



New South Wales

Stronger Communities Legislation Amendment (Children) Bill 2021

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the following Acts and Regulations—

- (a) *Adoption Act 2000*,
- (b) *Child Protection (Working with Children) Act 2012*,
- (c) *Children and Young Persons (Care and Protection) Act 1998*,
- (d) *Children (Detention Centres) Act 1987*,
- (e) *Children's Guardian Act 2019*,
- (f) *Civil and Administrative Tribunal Act 2013*,
- (g) *Civil and Administrative Tribunal Regulation 2013*.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Adoption Act 2000 No 75

Schedule 1[1] inserts proposed section 124AA into the *Adoption Act 2000* to make provision for the appointment of a member of the Guardian Ad Litem Panel, established under the *Children and Young Persons (Care and Protection) Act 1998* (the **GAL Panel**), as a guardian ad litem in adoption proceedings.

Schedule 1[3] makes an amendment of a savings nature to validate past appointments of guardians ad litem.

Schedule 1[2] and [4] make consequential amendments, including to the Dictionary.

Schedule 2 Amendment of Child Protection (Working with Children) Act 2012 No 51

Schedule 2[1] makes an amendment to the *Child Protection (Working with Children) Act 2012* (the *WWC Act*), section 26 to include persons convicted of serious animal cruelty offences in the list of persons who may not apply to the Civil and Administrative Tribunal for the following—

- (a) an administrative review of a decision to—
 - (i) refuse a working with children check clearance, or
 - (ii) cancel a working with children check clearance, or
 - (iii) impose an interim bar,
- (b) an enabling order.

Schedule 2[2] inserts proposed section 33A into the WWC Act to authorise animal welfare bodies to disclose to the Children’s Guardian if the body has commenced proceedings against a person for an animal cruelty offence and if a person is found guilty of an animal cruelty offence.

Schedule 2[3] makes an amendment to include animal cruelty offences in the list of offences that trigger a risk assessment under the WWC Act, Part 3, Division 3.

Schedule 2[4] makes an amendment to include serious animal cruelty offences under the *Crimes Act 1900*, section 530 in the list of offences that disqualify a person from being granted a working with children check clearance.

Schedule 3 Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157

Guardian ad litem amendments

Schedule 3[3] inserts proposed section 101AA into the *Children and Young Persons (Care and Protection) Act 1998* (the *Care Act*) to make provision for the appointment of a member of the GAL Panel as a guardian ad litem in Children’s Court proceedings under the Act.

Schedule 3[4] makes a consequential amendment.

Schedule 3[10] inserts a regulation-making power to provide for the administrator of the GAL Panel to be specified by regulation.

Schedule 3[11] makes an amendment of a savings nature to validate past appointments of guardians ad litem.

Authorised residential care worker amendments

Schedule 3[6] inserts proposed section 137AA into the Care Act to provide that an authorised residential care worker is a person who is—

- (a) authorised to provide care to a child or young person in statutory out-of-home care or supported out-of-home care only in the course of the person’s professional work or paid employment, or
- (b) a member of a class of persons prescribed by the regulations.

Schedule 3[2], [5] and [7]–[9] make amendments to provide that authorised residential care workers, as defined by proposed section 137AA, do not have the same responsibilities, entitlements or obligations for children and young people in their care as are held by other authorised carers under the Care Act.

Miscellaneous amendments

Schedule 3[1] makes a consequential amendment to the definitions section.

Schedule 4 Amendment of Children (Detention Centres) Act 1987 No 57

Schedule 4[1] makes an amendment to clarify that bail for a juvenile on parole may be granted by any magistrate.

Schedule 4[2], [3], [5] and [6] clarify the powers of the Children's Court on the reconsideration of a parole decision.

Schedule 4[4] make amendments to the *Children (Detention Centres) Act 1987* to ensure that a period of time a young person who is on parole spends in custody as a result of a separate charge or following a revocation of the young person's parole will be counted towards the original sentence.

