

Passed by both Houses



New South Wales

# Children's Guardian Amendment Bill 2022

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Legislative Council*  
2022

*Clerk of the Parliaments*



New South Wales

## **Children's Guardian Amendment Bill 2022**

Act No \_\_\_\_\_, 2022

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An Act to amend the *Children's Guardian Act 2019* in relation to the accreditation of designated agencies and adoption service providers, the Child Safe Scheme, specialised substitute residential care, registers and the functions of the Children's Guardian and authorised persons; and for other purposes.

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See also the *Child Protection (Working with Children) Amendment Act 2022*.

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**The Legislature of New South Wales enacts—**

**1 Name of Act**

This Act is the *Children's Guardian Amendment Act 2022*.

**2 Commencement**

This Act commences as follows—

- (a) for Schedule 1[12], [14] to the extent that it inserts proposed section 85(1C), [15], [16], [18]–[20], [38], [39] and [46]—on 18 July 2022,
- (b) otherwise—on 1 September 2022.

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

### [1]    **Section 8DA**

Insert after section 8D—

#### **8DA    Codes of practice**

- (1) The regulations may prescribe codes of practice for the purposes of ensuring entities comply with the Child Safe Standards.
- (2) A code of practice may apply only to the following entities—
  - (a) a designated agency,
  - (b) an adoption service provider,
  - (c) an entity providing specialised substitute residential care,
  - (d) an entity prescribed by the regulations.
- (3) A code of practice must specify the entities to which it applies.
- (4) A code of practice for entities providing specialised substitute residential care must require each entity to complete, within the time specified in the code of practice, a self-assessment of the entity's compliance with the Child Safe Standards.
- (5) An entity that fails, without reasonable excuse, to complete the self-assessment within the time specified in the code of practice commits an offence.  
Maximum penalty—10 penalty units.
- (6) A code of practice may include the following—
  - (a) the steps that must be taken to implement the Child Safe Standards,
  - (b) the outcomes that will indicate compliance with the Child Safe Standards,
  - (c) other matters relevant to compliance with the Child Safe Standards.
- (7) A code of practice that applies to a designated agency or an adoption service provider may also include steps that must be taken to obtain and maintain accreditation under this Act.
- (8) An entity must comply with a code of practice that applies to the entity.  
**Note—** This provision makes the code of practice a mandatory prescriptive requirement for compliance with the Child Safe Standards.
- (9) The failure by an entity to comply with a code of practice is grounds for the Children's Guardian to—
  - (a) conduct an investigation under Division 6, and
  - (b) following the investigation, if the Children's Guardian considers it appropriate—issue a compliance notice to the entity under Part 9A.

### [2]    **Part 3A, Division 7**

Insert after Division 6—

## **Division 7 Children in specialised substitute residential care**

### **8ZA Limit on time to be spent in specialised substitute residential care**

- (1) A child must not remain in specialised substitute residential care for more than a total of 90 days in a period of 12 months unless the care is provided or supervised by a designated agency.
- (2) A child may remain in specialised substitute residential 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.
- (3) A child who remains in specialised substitute residential care in contravention of subsection (1) or (2) is taken to be at risk of significant harm for the purposes of the *Children and Young Persons (Care and Protection) Act 1998*, Chapter 3, Parts 2 and 3.
- (4) 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 175.

### **8ZB Notification of deaths of children in specialised substitute residential care**

If a child dies while in specialised substitute residential care, the principal officer of the entity providing the specialised substitute residential care must immediately give notice of the death to the following persons—

- (a) the parents of the child, if the parents can reasonably be located,
- (b) the Children's Guardian,
- (c) the Coroner.

### **8ZC Principal officer**

- (1) In this Act, the *principal officer* of an entity providing specialised substitute residential care means the person who has the overall supervision of the entity's arrangements for providing specialised substitute residential care.
- (2) Anything done by, or with the approval of, the principal officer of an entity providing specialised substitute residential care in relation to specialised substitute residential care is, for this Act and the regulations, taken to be done by the entity.
- (3) Nothing in this section affects the personal liability of the principal officer.

### **8ZD Regulations**

Regulations may be made about specialised substitute residential care.

### **[3] Section 66 Children's Guardian approval of head of relevant entity in certain circumstances**

Insert after section 66(4)—

- (5) In this section—  
*relevant entity* includes a child safe organisation.

### **[4] Part 5, heading**

Omit "matters regulated by Children's Guardian".

**[5] Sections 71(c) and (h), 73, 164(a) and (b) and 184(2)(a)–(d)**

Omit the provisions.

**[6] Section 72**

Omit the section. Insert instead—

**72 Meaning of “designated agency”**

In this Act, *designated agency* means an agency accredited by the Children's Guardian under Schedule 3A.

**[7] Section 74**

Omit the section. Insert instead—

**74 Meaning of “principal officer”**

In this Act, the *principal officer*, of a designated agency, means 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.

**[8] Section 75 Actions of principal officer**

Omit “or a registered agency” from section 75(1).

**[9] Section 75(1)**

Omit “or registered agency”.

**[10] Part 5, Division 2**

Omit the Division.

