

Children's Guardian Amendment Act 2022

Summary of accreditation provisions

The Children's Guardian Amendment Bill 2022 was passed by Parliament on 22 June 2022 and consolidates the Children's Guardian's accreditation functions in the *Children's Guardian Act 2019* ('the CG Act') and the Children's Guardian Regulation 2022. This follows consultation with the statutory out-of-home care and adoption sector in late 2021 regarding the Children's Guardian's accreditation functions.

The table below sets out a summary of the accreditation provisions for the accreditation of designated agencies and adoption service providers and indicates where there are new provisions, or changes to existing provisions. Accreditation functions in respect of designated agencies will be set out in Schedule 3A to the CG Act. Accreditation functions in respect of adoption service providers will be set out in Schedule 3B to the CG Act.

These provisions will commence on **1 September 2022**.

Codes of practice (s.8DA of the CG Act)

The CG Act has been amended to provide for regulations to prescribe codes of practice to ensure that organisations comply with the Child Safe Standards. This is a new provision.

Codes of practice will apply to:

- designated agencies
- adoption service providers
- specialist substitute residential care providers
- an entity prescribed by the regulations.

Codes of practice may include the following:

- the steps that must be taken to implement the Child Safe Standards
- the outcomes that will indicate compliance with the Child Safe Standards
- other matters relevant to compliance with the Child Safe Standards
- steps that must be taken by a designated agency or adoption service provider to obtain and maintain accreditation.

The code of practice for designated agencies and adoption service providers will not commence on 1 September 2022. This is because the CG Act, new section 8DA(1), requires the code of practice to be set out in the regulations, and no regulations will provide for a code until the OCG has undertaken consultation to develop the content of the code. At this stage, the OCG expects to make regulations which will commence the code in late 2023.

Accreditation of designated agencies

Accreditation process/decision Summary of provision

Legislative reference

Definitions

Defines an *agency* as:

- A government agency or part of a government agency, or
- An organisation or part of an organisation.

The definition of an agency has been expanded to include that an agency may be a part of an organisation. For example, where a NSW out-of-home care program sits within a larger national organisation, the *program* may be accredited rather than the entire organisation. This definition also ensures that individual DCJ districts can continue to be accredited as separate agencies.

Clarifies that *grant of accreditation* includes renewing an agency's accreditation.

s.1 of Schedule 3A of the CG Act

Recommending and approving accreditation criteria

No change to existing provisions

- **Retains** existing provisions for the Minister to approve, on the recommendation of the Children's Guardian, accreditation criteria to be met by designed agencies.
- **Retains** existing provisions that the accreditation criteria must address certain things, including the assessment, training and supervision of authorised carers.
- **Retains** existing requirement that the Children's Guardian must publish accreditation criteria on its website.
- **Retains** provisions for the Children's Guardian to recognise compliance with a criterion required by another entity as evidence of compliance with the accreditation criteria.

These provisions will be repealed at a later date, when the Child Safe Standards and code of practice commence as the new accreditation criteria.

s.2 of Schedule 3A to the CG Act.

Making an application for grant of accreditation

No change to existing provisions

- **Retains** the existing requirement that an agency making an application for a grant of accreditation (this includes an agency applying for new accreditation or an agency applying to renew its existing accreditation) must submit an application in a form approved by the Children's Guardian.

s.4 of Schedule 3A to the CG Act.

- **Retains** existing requirements that an applicant must provide additional information that the Children’s Guardian could reasonably require to assess the application.
- **Retains** existing provisions regarding the progression from provisional accreditation to full accreditation.
- **Retains** existing provisions that an agency’s accreditation remains in force while its application for full accreditation is determined.

These provisions regarding the application process remain unchanged, including provisions for the Children’s Guardian to require additional information to assist in assessing the application.

Determining whether an agency is suitable to be accredited

Clarifies and consolidates existing provisions regarding suitability to be a designated agency s. 3 of Schedule 3A of the CG Act

Currently, the Children’s Guardian may grant accreditation if satisfied that the agency wholly or substantially meets accreditation criteria (cl49(1) of the Care Regulation).

