

Passed by both Houses



New South Wales

Stronger Communities Legislation Amendment (Children) Bill 2021

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2021



New South Wales

Stronger Communities Legislation Amendment (Children) Bill 2021

Act No _____, 2021

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

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

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

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided for in subsection (2).
- (2) Schedules 2 and 3[2] and [5]–[9] commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Adoption Act 2000 No 75

[1] Section 124AA

Insert after section 124—

124AA Use of Guardian Ad Litem Panel

- (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.
- (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.

[2] Section 124A Guardian ad litem—exclusion of personal liability

Omit section 124A(3).

[3] Schedule 3 Savings, transitional and other provisions

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

Part Provisions consequent on enactment of Stronger Communities Legislation Amendment (Children) Act 2021

Appointment of guardian ad litem

- (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—
 - (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—
 - (i) a child the subject of adoption proceedings, or
 - (ii) an adoptive parent of a child the subject of adoption proceedings, or
 - (iii) a birth parent of a child the subject of adoption proceedings, and
 - (b) the administrator notified the Court of the name of the person selected.
- (2) In this clause—

commencement date means the date on which section 124AA commenced.

relevant administrator, 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.

[4] Dictionary

Insert in the Dictionary in alphabetical order—

administrator, of the Guardian Ad Litem Panel, means the person responsible for the constitution of the Guardian Ad Litem Panel under the *Children and Young Persons (Care and Protection) Act 1998*.

Guardian Ad Litem Panel has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.

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

[1] Section 26 Persons not entitled to apply for review or enabling order

Insert after section 26(1)(a)(viii)—

(viiia) an offence against the *Crimes Act 1900*, section 79 or 530,

[2] Section 33A

Insert after section 33—

33A Notification of animal cruelty offences

(1) An animal welfare body is authorised to disclose to the Children’s Guardian the following information about a person—

- (a) the commencement by the body of proceedings for an animal cruelty offence by the person,
- (b) a finding of guilt against the person, whether or not a conviction is recorded, for an animal cruelty offence.

(2) In this section—

animal cruelty offence means—

- (a) an offence under the *Prevention of Cruelty to Animals Act 1979*, section 5, 6, 11, 12, 15, 16, 17, 18, 18A, 21A or 23, or
- (b) an offence under the *Crimes Act 1900*, section 79, 80, 530 or 531.

animal welfare body means each of the following—

- (a) Royal Society for the Prevention of Cruelty to Animals, New South Wales,
- (b) Animal Welfare League NSW.

[3] Schedule 1 Assessment requirement triggers

Insert “5(1) or (2) or” after “section” in clause 1(2)(g).

[4] Schedule 2 Disqualifying offences

Insert after clause 1(1)(q)—

(q1) an offence under the *Crimes Act 1900*, section 530.

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

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

administrator, of the Guardian Ad Litem Panel, means—

- (a) the Secretary, or
- (b) the person prescribed by the regulations as the administrator of the Guardian Ad Litem Panel.

authorised residential care worker—see section 137AA.

Guardian Ad Litem Panel means the panel constituted as the Guardian Ad Litem Panel by the administrator.

[2] Section 79B Applications for guardianship orders

Omit section 79B(7). Insert instead—

- (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—
 - (a) the principal officer of a designated agency,
 - (b) an authorised residential care worker.

[3] Section 101AA

Insert after section 101—

101AA Use of Guardian Ad Litem Panel

- (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.
- (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.

[4] Section 101A Guardian ad litem—exclusion of personal liability

Omit section 101A(3).

[5] Section 137 Authorised carers

Insert after section 137(3)—

- (4) Subsection (3) does not apply to a person who is an authorised carer solely because the person is an authorised residential care worker.

[6] Section 137AA

Insert after section 137—

137AA Definition of authorised residential care worker

- (1) In this Act, *authorised residential care worker* means—
 - (a) a person who—
 - (i) is authorised as an authorised carer by a designated agency, and

- (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
 - (b) a person who is a member of a class of persons prescribed by the regulations.
- (2) The regulations may prescribe a class or classes of persons who, despite subsection (1)(a), are not authorised residential care workers.