**[11] Section 85 Registers to be kept**

Omit section 85(1)(a). Insert instead—

(a) a register for carers (the *carers register*),

**[12] Section 85(1)(b)**

Omit the paragraph. Insert instead—

(b) a register for residential care workers (the *residential care workers register*),

**[13] Section 85(1)(c)**

Omit the paragraph. Insert instead—

(c) a register for children in specialised substitute residential care (the *specialised substitute residential care register*).

**[14] Section 85(1B)–(1D)**

Insert after section 85(1A)—

(1B) The carers register may include information about the following—

- (a) a carer (a *relevant authorised carer*) authorised by a designated agency to provide statutory out-of-home care or supported out-of-home care in a private capacity,
- (b) a person who was formerly a relevant authorised carer,
- (c) a person who has applied to be a relevant authorised carer,

- (d) a person, other than a child in out-of-home care, who resides for more than 21 days on the same property as a relevant authorised carer,
  - (e) a person prescribed by the regulations.
- (1C) The residential care workers register may include information about the following—
- (a) a residential care worker,
  - (b) a person who was formerly a residential care worker,
  - (c) a person who has applied to be a residential care worker and who reached an advanced stage in the recruitment process,
  - (d) a person prescribed by the regulations.
- (1D) The specialised substitute residential care register may include information about the following—
- (a) a child in specialised substitute residential care,
  - (b) a person prescribed by the regulations.

**[15] Section 85(3)**

Insert in alphabetical order—

*advanced stage*, in a recruitment process, means a stage prescribed by the regulations.

**[16] Section 86 General access to registers**

Omit section 86(2). Insert instead—

- (2) A residential care provider must have access to the information on the register in relation to the following—
- (a) residential care workers who work at places at which residential care is provided if the provision of the residential care is arranged by the residential care provider (*residential care workers for the residential care provider*),
  - (b) persons who were formerly residential care workers for the residential care provider,
  - (c) persons who have applied to be residential care workers for the residential care provider,
  - (d) persons prescribed by the regulations.

**[17] Section 86(3)(b)**

Omit the paragraph. Insert instead—

- (b) the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*,

**[18] Section 87 Permission to access register**

Omit section 87(2)(b). Insert instead—

- (b) the residential care provider who has access to the person's information under section 86(2).

**[19] Section 87(3)**

Omit "employing".

**[20] Section 87(6)**

Omit the subsection.

**[21] Part 7, Division 1, heading**

Omit the heading.

**[22] Section 110A**

Insert after section 110—

**110A Meaning of “accredited adoption service provider”**

In this Act, *accredited adoption service provider* means an organisation, or part of an organisation, accredited by the Children's Guardian under Schedule 3B.

**[23] Part 7, Division 2, heading**

Omit the heading.

**[24] Section 112, heading**

Omit “Accreditation and review”. Insert instead “Review”.

**[25] Section 112(1)**

Omit the subsection.

**[26] Section 113**

Omit the section.

**[27] Part 7, Division 3, heading**

Omit the heading.

**[28] Section 128 Functions of Children's Guardian**

Omit section 128(1)(e) and (f). Insert instead—

- (e) to exercise accreditation functions for designated agencies,
- (f) to exercise accreditation functions for adoption service providers,
- (f1) to monitor the exercise of functions under the children's care legislation by designated agencies,
- (f2) to monitor the exercise of functions under the children's care legislation by accredited adoption service providers in relation to the provision of adoption services,
- (f3) to monitor the exercise of functions of the Secretary in relation to the provision of adoption services under the *Adoption Act 2000* and the regulations under that Act,
- (f4) to investigate compliance with the children's care legislation,

**[29] Section 128(1)(k)**

Omit the paragraph.

**[30] Section 143 Definitions**

Insert after section 143, definition of *child in care*, paragraph (d)—



- (d1) who is the subject of an arrangement for specialised substitute residential care, or

**[31] Section 151 Provision of information to Children's Guardian**

Omit section 151(1). Insert instead—

- (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—
- (a) the accreditation of designated agencies, or
  - (b) specialised substitute residential care.

**[32] Section 154 Applications to Civil and Administrative Tribunal for administrative review**

Omit section 154(1)(a). Insert instead—

- (a) a decision of the Children's Guardian to do or refuse to do the following in relation to accreditation as a designated agency or an accredited adoption service provider—
- (i) grant accreditation,
  - (ii) impose a condition on an accreditation or vary the conditions to which an accreditation is subject,
  - (iii) transfer an accreditation,
  - (iv) cancel or shorten the period of an accreditation,

**[33] Section 154(1)(e)**

Omit section 154(1)(e)–(j). Insert instead—

- (e) a decision to refuse to make a decision referred to in paragraphs (a)–(d) that the Children's Guardian is empowered and has been asked to make,

**[34] Section 175 Secretary may make guidelines**

Omit section 175(2).

**[35] Schedule 1 Schedule 1 entities**

Insert after item 13—

- 14** an adoption service provider
- 15** an entity providing specialised substitute residential care

**[36] Schedule 2 Power of authorised persons**

Insert after clause 2(b)—

- (b1) for Part 7 of the Act—to monitor and accredit organisations and persons providing adoption services,

**[37] Schedules 3A and 3B**

Insert after Schedule 3—

**Schedule 3A Accreditation of designated agencies**

section 72

## Part 1 Preliminary

### 1 Definitions

In this Schedule—

**accreditation criteria**—see clause 2(1).

**agency** means—

- (a) a government agency or part of a government agency, or
- (b) an organisation or part of an organisation.