Schedule 5 Amendment of Children's Guardian Act 2019 No 25

Notifiable conduct amendments

Schedule 5[1]–[4] and [6] make amendments to the *Children's Guardian Act 2019* (the *CG Act*) to clarify that a class or kind of reportable conduct may be exempted from the requirement that it be notified to the Children's Guardian, while remaining reportable conduct that must be investigated and, if substantiated, addressed.

Other amendments

Schedule 5[5] makes an amendment to the *CG Act*, section 33 to clarify that responsibility for ensuring the investigation of reportable conduct does not interfere with a concurrent police investigation rests with the relevant entity undertaking the investigation, whether that is the head of a designated agency or the Children's Guardian, rather than simply with the Children's Guardian.

Schedule 5[7] makes an amendment to the *CG Act*, Schedule 4, clause 1(4) to extend the operation of the savings and transitional provisions and regulations by 6 months from 1 March 2022 to 1 September 2022.

Schedule 6 Amendment of Civil and Administrative Tribunal Act 2013 No 2

Schedule 6[2] inserts proposed section 45(4C) and (4D) into the *Civil and Administrative Tribunal Act 2013* to make provision for the appointment of a member of the GAL Panel, as a guardian ad litem in proceedings before the Tribunal.

Schedule 6[3] makes an amendment of a savings nature to validate past appointments of guardians ad litem.

Schedule 6[1] makes a consequential amendment to the definitions section.

Schedule 7 Amendment of Civil and Administrative Tribunal Regulation 2013

Schedule 7 makes a consequential amendment to the *Civil and Administrative Tribunal Regulation 2013*.



New South Wales

Stronger Communities Legislation Amendment (Children) Bill 2021

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New South Wales

Stronger Communities Legislation Amendment (Children) Bill 2021

No , 2021

A Bill for

An Act to amend various Acts relating to children in the Communities and Justice portfolio.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Stronger Communities Legislation Amendment (Children) Act 2021*.

3

2 Commencement

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(1) This Act commences on the date of assent to this Act, except as provided for in subsection (2).

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(2) Schedules 2 and 3[2] and [5]–[9] commence on a day or days to be appointed by proclamation.

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Schedule 1	Amendment of Adoption Act 2000 No 75	1
[1]	Section 124AA	2
	Insert after section 124—	3
	124AA Use of Guardian Ad Litem Panel	4
	(1) Without limiting section 123(1) or 124(1)(a), the Court may order that a person be represented by a guardian ad litem without naming a particular person to be appointed as guardian ad litem.	5 6 7
	(2) If the Court makes an order under subsection (1), the guardian ad litem is taken to have been appointed when the Court receives a written notice from the administrator of the Guardian Ad Litem Panel naming the person selected to be the guardian ad litem.	8 9 10 11
[2]	Section 124A Guardian ad litem—exclusion of personal liability	12
	Omit section 124A(3).	13
[3]	Schedule 3 Savings, transitional and other provisions	14
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	15
Part	Provisions consequent on enactment of Stronger Communities Legislation Amendment (Children) Act 2021	16 17 18
	Appointment of guardian ad litem	19
	(1) A person selected before the commencement date by the relevant administrator to be a guardian ad litem in proceedings in the Court is taken to have been validly appointed as a guardian ad litem if—	20 21 22
	(a) a request was made to the administrator by or on behalf of the Court for a person to be selected as a guardian ad litem for—	23 24
	(i) a child the subject of adoption proceedings, or	25
	(ii) an adoptive parent of a child the subject of adoption proceedings, or	26 27
	(iii) a birth parent of a child the subject of adoption proceedings, and	28
	(b) the administrator notified the Court of the name of the person selected.	29
	(2) In this clause—	30
	<i>commencement date</i> means the date on which section 124AA commenced.	31
	<i>relevant administrator</i> , in relation to the selection of a guardian ad litem, means the person responsible at the time of the selection for administering the body known as the Guardian Ad Litem Panel, as constituted from time to time, before this Part commenced.	32 33 34 35
[4]	Dictionary	36
	Insert in the Dictionary in alphabetical order—	37
	<i>administrator</i> , of the Guardian Ad Litem Panel, means the person responsible for the constitution of the Guardian Ad Litem Panel under the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	38 39 40
	<i>Guardian Ad Litem Panel</i> has the same meaning as in the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	41 42

