

Adoption Fact Sheet 2

Changes to Adoption Law

About the NSW Office of the Children's Guardian (OCG)

The OCG is an independent, statutory authority committed to delivering better outcomes for children and young people living in statutory out-of-home care (SOOHC). The OCG is a regulator – not a provider of care services.

We accredit and monitor the performance of agencies that arrange statutory and supported OOHC and adoption services. The OCG also administers the Carer's Register for the purpose of authorising individuals to provide statutory and supported OOHC. We also register and monitor agencies that provide, arrange, or supervise voluntary OOHC.

Amendments to the Adoption Act 2000 and Adoption Regulation 2003

There are a number of amendments to the *Adoption Act 2000* and the *Adoption Regulation 2003* which commenced on 29 October 2014. The amendments impact on the accreditation and monitoring of domestic and intercountry adoption service providers in NSW.

The changes to the accreditation process and requirements for adoption service providers are made by the:

- Child Protection Legislation Amendment Act 2014
- Adoption Amendment Regulation 2014

What do the changes mean?

Adoption Act 2000

Previously, the Director-General for Family and Community Services (FACS) was responsible for the accreditation of adoption service providers and this function was delegated to the Children's Guardian. These amendments mean that the Children's Guardian is now directly responsible for the accreditation and monitoring of adoption service providers.

The Children's Guardian is responsible for monitoring the provision of adoption services by accredited adoption service providers, as well as the adoption services provided by FACS.

Previously, the Director-General for FACS was responsible for setting the adoption standards for use in determining whether to accredit an adoption service provider. The Minister for FACS now approves the accreditation criteria, on the recommendation of the Children's Guardian and they are published in the Government Gazette (rather than being set in legislation which makes them more difficult to update).

Amendments to the Adoption Act 2000

Reference: S.11 (1) (b)

Adoption services may only be provided by the Secretary for Family and Community Services or an organisation accredited by the Children's Guardian to provide adoption services.

Reference: S.12 (1)

A charitable or non-profit organisation may apply to the Children's Guardian for accreditation as an adoption service provider that may provide services specified by the Children's Guardian.

Reference: S.12 (2)

The Children's Guardian is to monitor the provision of adoption services provided by the Secretary and accredited adoption service providers.

Reference: S 13 (1)

The Minister may, on the recommendation of the Children's Guardian approve standards and criteria to be used in determining whether to accredit an adoption service provider and the period for which accreditation is to be granted.

Reference: S 45 (2)

The Secretary for Family and Community Services or appropriate Principal officer must not assess a person as suitable to adopt a child unless the person and every adult person who resides with the person has a working with children check clearance or is exempted from the requirement to have such a clearance. This requirement is mirrored by amending the *Child Protection (Working with Children) Act 2012* by requiring that prospective adoptive parents and adults residing with them must apply for a working with children check clearance of a volunteer class [s.11 of the *Child Protection (Working with Children) Act 2012*].

Adoption Regulation 2003

The Adoption Regulation 2003 sets out the process and requirements for the accreditation of charitable or non-profit organisations to provide adoption services.

The Children's Guardian is responsible for the accreditation of adoption service providers and the new accreditation scheme is similar to the accreditation framework for statutory out-of-home care providers. This integration will allow an agency that wishes to provide OOH and adoption services to go through a single accreditation process and to have common accreditation periods for both services.

Under the new adoption accreditation scheme the Children's Guardian MAY:

- accredit a non-government adoption service provider to provide domestic adoption services, intercountry adoption services or both for a period of one, three or five years, depending on the circumstances of the agency
- authorise an organisation to take over an application for accreditation as an adoption service provider, made by another organisation
- grant Full accreditation or Provisional accreditation to an adoption service provider
- may authorise the transfer of accreditation from an accredited adoption service provider to another organisation
- defer a decision to renew an agency's accreditation, extend an agency's period of accreditation, shorten, suspend or cancel an agency's accreditation, impose conditions on an agency's accreditation
- inspect records for the purposes of exercising its adoption accreditation and monitoring functions and Working with Children Check functions.

The Children's Guardian MUST:

- inform the applicant of the accreditation decision and other matters including the reasons for the decision, any conditions imposed, any criteria that were not satisfied and the reasons for the Children's Guardian's opinion
- publish information on the OCG website regarding the accreditation of an adoption service provider, including the name of the agency, the full name of the principal officer, contact details for the agency, the terms of the agency's accreditation, the types of service the agency may provide and any conditions imposed on the agency's accreditation.

There are a number of other amendments that include empowering the NSW Civil and Administrative Tribunal to review the Children's Guardian's decisions relating to adoption accreditation, aligning conditions of adoption accreditation with statutory conditions of out of home care accreditation, providing a framework for the selection of authorised carers as prospective adoptive parents and making a range of suitability assessment reforms.

There are also other changes in relation to Working with Children Check requirements that impact on members of governing bodies of accredited adoption service providers and principal officers of accredited adoption service providers.

More information

For more information, please call the Accreditation team on (02) 8219 3600 or email accreditation@kidsguardian.nsw.gov.au. Please also refer to the fact sheets available from the website at www.kidsguardian.nsw.gov.au.

See also:

- Children and Young Persons (Care and Protection) Act 1998
- Children and Young Persons (Care and Protection) Regulation 2012
- Adoption Act 2000
- Adoption Regulation 2003.
- Child Protection (Working with Children) Act 2012
- Child Protection (Working with Children) Regulation 2013

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