**grant accreditation** includes grant a renewal of accreditation.

**suitable to be accredited**—see clause 3.

### 2 Accreditation criteria

- (1) The Minister may, on the recommendation of the Children's Guardian, approve criteria (**accreditation criteria**) to be met by designated agencies.
- (2) Different criteria may be approved for different classes of agencies.
- (3) The criteria must address the following—
  - (a) the assessment by an agency of a person's suitability to be a carer (a **relevant authorised carer**) who is authorised to provide statutory out-of-home care or supported out-of-home care in the carer's home,
  - (b) the provision of training by an agency to relevant authorised carers,
  - (c) the supervision of relevant authorised carers by an agency,
  - (d) the involvement of the following persons in the making of decisions that affect a child—
    - (i) the child,
    - (ii) persons with parental responsibility for the child immediately before the child entered out-of-home care,
    - (iii) the authorised carer of the child,
  - (e) anything else prescribed by the regulations.
- (4) The Children's Guardian must publish criteria approved under this clause on a website of the Office of the Children's Guardian.
- (5) The Children's Guardian may come to the opinion that an agency meets a particular accreditation criterion if—
  - (a) an entity is of the opinion that the agency meets a criterion, and
  - (b) the Children's Guardian is satisfied that the criterion is equivalent to the accreditation criterion, and
  - (c) the Children's Guardian recognises the entity for the purposes of this clause.
- (6) The Children's Guardian must publish a notice setting out entities recognised for the purposes of this clause on a website of the Office of the Children's Guardian.
- (7) Failure to publish criteria under subclause (4) or a notice under subclause (6) does not affect the validity of—
  - (a) the criteria or the entities recognised, or
  - (b) a decision made in relation to the criteria or recognition.

### 3 Grounds for finding that agency is not suitable to be accredited

- (1) An agency is not *suitable to be accredited* if—
  - (a) the agency is disqualified from being accredited, or
  - (b) the agency does not wholly or substantially meet the accreditation criteria, or
  - (c) the Children's Guardian is of the opinion that the agency is not suitable to be a designated agency.
- (2) The Children's Guardian may form an opinion that an agency is not suitable to be a designated agency in one or more of the following circumstances—
  - (a) the agency, or the principal officer of the agency, failed to comply with the children's care legislation,
  - (b) the agency failed to comply with a condition of its accreditation,
  - (c) the agency, or the principal officer of the agency, made a statement or gave information in connection with the administration of the children's care legislation knowing the statement of information was false or misleading in a material particular,
  - (d) another circumstance prescribed by the regulations.
- (3) In this clause—

*children's care legislation* means the following Acts and the regulations under the Acts—

  - (a) this Act,
  - (b) the *Children and Young Persons (Care and Protection) Act 1998*,
  - (c) the *Child Protection (Working with Children) Act 2012*.

## Part 2 Application for accreditation

### 4 Application for grant of accreditation

- (1) An agency may apply to the Children's Guardian to grant accreditation as a designated agency.

**Note—** The definition of *grant* of accreditation in clause 1 includes grant a renewal of accreditation.
- (2) An application must—
  - (a) be in a form approved by the Children's Guardian, and
  - (b) include or be accompanied by information or evidence the Children's Guardian reasonably requires to assess the application, and
  - (c) include or be accompanied by other information prescribed by the regulations.
- (3) If the Children's Guardian considers it necessary, the Children's Guardian may require further documents or information to be provided by the applicant.
- (4) The holder of a provisional accreditation that gives a notice under clause 15 is taken to have made an application for full accreditation 12 months after the notice is given.
- (5) If an application for the grant of accreditation is made to the Children's Guardian before the expiry of an existing accreditation held by the applicant, the existing accreditation continues in force until the Children's Guardian notifies the applicant of a decision to grant or refuse the application.

## **5 Withdrawal of application**

- (1) An applicant may withdraw an application for a grant of accreditation.
- (2) The Children's Guardian may require the withdrawal not to occur until a date decided by the Children's Guardian (the *withdrawal date*).
- (3) The withdrawal date may be up to 6 months after the applicant applies to withdraw the application.
- (4) The applicant's accreditation remains in force until the withdrawal date.
- (5) In deciding on a withdrawal date, the Children's Guardian must consider the safety, welfare and wellbeing of children who may be affected by the decision.

## **6 Grant or refusal of accreditation**

- (1) The Children's Guardian may grant or refuse accreditation to an applicant.
- (2) The Children's Guardian may refuse to grant accreditation—
  - (a) if the application for accreditation does not comply with a requirement imposed by or under this Act, or
  - (b) on a ground prescribed by the regulations.
- (3) The Children's Guardian must refuse to grant accreditation if the applicant is not suitable to be accredited unless the Children's Guardian defers its decision under clause 7.
- (4) The Children's Guardian must give the applicant written notice of a decision to grant or refuse accreditation.
- (5) The notice must include any matter prescribed by the regulations.

