

Children's Guardian Act 2019

Information for voluntary, statutory out-of-home care and adoption agencies

The *Children's Guardian Act 2019* commenced on 1 March 2020. The new Act consolidates the Children's Guardian's functions related to the registration or accreditation and monitoring of voluntary and statutory out-of-home care agencies. It gives the Children's Guardian greater oversight to help agencies create safer environments for children in NSW.

The new Act expands the Children's Guardian's functions to include the Community Visitor Scheme (in relation to children and young people) and the Reportable Conduct Scheme, which transfers to the Office of the Children's Guardian from the NSW Ombudsman.

The new Act also provides the Children's Guardian with the power to establish the new Residential Care Workers Register. Consultation and information will be provided about this in the coming months.

Agencies' registration and/or accreditation to provide voluntary and/or statutory out-of-home care will transfer under the new Act, as it currently stands.

Regulations (the *Children and Young Persons (Care and Protection) Regulation 2012* and the *Adoption Regulation 2015*) remain in place until new regulations are made under the *Children's Guardian Act*.

Changes that impact agencies

Broader information exchange powers

The *Children's Guardian Act* broadens the Children's Guardian's information exchange powers. These powers operate alongside existing powers to share information under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*.

The new Act enables the Children's Guardian to share information more easily with existing prescribed bodies and extends existing information exchange mechanisms to enable the Children's Guardian to share information with Commonwealth enforcement and investigative agencies such as the National Disability Insurance Agency and the NDIS Quality and Safeguards Commission.

Immunity from liability

Agency employees who make a complaint, give a report, or notify the Children's Guardian of an allegation in good faith are immune from liability under the new Act.

Reportable Conduct Scheme under the new Act

Agencies now notify reportable conduct and reportable allegations to the Reportable Conduct team within the Office of the Children's Guardian – not the NSW Ombudsman.

This means the notification made by designated agencies for statutory out-of-home care will be streamlined and reduced. This will be done via forms that will be available on our website in the Reportable Conduct section from 1 March 2020.

The new Act brings all reporting requirements into one scheme encompassing 'relevant entities' voluntary and statutory out-of-home care agencies are relevant entities under the new Act.

***Note for statutory out-of-home care agencies:** From March 2020 there are changes to conditions of accreditation for designated agencies. Agencies will no longer need to notify the OOHC Accreditation and Monitoring team of allegations of sexual misconduct or serious physical assault against a child or young person after 1 March 2020. These allegations must be reported to the Reportable Conduct team within the Office of the Children's Guardian.

Clarified definition of reportable conduct

Under the new Act, 'reportable conduct' includes the following:

- a sexual offence
- sexual misconduct
- ill-treatment of a child
- neglect of a child
- assault against a child
- an offence under s43B (failure to protect) or s316A (failure to report) of the *Crimes Act 1900*
- behaviour that causes significant emotional or psychological harm to a child.

Contractors are now covered

The new Act now clarifies that contractors and sub-contractors who require a WWCC to work with an agency are now within the remit of the Reportable Conduct Scheme. In addition, any reportable allegation must be reported even if the alleged conduct occurred *outside* the work context.



Notification timeframes

Under the *Children's Guardian Act 2019*, the head of the entity must advise the Office of the Children's Guardian within **seven business days** of becoming aware of a reportable allegation.

After **30 days**, they must provide an update to the OCG, this can be an interim report or the final report, if completed. The Act also introduces penalties for not meeting the notification timeframe.

Where do I go if I have any further questions?

There is more information specifically about the Reportable Conduct Scheme including fact sheets and FAQs on the website www.kidsguardian.nsw.gov.au/reportableconduct.

For more information about the reportable conduct scheme:

Phone: 02 8219 3800

Email: reportableconduct@kidsguardian.nsw.gov.au

website: www.kidsguardian.nsw.gov.au/reportableconduct

For more information about voluntary out-of-home care:

Phone: 02 8219 3798

Email: voohc@kidsguardian.nsw.gov.au

For more information about statutory out-of-home care:

Phone: 02 8219 3796

Email: accreditation@kidsguardian.nsw.gov.au