The Children’s Guardian may also shorten, suspend or cancel an agency’s accreditation if it has not complied with accreditation criteria, has not complied with a condition of accreditation, has not complied with its legislative obligations or if the agency or principal officer made a statement or provided information that it knew to be false or misleading (cl66 of the Care Regulation).

These decisions have been consolidated into a provision that sets out the grounds on which the Children’s Guardian may find an agency is not suitable to be accredited (s.3 of Schedule 3A of the CG Act).

An agency is not suitable to be accredited if:

- The agency is disqualified from being accredited (new provision), or
- The agency does not wholly or substantially satisfy the accreditation criteria (existing provision), or
- The Children’s Guardian is of the opinion that the agency is not suitable to be a designated agency (new provision).

The Children’s Guardian may form an opinion that an agency is not suitable to be a designated agency if:

- The agency or the principal officer failed to comply with relevant children’s care legislation (existing provision), and/or

- The agency failed to comply with a condition of its accreditation (existing provision), and/or
- The agency or principal officer of the agency made a statement or gave information in connection with the administration of the children’s care legislation knowing it to be false or misleading in a material particular (existing provision), and/or
- Another circumstance prescribed by the regulations (new provision).

A **new provision** has been created to disqualify an agency that has had its accreditation cancelled, from being accredited for two years.

Withdrawing an application for accreditation

Clarifies existing provisions for an agency to withdraw its application for accreditation.

s.5 of Schedule 3A to the CG Act

An agency may withdraw its application for accreditation and the Children’s Guardian may require that the application not be withdrawn until a certain date, to allow for the transition of any children and young people in the care of the agency, to another designated agency

Granting or refusing accreditation

Retains and clarifies existing provisions regarding the Children’s Guardian’s decision to grant or refuse accreditation

s.6 of Schedule 3A to the CG Act

These provisions:

- **Retain** existing provisions for the Children’s Guardian to grant or refuse accreditation.
- **Clarifies** that the Children’s Guardian must refuse to grant accreditation if the applicant is not suitable to be accredited, unless the Children’s Guardian defers a decision on the application.
- **Retain existing** requirements that the Children’s Guardian must give notice in writing of a decision to refuse or grant accreditation.

Deferring a decision to grant or refuse accreditation

New requirements to strengthen existing provisions

s.7 and s.8 of Schedule 3A to the CG Act

Currently, the Children’s Guardian may defer a decision to grant or refuse accreditation. There is currently no limit on the length of time a decision may be deferred.

The provisions:

- **Retain** the Children’s Guardian’s power to defer a decision to grant or refuse accreditation.

- **Makes new provisions** limiting the circumstances in which the Children’s Guardian may defer a decision to grant or refuse accreditation:
 - the agency has not met the accreditation criteria, and
 - the agency has submitted an action plan, and
 - the plan has been approved by the Children’s Guardian.
- **Makes a new provision** that a deferral period may be for up to 12 months.
- **Makes a new provision** that more than 1 deferral may occur, but the total period of the deferrals must not be more than 24 months.
- **Makes a new provision** that where a decision has been deferred for 24 months and no decision has been made, the application is automatically refused.

The purpose of these new provisions is to limit the circumstances in which a decision may be deferred and limiting the length of time a decision may be deferred.

A new provision requires an agency to develop an action plan setting out the steps the agency will take to ensure it satisfies the accreditation criteria and the agency must implement the plan. The plan may be amended by agreement with the Children’s Guardian.

Review of a decision to refuse accreditation	Clarifies existing provisions that the Children’s Guardian may review a decision to refuse accreditation and may obtain additional information from the applicant as part of the review.	s.9 of Schedule 3A to the CG Act
Granting provisional or full accreditation	No change to existing provisions that the Children’s Guardian may grant provisional accreditation or full accreditation. <ul style="list-style-type: none"> • Full accreditation may be granted where the agency has provided statutory out-of-home care within 12 months before the applications decided. • Provisional accreditation may be granted where the agency has <i>not</i> provided statutory out-of-home care within the 12 months before the application is decided. 	s.10 of Schedule 3A to the CG Act
Duration of accreditation	Clarifies existing provisions <ul style="list-style-type: none"> • Where an agency previously held full accreditation, the maximum period of full accreditation is five years. • When the agency did <i>not</i> previously hold full accreditation the maximum period of accreditation is three years. 	s.11 of Schedule 3A to the CG Act