## **7 Deferral of decision to grant or refuse accreditation**

- (1) The Children's Guardian may defer its decision on whether to grant or refuse accreditation to an applicant if—
  - (a) the applicant does not meet the accreditation criteria, and
  - (b) the applicant has submitted an action plan to the Children's Guardian, and
  - (c) the Children's Guardian is satisfied the applicant will meet the accreditation criteria if the applicant implements the action plan.
- (2) The Children's Guardian must give the applicant written notice of the deferral that sets out the period for which the decision is to be deferred.
- (3) A deferral period must not be more than 12 months.
- (4) More than one deferral may occur under this clause but the total period of the deferrals must not be more than 24 months.
- (5) If a decision to grant or refuse accreditation to an applicant is not made by the end of the period of the deferrals, the application is taken to have been refused.

## **8 Action plans**

- (1) An action plan submitted under clause 7 must set out the steps the applicant proposes to take to ensure the applicant satisfies the accreditation criteria.
- (2) An applicant that submits an action plan must undertake to implement the action plan.

- (3) An applicant may, with the agreement of the Children's Guardian, amend an action plan.

#### **9 Review of decision to refuse accreditation**

- (1) The Children's Guardian may review its decision to refuse accreditation to an applicant.
- (2) The Children's Guardian may obtain additional information from the applicant as part of the review.
- (3) The Children's Guardian must conduct the review as if it were an application for a grant of accreditation.
- (4) The Children's Guardian is not required to conduct a review under this clause.

#### **10 Full or provisional accreditation**

If the Children's Guardian decides to grant accreditation, the accreditation is—

- (a) if the applicant has provided out-of-home care in accordance with this Act and the regulations within 12 months before the decision—full accreditation, or
- (b) otherwise—provisional accreditation.

#### **11 Duration of accreditation**

- (1) Accreditation remains in force for the period specified by the Children's Guardian in the notice by which the accreditation is granted, unless sooner cancelled or shortened.
- (2) The maximum period that may be specified is—
  - (a) for full accreditation granted immediately after the holder previously held full accreditation—5 years, or
  - (b) otherwise—3 years.
- (3) If the applicant is also an adoption service provider accredited under Schedule 3B, the period of accreditation may be adjusted by the Children's Guardian so that each accreditation period ends at the same time.
- (4) The Children's Guardian may, despite any other provision of this Schedule, extend the period of an accreditation in circumstances prescribed by the regulations.

### **Part 3 Conditions of accreditation**

#### **12 Conditions of accreditation**

- (1) An accreditation is subject to the following conditions—
  - (a) conditions prescribed by this Act or the regulations,
  - (b) conditions imposed by the Children's Guardian.
- (2) The Children's Guardian may impose conditions on an accreditation—
  - (a) at the time of the grant of accreditation, or
  - (b) at another time by varying the conditions of the accreditation under clause 13.
- (3) A provision of this Act that authorises a type of condition to be imposed on an accreditation does not prevent other types of conditions being imposed, or

limit the matters that may be provided for by conditions, unless expressly provided for by this Act.

- (4) The Children's Guardian must not impose a condition on the accreditation of a government agency or part of a government agency unless the Children's Guardian has first notified the Minister about why the condition is considered necessary.

### **13 Variation of conditions of accreditation**

- (1) The Children's Guardian may, at any time, by written notice to an accreditation holder, vary the conditions of the accreditation imposed by the Children's Guardian.
- (2) A variation includes the following—
  - (a) the imposition of a new condition,
  - (b) the substitution of a condition,
  - (c) the removal of a condition,
  - (d) the amendment of a condition.

### **14 Condition requiring compliance with accreditation criteria**

The Children's Guardian must impose a condition on accreditation requiring the holder of the accreditation to wholly meet the accreditation criteria within 12 months if—

- (a) the Children's Guardian grants accreditation to the holder, and
- (b) the Children's Guardian is of the opinion the holder substantially meets the accreditation criteria but does not wholly meet the criteria.

### **15 Condition of provisional accreditation**

It is a condition of a provisional accreditation that the holder of the accreditation give written notice to the Children's Guardian as soon as practicable after the holder first makes arrangements for the provision of out-of-home care under the accreditation.

## **Part 4 Transfer and surrender of accreditation**

### **16 Transfer of accreditation**

The Children's Guardian may transfer the accreditation of an agency (the *former agency*) to another agency (the *new agency*) if satisfied that—

- (a) because of a restructure involving the former agency, the new agency will be exercising the designated agency functions previously exercised by the former agency, or
- (b) the former agency has been merged with, or acquired by, the new agency, or
- (c) the accreditation should be transferred because of circumstances prescribed by the regulations.

### **17 Surrender of accreditation**

- (1) The holder of an accreditation may surrender the accreditation.
- (2) The Children's Guardian may require the surrender not to occur until a date decided by the Children's Guardian not more than 6 months after the holder applies to surrender the accreditation.

- (3) In deciding on a date, the Children's Guardian must consider the safety, welfare and wellbeing of children who may be affected by the decision.
- (4) A failure by the holder to apply to renew accreditation is taken to be an application to surrender an accreditation except as provided by the regulations.
- (5) An accreditation remains in force until the date decided by the Children's Guardian under subclause (2).

## **Part 5 Cancellling or shortening period of accreditation**

### **18 Grounds for cancelling or shortening period of accreditation**

Each of the following constitutes grounds for cancelling or shortening the period of an accreditation—

- (a) the holder of the accreditation is not suitable to be accredited,
- (b) the accreditation was granted in error,
- (c) a ground prescribed by the regulations.

