



New South Wales

# Child Protection Legislation Amendment Act 2014 No 8

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New South Wales

# Child Protection Legislation Amendment Act 2014 No 8

Act No 8, 2014

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An Act to make miscellaneous amendments to the *Children and Young Persons (Care and Protection) Act 1998*; to make consequential and related amendments to the *Adoption Act 2000* and the *Child Protection (Working with Children) Act 2012* and other legislation; and for other purposes. [Assented to 1 April 2014]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Child Protection Legislation Amendment Act 2014*.

**2 Commencement**

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

## Schedule 1 Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157

### [1] Section 3 Definitions

Insert in alphabetical order:

*alternative dispute resolution*—see section 244A.

*Children’s Registrar* means a Children’s Registrar within the meaning of the *Children’s Court Act 1987*.

*contact order*—see section 86 (1).

*guardianship order*—see section 79A (2).

*kin* of a child or young person means a person who shares a cultural, tribal or community connection with the child or young person that is recognised by that child or young person’s family or community.

*parent capacity order*—see section 91A.

*permanent placement*—see section 10A (1).

*permanent placement principles*—see section 10A (3).

*prohibition order*—see section 90A(1).

*relative* of a child or young person means any of the following:

- (a) a parent, step-parent, or spouse of a parent or step-parent, of the child or young person,
- (b) a grandparent, brother, sister, step-brother, step-sister, cousin, niece or nephew, uncle or aunt (whether by blood, marriage, affinity or adoption) of the child or young person,
- (c) a person who has parental responsibility for the child or young person (not being the Minister, the Director-General or a person who has parental responsibility other than in his or her personal capacity),
- (d) a person who has care responsibility for the child or young person under the *Adoption Act 2000* (not being the Minister, the Director-General or a person who has care responsibility other than in his or her personal capacity),
- (e) in the case of a child or young person who is an Aboriginal or Torres Strait Islander—a person who is part of the extended family or kin of the child or young person.

### [2] Section 3, definition of “non-court proceedings”

Omit paragraphs (b) and (c) of the definition. Insert instead:

- (b) any dispute resolution conference under section 65 or 91D,
- (c) any other alternative dispute resolution process.

### [3] Section 3

Omit the definition of *permanent placement*.

### [4] Section 3 (2)

Insert at the end of section 3:

- (2) In this section, *spouse* of a person means:
  - (a) the person’s husband or wife, or

- (b) the person's de facto partner,  
but if more than one person would so qualify as a spouse, means only the latest person to so qualify.

**Note.** *De facto partner* is defined in section 21C of the *Interpretation Act 1987*.

**[5] Section 8 What are the objects of this Act?**

Insert after section 8 (a):

- (a1) recognition that the primary means of providing for the safety, welfare and well-being of children and young persons is by providing them with long-term, safe, nurturing, stable and secure environments through permanent placement in accordance with the permanent placement principles, and

**[6] Section 9 Principles for administration of Act**

Insert after section 9 (2) (f):

- (g) If a child or young person is placed in out-of-home care, the permanent placement principles are to guide all actions and decisions made under this Act (whether by legal or administrative process) regarding permanent placement of the child or young person.

**[7] Section 10A**

Insert after section 10:

**10A Permanent placement principles**

- (1) In this Act:  
*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 that provides a safe, nurturing, stable and secure environment for the child or young person.
- (2) Subject to the objects in section 8 and the principles in section 9, a child or young person who needs permanent placement is to be placed in accordance with the permanent placement principles.
- (3) The *permanent placement principles* are as follows:
- (a) if it is practicable and in the best interests of a child or young person, the first preference for permanent placement of the child or young person is for the child or young person to be restored to the care of his or her parent (within the meaning of section 83) or parents so as to preserve the family relationship,
- (b) if it is not practicable or in the best interests of the child or young person to be placed in accordance with paragraph (a), the second preference for permanent placement of the child or young person is guardianship of a relative, kin or other suitable person,
- (c) if it is not practicable or in the best interests of the child or young person to be placed in accordance with paragraph (a) or (b), the next preference is (except in the case of an Aboriginal or Torres Strait Islander child or young person) for the child or young person to be adopted,
- (d) if it is not practicable or in the best interests of the child or young person to be placed in accordance with paragraph (a), (b) or (c), the last preference is for the child or young person to be placed under the parental responsibility of the Minister under this Act or any other law,