Conditions on accreditation	<p>No change to existing provisions that accreditations may be subject to conditions.</p> <ul style="list-style-type: none"> • Retains provisions for the Children’s Guardian to impose conditions on an agency’s accreditation at any time. • Retains provisions that the Children’s Guardian must not impose conditions on the accreditation of a government agency unless the Children’s Guardian has first notified the Minister about why the condition is necessary. • Retains provisions for the Children’s Guardian to vary the conditions on an agency’s accreditation at any time. • Clarifies that a condition may be varied by imposing a new condition, substituting a condition, removing a condition or amending a condition. • Retains provisions requiring an agency that is accredited on the basis that it substantially meets accreditation criteria, to be wholly compliant within 12 months. • Retains provisions requiring an agency that is provisionally accredited to give written notice to the Children’s Guardian when it first makes arrangements for the provision of out-of-home care. <p>Schedule 3 to the Children and Young Persons (Care and Protection) Regulation 2012 sets out the general conditions of accreditation of designated agencies. From 1 September 2022 general conditions of accreditation will be set out in the Children’s Guardian Regulation 2022 (‘the CG Regulation’).</p> <p>The CG Regulation makes a new condition of accreditation of designated agencies, that care may only be provided in a private home by a person who is an authorised foster carer or relative/kinship carer.</p>	s.12-15 of Schedule 3A to the CG Act
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Transfer of accreditation	<p>Makes new provisions to strengthen existing provisions</p> <p>These provisions retain existing power to transfer accreditation of an organisation, or part of an organisation to another organisation or part of an organisation.</p> <p>New provisions limit the circumstances in which the Children’s Guardian can approve the transfer of accreditation:</p> <ul style="list-style-type: none"> • because of a restructure involving the former agency, the new agency will be exercising the designated agency functions previously exercised by the former agency. • the former agency has merged with, or been acquired by, a new agency • circumstances prescribed by the regulations. 	s.16 of Schedule 3A to the CG Act
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Surrender of accreditation	Clarifies existing provisions for an agency to surrender its accreditation	s.17 of Schedule 3A to the CG Act
	An agency may surrender its accreditation and the Children’s Guardian may require the surrender to not to take effect until a certain date, to allow for the transition of children and young people in the agency’s care to another designated agency.	
Cancelling or shortening accreditation	Clarifies the grounds on which the Children’s Guardian may shorten or cancel an agency’s accreditation and the process of cancelling or shortening accreditation	s.18 and s.19 of Schedule 3A to the CG Act
	The Children’s Guardian may shorten or cancel an agency’s accreditation if:	
	<ul style="list-style-type: none"> • the agency is not suitable to be accredited • the accreditation was granted in error • a ground prescribed by the regulations 	
	The Children’s Guardian must give notice in writing of the decision to cancel or shorten the accreditation including the date or time from which the decision takes effect and the grounds for the decision.	
	The Children’s Guardian must not cancel the accreditation of a government agency or part of a government agency unless it has first notified the Minister about why the cancellation is considered necessary.	
	The Children’s Guardian may amend or revoke a notice shortening or cancelling accreditation.	
Regulations about accreditation	Clarifies regulation-making powers for	s.21 of Schedule 3A to the CG Act
	<ul style="list-style-type: none"> • accreditation • withdrawal of applications for accreditation • deferral of decisions on applications for accreditation • conditions on accreditation and applications for variation of conditions of accreditation • transfer of accreditation • surrender of accreditation. 	

Accreditation of adoption service providers

Accreditation process/decision Summary of provision

Legislative reference

Definitions

Defines an *organisation* as a charitable organisation within the meaning of the *Adoption Act 2000*, or part of a charitable organisation.

s 1 of Schedule 3B to the CG Act

The definition of an organisation has been expanded to include that an agency may be a part of an organisation. For example, where a NSW adoption program sits within a larger national organisation, the *program* may be accredited rather than the entire organisation.

Clarifies that *grant of accreditation* includes renewing an agency's accreditation.

Recommending and approving accreditation criteria

No change to existing provisions

- **Retains** existing provisions for the Minister to approve, on the recommendation of the Children's Guardian, accreditation criteria to be met by accredited adoption service providers.
- **Retains** existing requirement that the Children's Guardian must publish accreditation criteria on its website.
- **Retains** provisions for the Children's Guardian to recognise compliance with a criterion required by another entity as evidence of compliance with the accreditation criteria.