### **19 How accreditation is cancelled or shortened**

- (1) The Children's Guardian may, by written notice given to the holder of an accreditation, cancel or shorten the period of the accreditation if the Children's Guardian is satisfied there are grounds for the cancellation or shortening.
- (2) A notice cancelling an accreditation must specify—
  - (a) the date or time from which cancellation takes effect, and
  - (b) the grounds for the cancellation.
- (3) A notice shortening the period of an accreditation must specify—
  - (a) the date on which the shortened accreditation will cease to have effect, and
  - (b) the grounds for the shortening of the period of accreditation.
- (4) The Children's Guardian may, by further written notice given to the holder of an accreditation while the accreditation is in force, amend or revoke a notice cancelling or shortening the period of the accreditation.
- (5) The Children's Guardian must not cancel the accreditation of a government agency or part of a government agency unless the Children's Guardian has first notified the Minister about why the cancellation is considered necessary.

### **20 Disqualification if cancelled**

If an accreditation is cancelled, the holder of the accreditation is disqualified from being accredited for 2 years after the cancellation takes effect.

## **Part 6 Regulations**

### **21 Regulations about accreditation**

Regulations may be made about accreditation, including the following—

- (a) applications for accreditation,
- (b) the withdrawal of applications,
- (c) the deferral of decisions and the obligations the Children's Guardian may impose on an applicant during the period of the deferral,

- (d) conditions of accreditation and applications for variation of conditions of accreditation,
- (e) transfers of accreditation,
- (f) surrenders of accreditation.

## Schedule 3B Accreditation of adoption service providers

section 110A

### Part 1 Preliminary

#### 1 Definitions

In this Schedule—

**accreditation criteria**—see clause 2(1).

**grant** accreditation includes grant a renewal of accreditation.

**organisation** means a charitable organisation within the meaning of the *Adoption Act 2000*, or part of a charitable organisation.

**suitable to be accredited**—see clause 3.

#### 2 Accreditation criteria

- (1) The Minister may, on the recommendation of the Children's Guardian, approve criteria (**accreditation criteria**) to be met by accredited adoption service providers.
- (2) Different criteria may be approved for different classes of providers.
- (3) The Children's Guardian must publish criteria approved under this clause on a website of the Office of the Children's Guardian.
- (4) The Children's Guardian may come to the opinion that an organisation meets a particular accreditation criterion if—
  - (a) an entity is of the opinion that the organisation meets a criterion, and
  - (b) the Children's Guardian is satisfied that the criterion is equivalent to the accreditation criterion, and
  - (c) the Children's Guardian recognises the entity for the purposes of this clause.
- (5) The Children's Guardian must publish a notice setting out entities recognised for the purposes of this clause on a website of the Office of the Children's Guardian.
- (6) Failure to publish criteria under subclause (3) or a notice under subclause (5) does not affect the validity of—
  - (a) the criteria or the entities recognised, or
  - (b) a decision made in relation to the criteria or recognition.
- (7) The accreditation criteria must, as far as is reasonably practicable, be consistent with the accreditation criteria under Schedule 3A, clause 2.

#### 3 Grounds for finding that organisation is not suitable to be accredited

- (1) An organisation is not **suitable to be accredited** if—
  - (a) the organisation is disqualified from being accredited, or



- (b) the organisation does not wholly or substantially meet the accreditation criteria, or
  - (c) the Children's Guardian is of the opinion that the organisation is not suitable to be an accredited adoption service provider.
- (2) The Children's Guardian may form an opinion that an organisation is not suitable to be an accredited adoption service provider in one or more of the following circumstances—
- (a) the organisation, or the principal officer of the organisation, failed to comply with the children's care legislation,
  - (b) the organisation failed to comply with a condition of its accreditation,
  - (c) the organisation, or the principal officer of the organisation, made a statement or gave information in connection with the administration of the children's care legislation knowing the statement of information was false or misleading in a material particular,
  - (d) another circumstance prescribed by the regulations.

## Part 2 Application for accreditation

### 4 Application for grant of accreditation

- (1) An organisation may apply to the Children's Guardian to grant accreditation as an accredited adoption service provider.
- Note—** The definition of **grant** of accreditation in clause 1 includes grant a renewal of accreditation.
- (2) An application must—
- (a) be in a form approved by the Children's Guardian, and
  - (b) include or be accompanied by information or evidence the Children's Guardian reasonably requires to assess the application, and
  - (c) include or be accompanied by other information prescribed by the regulations.
- (3) If the Children's Guardian considers it necessary, the Children's Guardian may require further documents or information to be provided by the applicant.
- (4) The holder of a provisional accreditation that gives a notice under clause 16 is taken to have made an application for full accreditation 12 months after the notice is given.
- (5) If an application for the grant of accreditation is made to the Children's Guardian before the expiry of an existing accreditation held by the applicant, the existing accreditation continues in force until the Children's Guardian notifies the applicant of a decision to grant or refuse the application.