Schedule 2	Amendment of Child Protection (Working with Children) Act 2012 No 51	1
		2
[1]	Section 26 Persons not entitled to apply for review or enabling order	3
	Insert after section 26(1)(a)(viii)—	4
	(viiia) an offence against the <i>Crimes Act 1900</i> , section 79 or 530,	5
[2]	Section 33A	6
	Insert after section 33—	7
33A	Notification of animal cruelty offences	8
(1)	An animal welfare body is authorised to disclose to the Children’s Guardian the following information about a person—	9
	(a) the commencement by the body of proceedings for an animal cruelty offence by the person,	10
	(b) a finding of guilt against the person, whether or not a conviction is recorded, for an animal cruelty offence.	11
(2)	In this section—	12
	animal cruelty offence means—	13
	(a) an offence under the <i>Prevention of Cruelty to Animals Act 1979</i> , section 5(1) or (2) or 6, or	14
	(b) an offence under the <i>Crimes Act 1900</i> , section 79 or 530.	15
	animal welfare body means each of the following—	16
	(a) Royal Society for the Prevention of Cruelty to Animals, New South Wales,	17
	(b) Animal Welfare League NSW.	18
[3]	Schedule 1 Assessment requirement triggers	19
	Insert “5(1) or (2) or” after “section” in clause 1(2)(g).	20
[4]	Schedule 2 Disqualifying offences	21
	Insert after clause 1(1)(q)—	22
	(q1) an offence under the <i>Crimes Act 1900</i> , section 530.	23
		24
		25
		26
		27
		28

Schedule 3	Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157	1
		2
[1] Section 3 Definitions		3
	Insert in alphabetical order in section 3(1)—	4
	<i>administrator</i> , of the Guardian Ad Litem Panel, means—	5
	(a) the Secretary, or	6
	(b) the person prescribed by the regulations as the administrator of the Guardian Ad Litem Panel.	7
	<i>authorised residential care worker</i> —see section 137AA.	8
	<i>Guardian Ad Litem Panel</i> means the panel constituted as the Guardian Ad Litem Panel by the administrator.	9
		10
		11
[2] Section 79B Applications for guardianship orders		12
	Omit section 79B(7). Insert instead—	13
	(7) An application cannot be made under subsection (1)(c) by a person who is an authorised carer solely in the person’s capacity as 1 or both of the following—	14
	(a) the principal officer of a designated agency,	15
	(b) an authorised residential care worker.	16
		17
[3] Section 101AA		18
	Insert after section 101—	19
101AA Use of Guardian Ad Litem Panel		20
	(1) Without limiting section 100(1) or 101(1)(a), the Children’s Court may order that a person be represented by a guardian ad litem without naming a particular person to be appointed as guardian ad litem.	21
		22
		23
	(2) If the Children’s Court makes an order under subsection (1), the guardian ad litem is taken to have been appointed as guardian ad litem when the Children’s Court receives a written notice from the administrator of the Guardian Ad Litem Panel naming the person selected to be the guardian ad litem.	24
		25
		26
		27
[4] Section 101A Guardian ad litem—exclusion of personal liability		28
	Omit section 101A(3).	29
[5] Section 137 Authorised carers		30
	Insert after section 137(3)—	31
	(4) Subsection (3) does not apply to a person who is an authorised carer solely because the person is an authorised residential care worker.	32
		33
[6] Section 137AA		34
	Insert after section 137—	35
137AA Definition of authorised residential care worker		36
	(1) In this Act, <i>authorised residential care worker</i> means—	37
	(a) a person who—	38
	(i) is authorised as an authorised carer by a designated agency, and	39