[7] Section 146 Involvement of authorised carers in decision-making

Insert at the end of the section—

- (2) Subsection (1) does not apply to a person who is an authorised carer solely because the person is an authorised residential care worker.

[8] Section 147 Indemnity of authorised carers

Insert at the end of the section—

- (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.

[9] Section 149E Consent of authorised carer to disclosure of high level identification information

Insert after section 149E(2)—

- (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.

[10] Section 264 Regulations

Insert after section 264(1A)(l)—

- (m) specifying the administrator of the Guardian Ad Litem Panel.

[11] Schedule 3 Savings, transitional and other provisions

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

Part Provisions consequent on enactment of Stronger Communities Legislation Amendment (Children) Act 2021

Appointment of guardian ad litem

- (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—
 - (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—
 - (i) a child or young person the subject of proceedings in the Children's Court, or
 - (ii) a parent of a child or young person, and
 - (b) the administrator notified the Children's Court of the name of the person selected.
- (2) In this clause—

commencement date means the date on which section 101AA commenced.

relevant administrator, 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.

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

[1] Section 41 Jurisdiction of Children’s Court relating to parole

Insert after section 41(2)—

- (3) This section does not prevent a bail decision under the *Bail Act 2013*, section 8 being dealt with under that Act.

[2] Section 67 Hearings as to non-compliance and revocation

Omit “may make any decision that it could make on a reconsideration application under section 74 (1).” from section 67(4).

Insert instead—

may—

- (a) vary the date on which a revocation order took effect, or
(b) rescind an earlier date, specified under section 68(1), on which a revocation order took effect, or
(c) rescind or confirm the revocation order.

[3] Section 67(5)

Insert after section 67(4)—

- (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.

[4] Section 68 Effect of revocation order

Insert after section 68(3)—

- (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.

[5] Section 75 Decisions on reconsideration

Omit “On the” from section 75(1).

Insert instead “On a hearing held in accordance with section 73(1)(b) or on the”.

[6] Section 75(1)(d)–(f)

Insert at the end of section 75(1)(c)—

, or

- (d) rescind the revocation of a parole order, or
(e) vary the date on which the revocation of a parole order took effect, or
(f) rescind an earlier date, specified under section 68(1), on which the revocation of a parole order took effect.

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

[1] Section 29 Children's Guardian to be given notification of reports

Omit "unless the head of the relevant entity has a reasonable excuse." from section 29(4).

Insert instead—

unless—

- (a) an exemption applies under section 30, or
- (b) the head of the relevant entity has a reasonable excuse.

[2] Section 30, heading

Omit "reporting". Insert instead "notification".

[3] Section 30(1)

Omit "being reportable conduct".

Insert instead "notification under section 29".

[4] Section 30(2)

Omit "being reportable conduct".

Insert instead "notification under section 29".

[5] Section 33 Concurrent investigations or proceedings

Omit section 33(4). Insert instead—

- (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.

[6] Section 36 Report by relevant entity about investigation or determination

Insert after section 36(3)—

- (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.

[7] Schedule 4 Savings, transitional and other provisions

Omit "2 years after the day of commencement" from clause 1(4).

Insert instead "on 1 September 2022".

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

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

administrator, of the Guardian Ad Litem Panel, means the person responsible for the constitution of the Guardian Ad Litem Panel under the *Children and Young Persons (Care and Protection) Act 1998*.

Guardian Ad Litem Panel has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.

[2] Section 45 Representation of parties

Insert after section 45(4B)—

- (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.
- (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.

[3] Schedule 1 Savings, transitional and other provisions

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

Part Provisions consequent on enactment of Stronger Communities Legislation Amendment (Children) Act 2021

Appointment of guardian ad litem

- (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—
- (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—
- (i) a party in the proceedings, or
- (ii) a child affected by the proceedings, and
- (b) the administrator notified the Tribunal of the name of the person selected.
- (2) In this clause—
- commencement date* means the date on which section 45(4C) and (4D) commenced.
- relevant administrator*, 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.

Schedule 7 Amendment of Civil and Administrative Tribunal Regulation 2013

Clause 10 Representation by members of Guardian Ad Litem Panel

Omit clause 10(2).