These provisions will be repealed at a later date, when the Child Safe Standards and code of practice commence as the new accreditation criteria.

Making an application for a grant of accreditation

No change to existing provisions

- **Retains** the existing requirement that an organisation making an application for a grant of accreditation (this includes an organisation applying for new accreditation or an organisation applying to renew its existing accreditation) must submit an application in a form approved by the Children's Guardian.
- **Retains** existing requirements that an applicant must provide additional information that the Children's Guardian could reasonably require to assess the application.
- **Retains** existing provisions regarding the progression from provisional accreditation to full accreditation.
- **Retains** existing provisions that an organisation's accreditation remains in force while its application for full accreditation is determined.

These provisions regarding the application process remain unchanged, including provisions for the Children’s Guardian to require additional information to assist in assessing the application.

Determining whether an organisation is suitable to be accredited

Clarifies and consolidates existing provisions regarding suitability to be an accredited adoption service provider

Currently, the Children’s Guardian may grant accreditation if satisfied that the organisation wholly or substantially meets accreditation criteria.

The Children’s Guardian can also shorten, suspend or cancel an organisation’s accreditation if it has not complied with accreditation criteria, has not complied with a condition of accreditation, has not complied with its legislative obligations or if the organisation or principal officer made a statement or provided information that it knew to be false or misleading.

These decisions have been consolidated into a provision that sets out the grounds on which the Children’s Guardian may find an organisation is not suitable to be accredited.

An organisation is not suitable to be accredited if:

- The organisation is disqualified from being accredited (new provision), or
- The organisation does not wholly or substantially satisfy the accreditation criteria (existing provision), or
- The Children’s Guardian is of the opinion that the organisation is not suitable to be an accredited adoption service provider (new provision).

The Children’s Guardian may form an opinion that an organisation is not suitable to be an accredited adoption service provider if:

- the organisation or the principal officer failed to comply with relevant children’s care legislation (existing provision), and/or
- the organisation failed to comply with a condition of its accreditation (existing provision), and/or
- the organisation or principal officer of the organisation made a statement or gave information in connection with the administration of the children’s care legislation knowing it to be false or misleading in a material particular (existing provision), and/or
- another circumstance prescribed by the regulations (new provision).

A **new provision** has been created to disqualify an organisation that has had its accreditation cancelled, from being accredited for two years.

Withdrawing an application for accreditation

Clarifies existing provisions for an organisation to withdraw its application for accreditation.

An organisation may withdraw its application for accreditation and the Children's Guardian may require that the application not be withdrawn until a certain date, to allow for the transition of any children and young people in the care of the organisation, to another accredited adoption service provider.

Granting or refusing accreditation

Retains and clarifies existing provisions regarding the Children's Guardian's decision to grant or refuse accreditation

These provisions:

- **Retain** existing provisions for the Children's Guardian to grant or refuse accreditation.
- **Clarifies** that the Children's Guardian must refuse to grant accreditation if the applicant is not suitable to be accredited unless the Children's Guardian defers a decision on the application.

Retain existing requirements that the Children's Guardian must give notice in writing of a decision to refuse or grant accreditation.

Deferring a decision to grant or refuse accreditation

New requirements to strengthen existing provisions

Currently, the Children's Guardian may defer a decision to grant or refuse accreditation. There is currently no limit on the length of time a decision may be deferred.

The provisions:

- **Retain** the Children's Guardian's power to defer a decision to grant or refuse accreditation.
- **Makes new provisions** limiting the circumstances in which the Children's Guardian may defer a decision to grant or refuse accreditation:
 - the organisation has not met the accreditation criteria, and
 - the organisation has submitted an action plan, and
 - the plan has been approved by the Children's Guardian.
- **Makes a new provision** that a deferral period may be for up to 12 months.

- **Makes a new provision** that more than 1 deferral may occur, but the total period of the deferrals must not be more than 24 months.
- **Makes a new provision** that where a decision has been deferred for 24 months and no decision has been made, the application is automatically refused.