(ii)	provides statutory out-of-home care or supported out-of-home care only in the course of the person's professional work or paid employment, or	1 2 3
(b)	a person who is a member of a class of persons prescribed by the regulations.	4 5
(2)	The regulations may prescribe a class or classes of persons who, despite subsection (1)(a), are not authorised residential care workers.	6 7
[7]	Section 146 Involvement of authorised carers in decision-making	8
	Insert at the end of the section—	9
(2)	Subsection (1) does not apply to a person who is an authorised carer solely because the person is an authorised residential care worker.	10 11
[8]	Section 147 Indemnity of authorised carers	12
	Insert at the end of the section—	13
(2)	Subsection (1) does not apply to loss or damage suffered by an authorised carer in the course of providing care as an authorised residential care worker.	14 15
[9]	Section 149E Consent of authorised carer to disclosure of high level identification information	16 17
	Insert after section 149E(2)—	18
(3)	This section does not apply to a person who is an authorised carer of a child or young person solely because the person is an authorised residential care worker.	19 20 21
[10]	Section 264 Regulations	22
	Insert after section 264(1A)(l)—	23
(m)	specifying the administrator of the Guardian Ad Litem Panel.	24
[11]	Schedule 3 Savings, transitional and other provisions	25
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	26
Part	Provisions consequent on enactment of Stronger Communities Legislation Amendment (Children) Act 2021	27 28 29
	Appointment of guardian ad litem	30
(1)	A person selected before the commencement date by the relevant administrator to be a guardian ad litem in proceedings in the Children's Court is taken to have been validly appointed as a guardian ad litem if—	31 32 33
(a)	a request was made to the administrator by or on behalf of the Children's Court for a person to be selected as a guardian ad litem for—	34 35
(i)	a child or young person the subject of proceedings in the Children's Court, or	36 37
(ii)	a parent of a child or young person, and	38
(b)	the administrator notified the Children's Court of the name of the person selected.	39 40
(2)	In this clause—	41

commencement date means the date on which section 101AA commenced. 1
relevant administrator, in relation to the selection of a guardian ad litem, 2
means the person responsible at the time of the selection for administering the 3
body known as the Guardian Ad Litem Panel, as constituted from time to time, 4
before this Part commenced. 5

Schedule 4	Amendment of Children (Detention Centres) Act 1987 No 57	1
		2
[1] Section 41 Jurisdiction of Children’s Court relating to parole		3
Insert after section 41(2)—		4
(3) This section does not prevent a bail decision under the <i>Bail Act 2013</i> , section 8 being dealt with under that Act.		5 6
[2] Section 67 Hearings as to non-compliance and revocation		7
Omit “may make any decision that it could make on a reconsideration application under section 74 (1).” from section 67(4).		8 9
Insert instead—		10
may—		11
(a) vary the date on which a revocation order took effect, or		12
(b) rescind an earlier date, specified under section 68(1), on which a revocation order took effect, or		13 14
(c) rescind or confirm the revocation order.		15
[3] Section 67(5)		16
Insert after section 67(4)—		17
(5) In making a decision under subsection (4), the Children’s Court may take into account the behaviour of the juvenile offender while released on parole or after the revocation of the parole order.		18 19 20
[4] Section 68 Effect of revocation order		21
Insert after section 68(3)—		22
(4) A juvenile offender is not at large for the purposes of subsection (3) if the juvenile offender is in custody for a separate charge.		23 24
[5] Section 75 Decisions on reconsideration		25
Omit “On the” from section 75(1).		26
Insert instead “On a hearing held in accordance with section 73(1)(b) or on the”.		27
[6] Section 75(1)(d)–(f)		28
Insert at the end of section 75(1)(c)—		29
, or		30
(d) rescind the revocation of a parole order, or		31
(e) vary the date on which the revocation of a parole order took effect, or		32
(f) rescind an earlier date, specified under section 68(1), on which the revocation of a parole order took effect.		33 34

