



New South Wales

Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001 No 91

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New South Wales

Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001 No 91

Act No 91, 2001

An Act to amend the *Children and Young Persons (Care and Protection) Act 1998* with respect to the long term welfare of children and young persons who are placed in out-of-home care; and for other purposes. [Assented to 6 December 2001]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

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

The *Children and Young Persons (Care and Protection) Act 1998* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order:

permanency plan means a plan that makes provision with respect to permanency planning.

permanency plan involving restoration—see section 84.

permanency planning—see section 78A.

permanent placement means a long-term placement following the removal of a child or young person from the care of a parent or parents pursuant to this Act which provides a safe, nurturing and secure environment for the child or young person and which may be achieved by:

- (a) restoration to the care of a parent or parents, or
- (b) placement with a member or members of the same kinship group as the child or young person, or
- (c) long-term placement with an authorised carer, or
- (d) placement under an order for sole parental responsibility under section 149, or
- (e) placement under a parenting order under the *Family Law Act 1975* of the Commonwealth, or
- (f) adoption.

[2] Section 3

Omit the definition of *restoration plan*.

[3] Section 9 What principles are to be applied in the administration of this Act?

Insert “In particular, the safety, welfare and well-being of a child or young person who has been removed from his or her parents are paramount over the rights of the parents.” at the end of section 9 (a).

[4] Section 9 (f) and (g)

Omit section 9 (f). Insert instead:

- (f) If a child or young person is placed in out-of-home care, arrangements should be made, in a timely manner, to ensure the provision of a safe, nurturing, stable and secure environment, recognising the child or young person's circumstances and that, the younger the age of the child, the greater the need for early decisions to be made in relation to a permanent placement.
- (g) If a child or young person is placed in out-of-home care, the child or young person is entitled to a safe, nurturing, stable and secure environment. Unless it is contrary to his or her best interests, and taking into account the wishes of the child or young person, this will include the retention by the child or young person of relationships with people significant to the child or young person, including parents, siblings, extended family, peers, family friends and community.

[5] Section 70A

Insert after section 70:

70A Consideration of necessity for interim care order

An interim care order should not be made unless the Children's Court has satisfied itself that the making of the order is necessary, in the interests of the child or young person, and is preferable to the making of a final order or an order dismissing the proceedings.

Note. Sections 63 and 72 deal with the power of the Children's Court to dismiss proceedings and section 94 deals with adjournments.

[6] Section 78 Care plans

Omit section 78 (2) (b). Insert instead:

- (b) the kind of placement proposed to be sought for the child or young person, including:
 - (i) how it relates to permanency planning for the child or young person, and

- (ii) any interim arrangements that are proposed for the child or young person pending permanent placement and the timetable proposed for achieving a permanent placement,

[7] Section 78A

Insert after section 78:

78A Permanency planning

- (1) For the purposes of this Act, *permanency planning* means the making of a plan that aims to provide a child or young person with a stable placement that offers long-term security and that:
 - (a) has regard, in particular, to the principle set out in section 9 (f), and
 - (b) meets the needs of the child or young person, and
 - (c) avoids the instability and uncertainty arising through a succession of different placements or temporary care arrangements.
- (2) Permanency planning recognises that long-term security will be assisted by a permanent placement.
- (3) A permanency plan for an Aboriginal or Torres Strait Islander child or young person must address how the plan has complied with the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles in section 13.
- (4) If a permanency plan indicates an intention to provide permanent placement through an order for sole parental responsibility or adoption of an Aboriginal or Torres Strait Islander child or young person with a non-Aboriginal or non-Torres Strait Islander person or persons, such an order should be made only:
 - (a) if no suitable permanent placement can be found with an Aboriginal or Torres Strait Islander person or persons in accordance with the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles in section 13, and
 - (b) in consultation with the child or young person, where appropriate, and

- (c) in consultation with a local, community-based and relevant Aboriginal or Torres Strait Islander organisation and the local Aboriginal or Torres Strait Islander community, and
- (d) if the child or young person is able to be placed with a culturally appropriate family, and
- (e) with the approval of the Minister for Community Services and the Minister for Aboriginal Affairs.

[8] Section 81 Parental responsibility of the Minister

Insert “while still recognising that the safety, welfare and well-being of the child or young person remains the paramount consideration” after “made” in section 81 (2).

[9] Section 82 Monitoring by Children’s Court of order concerning parental responsibility

Insert after section 82 (1):

- (1A) The report must include an assessment of progress in implementing the care plan, including progress towards the achievement of a permanent placement.