### 5 Withdrawal of application

- (1) An applicant may withdraw an application for a grant of accreditation.
- (2) The Children's Guardian may require the withdrawal not to occur until a date decided by the Children's Guardian (the **withdrawal date**).
- (3) The withdrawal date may be up to 6 months after the applicant applies to withdraw the application.
- (4) The applicant's accreditation remains in force until the withdrawal date.

- (5) In deciding on a withdrawal date, the Children's Guardian must consider the safety, welfare and wellbeing of children who may be affected by the decision.

## **6 Grant or refusal of accreditation**

- (1) The Children's Guardian may grant or refuse accreditation to an applicant.
- (2) The Children's Guardian may refuse to grant accreditation—
  - (a) if the application for accreditation does not comply with a requirement imposed by or under this Act, or
  - (b) on a ground prescribed by the regulations.
- (3) The Children's Guardian must refuse to grant accreditation if the applicant is not suitable to be accredited unless the Children's Guardian defers its decision under clause 7.
- (4) The Children's Guardian must give the applicant written notice of a decision to grant or refuse accreditation.
- (5) The notice must include any matter prescribed by the regulations.

## **7 Deferral of decision to grant or refuse accreditation**

- (1) The Children's Guardian may defer its decision on whether to grant or refuse accreditation to an applicant if—
  - (a) the applicant does not meet the accreditation criteria, and
  - (b) the applicant has submitted an action plan to the Children's Guardian, and
  - (c) the Children's Guardian is satisfied the applicant will meet the accreditation criteria if the applicant implements the action plan.
- (2) The Children's Guardian must give the applicant written notice of the deferral that sets out the period for which the decision is to be deferred.
- (3) A deferral period must not be more than 12 months.
- (4) More than one deferral may occur under this clause but the total period of the deferrals must not be more than 24 months.
- (5) If a decision to grant or refuse accreditation to an applicant is not made by the end of the period of the deferrals, the application is taken to have been refused.

## **8 Action plans**

- (1) An action plan submitted under clause 7 must set out the steps the applicant proposes to take to ensure the applicant satisfies the accreditation criteria.
- (2) An applicant that submits an action plan must undertake to implement the action plan.
- (3) An applicant may, with the agreement of the Children's Guardian, amend an action plan.

## **9 Review of decision to refuse accreditation**

- (1) The Children's Guardian may review its decision to refuse accreditation to an applicant.
- (2) The Children's Guardian may obtain additional information from the applicant as part of the review.

- (3) The Children's Guardian must conduct the review as if it were an application for a grant of accreditation.
- (4) The Children's Guardian is not required to conduct a review under this clause.

#### **10 Full or provisional accreditation**

If the Children's Guardian decides to grant accreditation, the accreditation is—

- (a) if the applicant has provided adoption services in accordance with this Act and the regulations within 12 months before the decision—full accreditation, or
- (b) otherwise—provisional accreditation.

#### **11 Duration of accreditation**

- (1) Accreditation remains in force for the period specified by the Children's Guardian in the notice by which the accreditation is granted, unless sooner cancelled or shortened.
- (2) The maximum period that may be specified is—
  - (a) for full accreditation granted immediately after the holder previously held full accreditation—5 years, or
  - (b) otherwise—3 years.
- (3) If the applicant is also a designated agency accredited under Schedule 3A, the period of accreditation may be adjusted by the Children's Guardian so that each accreditation period ends at the same time.
- (4) The Children's Guardian may, despite any other provision of this Schedule, extend the period of an accreditation in circumstances prescribed by the regulations.

### **Part 3 Conditions of accreditation**

#### **12 Conditions of accreditation**

- (1) An accreditation is subject to the following conditions—
  - (a) conditions prescribed by this Act or the regulations,
  - (b) conditions imposed by the Children's Guardian.
- (2) The Children's Guardian may impose conditions on an accreditation—
  - (a) at the time of the grant of accreditation, or
  - (b) at another time by varying the conditions of the accreditation under clause 13.
- (3) A provision of this Act that authorises a type of condition to be imposed on an accreditation does not prevent other types of conditions being imposed, or limit the matters that may be provided for by conditions, unless expressly provided for by this Act.

#### **13 Variation of conditions of accreditation**

- (1) The Children's Guardian may, at any time, by written notice to an accreditation holder, vary the conditions of the accreditation imposed by the Children's Guardian.
- (2) A variation includes the following—

- (a) the imposition of a new condition,
- (b) the substitution of a condition,
- (c) the removal of a condition,
- (d) the amendment of a condition.

**14 Condition limiting adoption services that may be provided**

The Children's Guardian may impose a condition on an accreditation limiting the adoption services that may be provided under the accreditation.

**15 Condition requiring compliance with accreditation criteria**

The Children's Guardian must impose a condition on accreditation requiring the holder of the accreditation to wholly meet the accreditation criteria within 12 months if—

- (a) the Children's Guardian grants accreditation to the holder, and
- (b) the Children's Guardian is of the opinion the holder substantially meets the accreditation criteria but does not wholly meet the criteria.

**16 Condition of provisional accreditation**

It is a condition of a provisional accreditation that the holder of the accreditation give written notice to the Children's Guardian as soon as practicable after the holder first provides adoption services under the accreditation.