Schedule 5	Amendment of Children's Guardian Act 2019 No 25	1
		2
[1] Section 29 Children's Guardian to be given notification of reports		3
Omit "unless the head of the relevant entity has a reasonable excuse." from section 29(4).		4
Insert instead—		5
unless—		6
(a) an exemption applies under section 30, or		7
(b) the head of the relevant entity has a reasonable excuse.		8
[2] Section 30, heading		9
Omit "reporting". Insert instead "notification".		10
[3] Section 30(1)		11
Omit "being reportable conduct".		12
Insert instead "notification under section 29".		13
[4] Section 30(2)		14
Omit "being reportable conduct".		15
Insert instead "notification under section 29".		16
[5] Section 33 Concurrent investigations or proceedings		17
Omit section 33(4). Insert instead—		18
(4) If the investigation under this Part is not suspended, the Children's Guardian or head of the relevant entity that decides not to suspend the investigation must ensure the investigation is conducted in a way that does not prejudice the police investigation or court proceeding.		19 20 21 22
[6] Section 36 Report by relevant entity about investigation or determination		23
Insert after section 36(3)—		24
(3A) Despite subsection (2), the entity report is not required to be given to the Children's Guardian if the conduct is, because of an exemption under section 30(1), exempt from notification under section 29.		25 26 27
[7] Schedule 4 Savings, transitional and other provisions		28
Omit "2 years after the day of commencement" from clause 1(4).		29
Insert instead "on 1 September 2022".		30

Schedule 6	Amendment of Civil and Administrative Tribunal Act 2013 No 2	1
		2
[1] Section 4 Definitions		3
	Insert in alphabetical order in section 4(1)—	4
	<i>administrator</i> , of the Guardian Ad Litem Panel, means the person responsible for the constitution of the Guardian Ad Litem Panel under the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	5
		6
		7
	<i>Guardian Ad Litem Panel</i> has the same meaning as in the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	8
		9
[2] Section 45 Representation of parties		10
	Insert after section 45(4B)—	11
	(4C) Without limiting subsection (4)(a) or (4A)(a), the Tribunal may order that a person be represented by a guardian ad litem without naming a particular person to be appointed as guardian ad litem.	12
		13
		14
	(4D) If the Tribunal makes an order under subsection (4C) the guardian ad litem is taken to have been appointed as guardian ad litem when the Tribunal receives a written notice from the administrator of the Guardian Ad Litem Panel naming the person selected to be the guardian ad litem.	15
		16
		17
		18
[3] Schedule 1 Savings, transitional and other provisions		19
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	20
Part	Provisions consequent on enactment of Stronger Communities Legislation Amendment (Children) Act 2021	21
		22
		23
	Appointment of guardian ad litem	24
	(1) A person selected before the commencement date by the relevant administrator to be a guardian ad litem in proceedings in the Tribunal is taken to have been validly appointed as a guardian ad litem if—	25
		26
		27
	(a) a request was made to the administrator by or on behalf of the Tribunal for a person to be selected as a guardian ad litem for—	28
		29
	(i) a party in the proceedings, or	30
	(ii) a child affected by the proceedings, and	31
	(b) the administrator notified the Tribunal of the name of the person selected.	32
		33
	(2) In this clause—	34
	<i>commencement date</i> means the date on which section 45(4C) and (4D) commenced.	35
		36
	<i>relevant administrator</i> , in relation to the selection of a guardian ad litem, means the person responsible at the time of the selection for administering the body known as the Guardian Ad Litem Panel, as constituted from time to time, before this Part commenced.	37
		38
		39
		40

Schedule 7	Amendment of Civil and Administrative Tribunal Regulation 2013	1
		2
Clause 10	Representation by members of Guardian Ad Litem Panel	3
	Omit clause 10(2).	4