

c2019-172J
GRNS--The Greens

LEGISLATIVE COUNCIL

Children's Guardian Bill 2019

First print

Proposed amendments

No. 1 **Commencement**

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 **Application of Act**

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 **Kinship placement principles**

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 **Sexual misconduct**

Page 17, proposed section 22, line 11. Omit “and”. Insert instead “or”.

No. 5 **Sexual misconduct**

Page 17, proposed section 22. Insert after line 12—

- (2) For the purposes of this section, *inappropriately intimate* means conduct that—
(a) is overtly sexual or overtly intimate in nature, and
(b) the person engaging in the conduct knew, or ought reasonably to have known, was unacceptable.

No. 6 **Neglect**

Page 17, proposed section 24, lines 26–31. Omit all words on those lines. Insert instead—

Neglect, of a child—

-
- (a) 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 the child, by—
 - (i) a person with parental responsibility for the child, or
 - (ii) an authorised carer of the child, or
 - (iii) an employee, if the child is in the employee’s care, and
 - (b) includes a significant failure to take reasonable steps to protect the child from neglect.

No. 7 **Assault**

Page 17, proposed section 25, line 40. Insert “or recklessly” after “intentionally”.

No. 8 **Guidelines**

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. 9 **Concurrent investigations**

Page 20, proposed section 33, line 37. Omit “must”. Insert instead “may”.

No. 10 **Concurrent investigations**

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. 11 **Reporting time**

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. 12 **Reporting time**

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. 13 **Assessing reportable conduct**

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

No. 14 **Information disclosure**

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 **Information disclosure**

Page 30, proposed section 57, line 19. Omit “Information”. Insert instead “Relevant information”.

No. 16 **Information disclosure**

Page 30, proposed section 57, lines 31–34. Omit all words on those lines.

No. 17 **Information disclosure**

Page 30, proposed section 57, lines 35 and 36. Omit “the child referred to in subparagraph (iv)”. Insert instead “a relevant child”.

No. 18 **Information disclosure**

Page 30, proposed section 57, lines 40 and 41. Omit “the child referred to in subparagraph (iv)”. Insert instead “a relevant child”.

No. 19 **Information disclosure**

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 **Cabinet information**

Page 35, proposed section 70, lines 31–34. Omit all words on those lines. Insert instead—

Cabinet information means confidential proceedings of Cabinet or a committee of Cabinet.

No. 21 **Reports**

Page 54. Insert after line 17—

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 **Reports**

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

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

No. 23 **Reports**

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. 24 **Reports**

Page 55, proposed section 135, line 17. Omit "may". Insert instead "must".

No. 25 **Reports**

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

No. 26 **Reports**

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

No. 27 **Reports**

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,".