The purpose of these new provisions is to limit the circumstances in which a decision may be deferred and limiting the length of time a decision may be deferred.

A new provision requires an organisation to develop an action plan setting out the steps the organisation will take to ensure it satisfies the accreditation criteria and the organisation must implement the plan. The plan may be amended by agreement with the Children’s Guardian.

Review of a decision to refuse accreditation **Clarifies existing provisions** that the Children’s Guardian may review a decision to refuse accreditation and may obtain additional information from the applicant as part of the review.

Granting provisional or full accreditation **No change to existing provisions** that the Children’s Guardian may grant provisional accreditation or full accreditation.

- **Full** accreditation may be granted where the organisation has provided adoption services within 12 months before the applications decided.
- **Provisional** accreditation may be granted where the organisation has *not* provided adoption services within the 12 months before the application is decided.

Duration of accreditation **Clarifies existing provisions**

- Where an organisation previously held full accreditation, the maximum period of full accreditation is five years.
- When the organisation did *not* previously hold full accreditation the maximum period of accreditation is three years.

Conditions on accreditation **No change to existing provisions** that accreditations may be subject to conditions.

- **Retains** provisions for the Children’s Guardian to impose conditions on an organisation’s accreditation at any time.
- **Retains** provisions that the Children’s Guardian may impose a condition on accreditation limiting the adoption services that may be provided under the accreditation.

- **Retains** provisions for the Children’s Guardian to vary the conditions on an organisation’s accreditation at any time.
- **Clarifies** that a condition may be varied by imposing a new condition, substituting a condition, removing a condition, or amending a condition.
- **Retains** provisions requiring an organisation that is accredited on the basis that it substantially meets accreditation criteria, to be wholly compliant within 12 months.
- **Retains** provisions requiring an organisation that is provisionally accredited to give written notice to the Children’s Guardian when it first makes arrangements for the provision of adoption services.

Schedule 1 to the Adoption Regulation 2015 sets out general conditions of accreditation for adoption service providers. From 1 September 2022, general conditions of accreditation for adoption service providers will be set out in the CG Regulation.

Transfer of accreditation	<p>Makes new provisions to strengthen existing provisions</p> <p>These provisions retain existing power to transfer accreditation of an organisation, or part of an organisation to another organisation or part of an organisation.</p> <p>New provisions limit the circumstances in which the Children’s Guardian can approve the transfer of accreditation:</p> <ul style="list-style-type: none"> • 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 • the former organisation has merged with, or been acquired by, a new organisation • circumstances prescribed by the regulations.
Surrender of accreditation	<p>Clarifies existing provisions for an organisation to surrender its accreditation</p> <p>An organisation may surrender its accreditation and the Children’s Guardian may require the surrender to not to take effect until a certain date, to allow for the transition of children and young people in the agency’s care to another accredited adoption service provider.</p>
Cancelling or shortening accreditation	<p>Clarifies the grounds on which the Children’s Guardian may shorten or cancel an organisation’s accreditation and the process of cancelling or shortening accreditation</p>

The Children’s Guardian may shorten or cancel an organisation’s accreditation if:

- the organisation is not suitable to be accredited
- the accreditation was granted in error
- a ground prescribed by the regulations

The Children’s Guardian must give notice in writing of the decision to cancel or shorten the accreditation including the date or time from which the decision takes effect and the grounds for the decision.

The Children’s Guardian may amend or revoke a notice shortening or cancelling accreditation.

Regulations about accreditation

Clarifies regulation-making powers for

- accreditation
- withdrawal of applications for accreditation
- deferral of decisions on applications for accreditation
- conditions on accreditation and applications for variation of conditions of accreditation
- transfer of accreditation
- surrender of accreditation.

Administrative reviews of decisions made by the Children’s Guardian

Accreditation process/decision	Summary of provision	Legislative reference
Applications to Civil and Administrative Tribunal for administrative review	<p>Consolidates the reviewable decisions for designated agencies and accreditation adoption service providers</p> <p>An application may be made to NCAT for administrative review of a decision by 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:</p> <ul style="list-style-type: none">• grant accreditation• impose a condition on an accreditation or vary the conditions to which an accreditation is subject• transfer an accreditation• cancel or shorten the period of an accreditation.	s.154 of the CG Act
