

Note. Section 134 requires information to be reported in particular circumstances.

No. 14 **GRNS No. 14 [c2019-172J]**

Page 30, proposed section 57, lines 11–18. Omit all words on those lines. Insert instead—

- (2) A person must not disclose relevant information unless subsection (3) or (4) applies.

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

- (3) A person to whom this section applies must disclose relevant information to the following persons unless the person is satisfied the disclosure is not in the public interest—

- (a) a child to whom the information relates,
- (b) a parent of the child,
- (c) if the child is in out-of-home care—an authorised carer that provides out-of-home care to the child.

- No. 15 **GRNS No. 15 [c2019-172J]**
Page 30, proposed section 57, line 19. Omit “Information”. Insert instead “Relevant information”.
- No. 16 **GRNS No. 16 [c2019-172J]**
Page 30, proposed section 57, lines 31–34. Omit all words on those lines.
- No. 17 **GRNS No. 17 [c2019-172J]**
Page 30, proposed section 57, lines 35 and 36. Omit “the child referred to in subparagraph (iv)”. Insert instead “a relevant child”.
- No. 18 **GRNS No. 18 [c2019-172J]**
Page 30, proposed section 57, lines 40 and 41. Omit “the child referred to in subparagraph (iv)”. Insert instead “a relevant child”.
- No. 19 **GRNS No. 19 [c2019-172J]**
Page 31, proposed section 57. Insert after line 1—
- (4) The Children’s Guardian may publish guidelines for the matters a person specified in subsection (1) must have regard to in deciding whether or not to disclose relevant information under this section.
 - (5) Nothing in this section prevents the Children’s Guardian from entering into an arrangement or procedure with another entity in relation to the exchange of information relating to the safety, welfare and wellbeing of a child or class of children.
 - (6) In this section—
relevant child means a child or a member of a class of children—
 - (a) against whom an employee of an entity is alleged to have committed reportable conduct, and
 - (b) to whom the relevant information relates.***relevant information*** means the following information relating to a reportable allegation or conviction considered to be a reportable conviction—
 - (a) information about the progress of the investigation,
 - (b) information about the findings of the investigation,
 - (c) information about action taken in response to the findings.
- No. 20 **OPP No. 3 [c2019-228I as amended]**
Page 39, insert after line 37—
- 85A General access to registers**
- (1) The Children's Guardian must ensure that information on the register is not disclosed except—
 - (a) as provided by this Division, or
 - (b) as required or permitted to be disclosed under another Act or law.
 - (2) A residential care provider must have access to the information on the register in relation to—
 - (a) a person who has applied for a role with the residential care provider, and

- (b) a residential care worker employed by the residential care provider.
- (3) The Children's Guardian must provide access to information held on the register to any of the following persons if asked by the person—
 - (a) the Secretary,
 - (b) the Minister for Families, Communities and Disability Services,
 - (c) the Ombudsman.

85B Permission to access register

- (1) This section applies—
 - (a) to a person whose details are included on the register, and
 - (b) in addition to any requirement under section 14 of the *Privacy and Personal Information Protection Act 1998*.
- (2) The person may ask any of the following entities to give the person all the information that is included on the register in relation to the person—
 - (a) the Children's Guardian,
 - (b) an employing residential care provider.
- (3) The Children's Guardian or employing residential care provider must comply with the request as soon as practicable after the request is made.
- (4) Despite subsection (3), information included on the register in relation to the person must not be provided if—
 - (a) the information is about a reportable allegation or reportable conviction, or
 - (b) a reportable conduct flag is on the register in relation to the person, applies to the information.
- (5) It is an offence for a person to access or amend the register except as provided by this Act or the Regulations.
Maximum penalty—100 penalty units.
- (6) In this clause—
employing residential care provider means a residential care provider that employs, or has previously employed, a residential care worker making a request.

85C Requirement to amend register in particular circumstances

A residential care provider with access to the register must remove a reportable conduct flag for a person if the finding of the investigation or determination to which the flag applies is that the person does not pose a real and appreciable risk to a child or children.

132A Report required before commencement of Part 4

- (1) Before the commencement of Part 4 of this Act, the Children's Guardian must give to the Committee on Children and Young People a report, and copies of policies and procedures to be adopted by the Children's Guardian, in relation to the exercise of

the Children's Guardian's functions under this Act or another Act.

- (2) The report must include information about how perceived or actual conflicts of interest associated with the exercise of the Children's Guardian's functions under this Act or another Act are to be minimised or removed.

- (3) In this section—

Committee on Children and Young People means the Parliamentary Joint Committee constituted under section 36(1) of the *Advocate for Children and Young People Act 2014*.

No. 22 **GRNS No. 22 [c2019-172J]**

Page 54, proposed section 134. Insert after line 34—

- (b) details of each exemption given under section 30,

No. 23 **OPP No. 4 [c2019-228I]**

Page 55, proposed section 134. Insert after line 4—

- (f) the number of investigations or determinations, in relation to reportable allegations or reportable convictions, that have not been completed by a relevant entity or the Children's Guardian within 6 months after the commencement of the investigation or determination,
- (g) the number of persons on the residential care workers register kept under section 85(1)(b) who have a reportable conduct flag noted, if the investigation or determination has not been completed by a relevant entity or the Children's Guardian within 6 months after the commencement of the investigation or determination.

No. 24 **GRNS No. 23 [c2019-172J]**

Page 55, proposed section 134. Insert before line 5—

- (f) copies of policies and procedures to be adopted by the Children's Guardian, in relation to the exercise of the Children's Guardian's functions under this Act or another Act, and information about how perceived or actual conflicts of interest associated with the exercise of the functions are to be minimised or removed.

No. 25 **GRNS No. 25 [c2019-172J]**

Page 55, proposed section 135, line 18. Insert "within 6 months after giving the report to the Minister" after "Parliament".

No. 26 **GRNS No. 26 [c2019-172J]**

Page 55, proposed section 136, line 27. Omit "other". Insert instead "a shorter".

No. 27 **GRNS No. 27 [c2019-172J]**

Page 55, proposed section 137, line 42. Omit "a Presiding Officer of a House of Parliament may". Insert instead "the Presiding Officer of a House of Parliament given the report under this Division must, within 14 days after receiving the report,".

No. 28 **OPP No. 5 [c2019-228I]**

Page 71, proposed section 170. Insert after line 20—

- (c) processes to follow to ensure procedural fairness and natural justice for employees the subject of an investigation or determination under the reportable conduct scheme,

No. 29 **OPP No. 6 [c2019-228I]**

Page 110, Dictionary. Insert after line 11—

reportable conduct flag, in relation to a person, means a notation on a register that the person is the subject of an investigation or determination under the reportable conduct scheme.
