



New South Wales

Children's Guardian Amendment Bill 2022

Explanatory note

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

The *Child Protection (Working with Children) Amendment Bill 2022* is cognate with this Bill.

Overview of Bill

This Bill amends the *Children's Guardian Act 2019* as follows—

- (a) to provide for codes of practice to ensure certain child safe organisations comply with the Child Safe Standards,
- (b) to provide for the nomination of a principal officer of certain child safe organisations,
- (c) to remove the concepts of voluntary out-of-home care and registered agencies and replace the concept of voluntary out-of-home care with specialised substitute residential care,
- (d) to update provisions relating to registers to be kept by the Children's Guardian,
- (e) to update the functions of the Children's Guardian and authorised persons,
- (f) to include adoption service providers and entities providing specialised substitute residential care as Schedule 1 entities,
- (g) to provide for the accreditation of designated agencies and adoption service providers,
- (h) to update certain definitions,
- (i) to include savings and transitional provisions.

This Bill also amends the following Acts consequential on the amendments made to the *Children's Guardian Act 2019*—

- (a) the *Children and Young Persons (Care and Protection) Act 1998*,
- (b) the *Stronger Communities Legislation Amendment (Courts and Civil) Act 2020*,

(c) the *Stronger Communities Legislation Amendment (Miscellaneous) Act 2020*.

Outline of provisions

Clause 1 sets out the name of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

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

Schedule 1[1] permits the regulations under the *Children's Guardian Act 2019* (the *principal Act*) to prescribe codes of practice to ensure entities comply with the Child Safe Standards. An entity must comply with a code of practice that applies to the entity. The Children's Guardian may conduct an investigation into a failure to comply and may issue a compliance notice.

Schedule 1[3] extends to a child safe organisation that is not a relevant agency a provision providing for the nomination of a principal officer for the organisation.

Schedule 1[4], [5], [7]–[10], [31], [34], [46] and [48] remove provisions from the principal Act relating to voluntary out-of-home care and registered agencies and replace the concept of voluntary out-of-home care with specialised substitute residential care. **Schedule 1[2]** re-enacts requirements that applied to voluntary out-of-home care as requirements applying to specialised substitute residential care and provides for the principal officer of an entity providing specialised substitute residential care. It also introduces an obligation on a principal officer to give certain notifications if a child dies while in specialised substitute residential care. **Schedule 1[30]** provides that a child who is subject to an arrangement for specialised substitute residential care is a child in care for the purposes of the Official Community Visitor scheme in principal Act, Part 9.

Schedule 1[11]–[20] update provisions relating to registers to be kept by the Children's Guardian. The provisions clarify whose information may be kept on each register and remove provisions that implied certain registers applied to employees only.

Schedule 1[28] updates the functions of the Children's Guardian to include accreditation functions for designated agencies and adoption service providers, the monitoring of entities exercising functions under the children's care legislation and investigating compliance with the children's care legislation. **Schedule 1[42]** includes a definition of *children's care legislation*.

Schedule 1 [29] makes a consequential amendment.

Schedule 1[35] includes adoption service providers and entities providing specialised substitute residential care as Schedule 1 entities for the purposes of the principal Act.

Schedule 1[36] provides that an authorised person has the function of monitoring and accrediting organisations and persons providing adoption services.

Schedule 1[37] provides for the accreditation of designated agencies and adoption service providers. The provisions consolidate and update existing provisions and make the 2 accreditation schemes consistent. **Schedule 1[6], [21]–[27], [32], [33], [40] and [43]** make consequential amendments.

Schedule 1[38] inserts a standard provision into the principal Act that enables the making of transitional regulations. **Schedule 1[39]** includes savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 1[41] updates the definition of *child safe organisation* in the principal Act to include all entities mentioned in Schedule 1 of the Act.

Schedule 1[44] inserts a standard definition of *function* for the purposes of the principal Act.

Schedule 1[45] updates the definition of *principal officer* for the purposes of the principal Act.

Schedule 1[47] inserts definitions of *residential care*, *residential care provider* and *residential care worker* for the purposes of the principal Act.

Schedule 1[49] updates the definition of *substitute residential care* in the principal Act to make clear that the 2 nights referred to in the definition are 2 nights in a period of 7 days.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends the *Adoption Act 2000* to omit a provision made redundant by the *Children's Guardian Act 2019*, section 110.

Schedule 2.2 amends the *Children and Young Persons (Care and Protection) Act 1998* to remove references to voluntary out-of-home care consequent on the amendments made to the *Children's Guardian Act 2019* by Schedule 1.

Schedule 2.3 amends the *Coroners Act 2009* to extend the jurisdiction of a senior coroner to hold an inquest concerning the death or suspected death of a child in specialised substitute residential care.

Schedule 2.4 amends the *Stronger Communities Legislation Amendment (Courts and Civil) Act 2020* to remove provisions made redundant by the amendments made to the *Children's Guardian Act 2019* by Schedule 1.

Schedule 2.5 amends the *Stronger Communities Legislation Amendment (Miscellaneous) Act 2020* to remove a provision made redundant by the amendments made to the *Children's Guardian Act 2019* by Schedule 1.