[10] Section 83

Omit the section. Insert instead:

83 Preparation of permanency plan

- (1) If the Director-General applies to the Children’s Court for a care order (not being an emergency care and protection order) for the removal of a child or young person, the Director-General must assess whether there is a realistic possibility of the child or young person being restored to his or her parents, having regard to:
 - (a) the circumstances of the child or young person, and
 - (b) the evidence, if any, that the child or young person’s parents are likely to be able to satisfactorily address the issues that have led to the removal of the child or young person from their care.

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- (2) If the Director-General assesses that there is a realistic possibility of restoration, the Director-General is to prepare a permanency plan involving restoration and submit it to the Children's Court for its consideration.
 - (3) If the Director-General assesses that there is not a realistic possibility of restoration, the Director-General is to prepare a permanency plan for another suitable long-term placement for the child or young person and submit it to the Children's Court for its consideration.
 - (4) In preparing a plan under subsection (3), the Director-General may consider whether adoption is the preferred option for the child or young person.
 - (5) The Children's Court is to decide whether to accept the assessment of the Director-General.
 - (6) If the Children's Court does not accept the Director-General's assessment, it may direct the Director-General to prepare a different permanency plan.
 - (7) The Children's Court must not make a final care order unless it expressly finds:
 - (a) that permanency planning for the child or young person has been appropriately and adequately addressed, and
 - (b) that prior to approving a permanency plan involving restoration there is a realistic possibility of restoration having regard to:
 - (i) the circumstances of the child or young person, and
 - (ii) the evidence, if any, that the child or young person's parents are likely to be able to satisfactorily address the issues that have led to the removal of the child or young person from their care.
 - (8) A permanency plan is only enforceable to the extent to which its provisions are embodied in, or approved by, an order or orders of the Children's Court.

[11] Section 84 Requirements of permanency plans involving restoration

Omit “restoration plan”.

Insert instead “permanency plan involving restoration”.

[12] Section 85A

Insert after section 85:

85A Review of permanency plans involving restoration

- (1) A permanency plan involving restoration is to be reviewed by the designated agency responsible for the placement of the child or young person:
 - (a) at the end of the length of time included in the permanency plan as the length of time during which restoration should be actively pursued, or
 - (b) if a review is directed by the Children’s Guardian.
- (2) A permanency plan involving restoration is to be reviewed by the designated agency if it has not been reviewed under subsection (1) within 12 months after the last occasion on which it was considered by the Children’s Court.
- (3) A review is to determine:
 - (a) whether the provisions of the permanency plan should be changed, particularly with respect to the length of time during which restoration should be actively pursued, and
 - (b) whether other arrangements should be made for the permanent placement of the child or young person, and
 - (c) whether the designated agency should recommend to the Director-General that an application for a care order be made or whether the designated agency should make an application for the rescission or variation of a care order.
- (4) Nothing in this section affects any obligation under section 150 to review the placement, and a review under section 150 may be taken to be a review for the purposes of this section also if the review under section 150 satisfies the requirements of this section.

- (5) The regulations may make provision for or with respect to a review under this section, including:
- (a) the qualifications of the person carrying out the review on behalf of the designated agency, and
 - (b) the matters to be taken into consideration in carrying out the review, and
 - (c) the release of reports prepared in relation to the review.

[13] Section 90 Rescission and variation of care orders

Omit section 90 (2). Insert instead:

- (2) The Children's Court may grant leave if it appears that there has been a significant change in any relevant circumstances since the care order was made or last varied.
- (2A) Before granting leave to vary or rescind the care order, the Children's Court must take the following matters into consideration:
- (a) the nature of the application, and
 - (b) the age of the child or young person, and
 - (c) the length of time for which the child or young person has been in the care of the present carer, and
 - (d) the plans for the child, and
 - (e) whether the applicant has an arguable case.

[14] Section 90 (3A)

Insert after section 90 (3):

- (3A) If:
- (a) an application is made to the Children's Court by a person or persons (other than the Director-General) for the rescission or variation of a care order (other than a contact order) in relation to a child or young person, and
 - (b) the application seeks to change the parental responsibility for the child or young person, or those aspects of parental responsibility involved in having care responsibility for the child or young person, and

(c) the Director-General is not a party to the proceedings, the applicant must notify the Director-General and the Children's Guardian of the application, and the Director-General and the Children's Guardian are entitled to be parties to the application.

[15] Section 94 Expedition and adjournments

Insert "and to finalise decisions concerning the long-term placement of the child or young person" after "family" in section 94 (1).