## **Part 4 Transfer and surrender of accreditation**

**17 Transfer of accreditation**

The Children's Guardian may transfer the accreditation of an organisation (the *former organisation*) to another organisation (the *new organisation*) if satisfied that—

- (a) because of a restructure involving the former organisation, the new organisation will be exercising the accredited adoption service provider functions previously exercised by the former organisation, or
- (b) the former organisation has been merged with, or acquired by, the new organisation, or
- (c) the accreditation should be transferred because of circumstances prescribed by the regulations.

**18 Surrender of accreditation**

- (1) The holder of an accreditation may surrender the accreditation.
- (2) The Children's Guardian may require the surrender not to occur until a date decided by the Children's Guardian not more than 6 months after the holder applies to surrender the accreditation.
- (3) In deciding on a date, the Children's Guardian must consider the safety, welfare and wellbeing of children who may be affected by the decision.
- (4) A failure by the holder to apply to renew accreditation is taken to be an application to surrender an accreditation except as provided by the regulations.
- (5) An accreditation remains in force until the date decided by the Children's Guardian under subclause (2).

## **Part 5 Cancellling or shortening period of accreditation**

### **19 Grounds for cancelling or shortening period of accreditation**

Each of the following constitutes grounds for cancelling or shortening the period of an accreditation—

- (a) the holder of the accreditation is not suitable to be accredited,
- (b) the accreditation was granted in error,
- (c) a ground prescribed by the regulations.

### **20 How accreditation is cancelled or shortened**

- (1) The Children's Guardian may, by written notice given to the holder of an accreditation, cancel or shorten the period of the accreditation if the Children's Guardian is satisfied there are grounds for the cancellation or shortening.
- (2) A notice cancelling an accreditation must specify—
  - (a) the date or time from which cancellation takes effect, and
  - (b) the grounds for the cancellation.
- (3) A notice shortening the period of an accreditation must specify—
  - (a) the date on which the shortened accreditation will cease to have effect, and
  - (b) the grounds for the shortening of the period of accreditation.
- (4) The Children's Guardian may, by further written notice given to the holder of an accreditation while the accreditation is in force, amend or revoke a notice cancelling or shortening the period of the accreditation.

### **21 Disqualification if cancelled**

If an accreditation is cancelled, the holder of the accreditation is disqualified from being accredited for 2 years after the cancellation takes effect.

## **Part 6 Regulations**

### **22 Regulations about accreditation**

Regulations may be made about accreditation, including the following—

- (a) applications for accreditation,
- (b) the withdrawal of applications,
- (c) the deferral of decisions and the obligations the Children's Guardian may impose on an applicant during the period of the deferral,
- (d) conditions of accreditation and applications for variation of conditions of accreditation,
- (e) transfers of accreditation,
- (f) surrenders of accreditation.

### **[38] Schedule 4 Savings, transitional and other provisions**

Omit clause 1. Insert instead—

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—

- (a) a provision of this Act, or
  - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after the commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after the commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before the commencement but not before—
- (a) for a provision of this Act—the date of assent to this Act, or
  - (b) for a provision amending this Act—the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—
- (a) affect the rights of a person existing before the publication in a way prejudicial to the person, or
  - (b) impose liabilities on a person for anything done or omitted to be done before the publication.
- (6) In this clause—  
*person* does not include the State or an authority of the State.

**[39] Schedule 4**

Insert at the end of the Schedule, with appropriate Part and clause numbering—

**Part Provisions consequent on enactment of Children's Guardian Amendment Act 2022**

**Definitions**

In this Part—

*amending Act* means the *Children's Guardian Amendment Act 2022*.

*commencement day* means 1 September 2022.

*existing accreditation* means accreditation, in force immediately before the commencement day, as—

- (a) a designated agency under the *Children and Young Persons (Care and Protection) Regulation 2012*, or
- (b) an adoption service provider under this Act.

**Existing accreditations**

- (1) An amendment made to this Act by the amending Act does not affect an existing accreditation and the accreditation continues in force in the same form and for the same period as if the amending Act had not commenced.
- (2) Despite subclause (1)—
- (a) Schedule 3A, including relevant provisions, applies to an existing accreditation of a designated agency as if the accreditation had been granted under that Schedule, and
  - (b) Schedule 3B, including relevant provisions, applies to an existing accreditation of an adoption service provider as if the accreditation had been granted under that Schedule.

- (3) In this clause—  
*relevant provisions* means provisions enabling the Children's Guardian to vary the conditions of accreditation or cancel or shorten the period of accreditation.

#### **Accreditation criteria**

- (1) The standards and criteria approved by the Minister under the *Children and Young Persons (Care and Protection) Regulation 2012*, clause 48 are taken to be the accreditation criteria for designated agencies approved by the Minister under Schedule 3A, clause 2.
- (2) Subclause (1) ceases to apply when the Minister approves accreditation criteria for designated agencies under Schedule 3A, clause 2.
- (3) The standards and criteria approved by the Minister under this Act, section 113 are taken to be the accreditation criteria for accredited adoption service providers approved by the Minister under Schedule 3B, clause 2.
- (4) Subclause (3) ceases to apply when the Minister approves accreditation criteria for accredited adoption service providers under Schedule 3B, clause 2.

#### **Accreditation criteria must be wholly satisfied**

The *Children and Young Persons (Care and Protection) Regulation 2012*, clause 54 as in force immediately before the commencement day continues to apply to an existing accreditation of a designated agency as if that clause were a provision of this Act.