[16] Section 94 (4)

Omit the subsection. Insert instead:

- (4) The Children's Court should avoid the granting of adjournments to the maximum extent possible and must not grant an adjournment unless it is of the opinion that:
- (a) it is in the best interests of the child or young person to do so, or
 - (b) there is some other cogent or substantial reason to do so.

[17] Section 135 What is "out-of-home care"?

Omit section 135 (1) (b). Insert instead:

- (b) by a person, other than a parent of the child or young person, and

[18] Section 135 (2)

Insert after section 135 (2) (a):

- (a1) any care provided by a relative of a child or young person unless:
 - (i) the Minister has parental responsibility for the child or young person by virtue of an order of the Children's Court, or
 - (ii) the child or young person is in the care of the Director-General, or

[19] Section 149

Omit the section. Insert instead:

149 Order for sole parental responsibility

- (1) An authorised carer who, for a continuous period of not less than 2 years, has had the care of a child or young person, for whom the Minister (either alone or with another person or persons) has parental responsibility, may apply to the Children's Court for an order awarding sole parental responsibility for the child or young person to the authorised carer, subject to this section.
- (2) The application may be made by the authorised carer and the authorised carer's partner, if the partner so consents, and an order may be made accordingly.
- (3) An application cannot be made by a person who has the responsibility of an authorised carer solely in his or her capacity as the principal officer of a designated agency.
- (4) An application cannot be made without the consent of the person or persons who had parental responsibility for the child or young person immediately before parental responsibility was allocated to the Minister. The Children's Court must be satisfied that the consent has been properly given on an informed basis.
- (5) An application that relates to a child who is not less than 12 years of age, or a young person, and who is capable of giving consent cannot be made without the consent of the child or young person. A consent is to be given in such form and manner as may be prescribed by the regulations.
- (6) If an application relates to a child who is less than 12 years of age, the principal officer of the relevant designated agency is to give the child notice of the application.
- (7) In making an order under this section for sole parental responsibility, the Children's Court may make or vary a contact order under section 86.

149A Variation or rescission of order for sole parental responsibility

- (1) An application for the variation or rescission of a sole parental responsibility order under section 149 in respect of a child or young person cannot be brought except with:
 - (a) the leave of the Children’s Court, and
 - (b) the consent of the principal officer of the designated agency that had last supervised the placement of the child or young person.
- (2) If:
 - (a) the principal officer of the designated agency that had last supervised the placement of the child or young person gives consent under subsection (1) (b), and
 - (b) the designated agency has provided support for the placement,

the principal officer must provide the Children’s Court with a report concerning the placement together with such other information as may be relevant to the application.
- (3) Section 90 (6) applies to the determination of an application to vary or rescind a sole parental responsibility order under section 149 in respect of a child or young person in the same way as it applies to the variation or rescission of a care order.
- (4) This section does not limit or affect the making of an application to the Children’s Court by the Director-General under section 45 or 61.

Note. Section 247 provides that nothing in this Act limits the jurisdiction of the Supreme Court. Consequently, nothing in this section will limit that jurisdiction.
- (5) The regulations may make provision for or with respect to:
 - (a) the form and manner in which a consent is to be given for the purposes of this section, and
 - (b) the form and contents of a report under subsection (2).

[20] Section 150 Review of placements effected by order of Children’s Court

Omit “A review” from section 150 (2).

Insert instead “Except as provided by subsection (3A), a review”.

[21] Section 150 (3A)

Insert after section 150 (3):

- (3A) In the case of a child or young person who has been placed in the care of a relative, reviews are to be conducted at intervals prescribed by or in accordance with the regulations.

[22] Section 151 Making of temporary care arrangements

Omit “restoration plan” from section 151 (4).

Insert instead “permanency plan involving restoration”.

[23] Section 155 Monitoring of children and young persons in voluntary out-of-home care

Omit “restoration plan” from section 155 (2) (a) (i).

Insert instead “permanency plan involving restoration”.

[24] Section 265 Review of Act

Omit section 265 (2). Insert instead:

- (2) The review is to be undertaken as soon as possible after the period of 4 years from the date of assent to the *Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001*.
- (2A) The review is to consider, in particular, the effects of the provisions in this Act for permanency planning on Aboriginal and Torres Strait Islander children and young persons.

Children and Young Persons (Care and Protection) Amendment
(Permanency Planning) Act 2001 No 91

Schedule 1 Amendments

[25] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Children and Young Persons (Care and Protection)
Amendment (Permanency Planning) Act 2001*

[Minister's second reading speech made in—
Legislative Assembly on 27 June 2001
Legislative Council on 14 November 2001]

BY AUTHORITY