#### **Applications for accreditation**

- (1) An application for accreditation as a designated agency or an adoption service provider made before the commencement day, including an application for which a decision is deferred, must be dealt with as if the amending Act had not commenced.
- (2) If the application is granted, it is taken to have been granted under this Act as amended by the amending Act.

#### **Applications for transfer of accreditation**

- (1) An application to transfer the accreditation as a designated agency or an adoption service provider must be dealt with as if the amending Act had not commenced.
- (2) However, the application must be dealt with as if the amending Act had commenced if the applicant elects to have it dealt with in this way.

#### **Children in specialised substitute residential care**

Time spent in specialised substitute residential care before the commencement of section 8ZA is to be taken into account for the purposes of that section.

#### **Residential care workers register**

Section 85(1C)(b) does not extend to include a person who ceased to be a residential care worker before the commencement of that paragraph.

#### **Specialised substitute residential care register**

- (1) The specialised substitute residential care register in section 85(1)(c) (the *new register*) is taken to be a continuation of the register for organisations that

provide or arrange voluntary out-of-home care (the *former register*) that was referred to in that paragraph before the commencement day.

- (2) Information on the former register may be kept on the new register.

**[40] Schedule 6 Dictionary**

Omit the definition of *accredited adoption service provider*. Insert instead—  
*accredited adoption service provider*—see section 110A.

**[41] Schedule 6, definition of “child safe organisation”, paragraph (a)**

Omit the paragraph. Insert instead—

- (a) an entity mentioned in Schedule 1,

**[42] Schedule 6, definition of “children’s care legislation”**

Insert in alphabetical order—

*children’s care legislation* means the following Acts and the regulations under the Acts—

- (a) this Act,  
(b) the *Children and Young Persons (Care and Protection) Act 1998*,  
(c) the *Child Protection (Working with Children) Act 2012*,  
(d) the *Adoption Act 2000*.

**[43] Schedule 6, definition of “designated agency”**

Omit “section 72(1)”. Insert instead “section 72”.

**[44] Schedule 6, definition of “function”**

Insert in alphabetical order—

*function* includes a power, authority or duty, and *exercise* a function includes perform a duty.

**[45] Schedule 6, definition of “principal officer”**

Omit the definition. Insert instead—

*principal officer*—

- (a) for an adoption service provider—see section 110, or  
(b) for a designated agency—see section 74, or  
(c) for an entity providing specialised substitute residential care—see section 8ZC.

**[46] Schedule 6, definitions of “registered agency” and “voluntary out-of-home care”**

Omit the definitions.

**[47] Schedule 6, definitions of “residential care”, “residential care provider” and “residential care worker”**

Insert in alphabetical order—

*residential care* means statutory out-of-home care or supported out-of-home care that is provided—

- (a) under an arrangement by a designated agency, and  
(b) at—  
(i) a home, managed by a designated agency, or



(ii) a place where accommodation is provided on a temporary basis.  
*residential care provider* means a designated agency that arranges the provision of residential care.

*residential care worker* means—

- (a) a person who provides residential care, or
- (b) a person prescribed by the regulations.

**[48] Schedule 6, definition of “specialised substitute residential care”**

Insert in alphabetical order—

*specialised substitute residential care* means substitute residential care for a child—

- (a) funded by the National Disability Insurance Scheme under the *National Disability Insurance Scheme Act 2013* of the Commonwealth, or
- (b) provided for the purposes of respite services or behaviour support.

**[49] Schedule 6, definition of “substitute residential care”, paragraph (b)**

Insert “in any period of 7 days” after “2 nights”.

## Schedule 2 Amendment of other Acts

### 2.1 Adoption Act 2000 No 75

#### Section 14 Actions of principal officer taken to be actions of provider

Omit the section.

### 2.2 Children and Young Persons (Care and Protection) Act 1998 No 157

#### [1] Section 3 Definitions

Omit section 3(1), definition of *voluntary out-of-home care*.

#### [2] Section 135 Definition and types of "out-of-home care"

Omit "3 types" from section 135(2). Insert instead "2 types".

#### [3] Section 135(2)(c)

Omit the paragraph.

#### [4] Section 136 Restriction on who may provide statutory out-of-home care

Omit section 136(2), notes. Insert instead—

**Note 1**— The provision of supported out-of-home care is regulated by this Chapter, Part 3.

**Note 2**— An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

#### [5] Section 158 Physical restraint of child or young person

Omit "or" from the end of section 158(6)(b) and omit section 158(6)(c).

### 2.3 Coroners Act 2009 No 41

#### Section 24 Jurisdiction concerning deaths of children and disabled persons

Insert after section 24(3), definition of *child in care*, paragraph (d)—

(d1) who is in specialised substitute residential care within the meaning of the *Children's Guardian Act 2019*, or

### 2.4 Stronger Communities Legislation Amendment (Courts and Civil) Act 2020 No 24

#### Schedule 1 Amendments

Omit Schedule 1.1[11], [13] and [18]–[20].

**2.5 Stronger Communities Legislation Amendment (Miscellaneous) Act  
2020 No 31**

**Schedule 2 Miscellaneous amendments**

Omit Schedule 2.2[1].