- (e) if it is not practicable or in the best interests of an Aboriginal or Torres Strait Islander child or young person to be placed in accordance with paragraph (a), (b) or (d), the last preference is for the child or young person to be adopted.

**[8] Section 13 Aboriginal and Torres Strait Islander Child and Young Person Placement Principles**

Insert at the end of section 13 (1):

**Note.** The placement principles set out in this section also apply to the making of guardianship orders in relation to Aboriginal and Torres Strait Islander children and young persons (see section 79A (3) (c)).

**[9] Section 25 Pre-natal reports**

Omit “the expectant mother” and “her child” from paragraph (a) of the note to the section.  
Insert instead “an expectant parent” and “the parent’s child”, respectively.

**[10] Section 37 Alternative dispute resolution by Director-General**

Omit “services” from section 37 (1). Insert instead “processes”.

**[11] Section 37 (3)**

Omit the subsection.

**[12] Section 37, note**

Omit “counselling and”.

**[13] Section 38A Parent responsibility contracts**

Omit section 38A (1). Insert instead:

- (1) A *parent responsibility contract* is either or both of the following:
  - (a) an agreement between the Director-General and one or more primary care-givers for a child or young person that contains provisions aimed at improving the parenting skills of the primary care-givers and encouraging them to accept greater responsibility for the child or young person,
  - (b) an agreement between the Director-General and either or both expectant parents whose unborn child is the subject of a pre-natal report under section 25 that contains provisions aimed at improving the parenting skills of the prospective parent and reducing the likelihood that the child will be at risk of significant harm after birth.

**[14] Section 38A (2) (b)**

Insert “or each expectant parent” after “care-giver”.

**[15] Section 38A (2) (e)**

Omit the paragraph. Insert instead:

- (e) specify the period (not exceeding 12 months) during which the contract will (unless varied under section 38B) be in force, commencing on the date on which the agreement is registered with the Children’s Court, and

**[16] Section 38A (2) (f)**

Omit “a primary care-giver”. Insert instead “a party to the contract”.

- [17] **Section 38A (3)**  
Omit “12 months”. Insert instead “18 months”.
- [18] **Section 38A (5) (a)–(c)**  
Omit “the primary care-giver” wherever occurring. Insert “party to the contract”.
- [19] **Section 38A (5) (e)**  
Omit “the primary care-givers”. Insert instead “any party to the contract”.
- [20] **Section 38A (11)**  
Insert after section 38A (10):  
(11) The period for which the parent responsibility contract has effect may be specified by reference to a fixed or ascertainable period or by reference to the occurrence of a specified future event.
- [21] **Section 38B Amendment of parent responsibility contracts**  
Insert “beyond 12 months” after “force” in section 38B (1).
- [22] **Section 38B (3)**  
Insert “or for the period as varied by agreement under this section” after “duration”.
- [23] **Section 38E Contract breach notices**  
Omit “a primary care-giver for a child or young person who is” from section 38E (1) (a).
- [24] **Section 38E (1) (b)**  
Omit “the primary care-giver”. Insert instead “any party to the contract”.
- [25] **Section 38E (2) (a)**  
Omit “the primary care-giver for a child or young person”.  
Insert instead “the party to the contract”.
- [26] **Section 38E (2) (b) and (c)**  
Omit “the primary care-giver” wherever occurring.  
Insert instead “the party to the contract”.
- [27] **Section 38E (3) (a)**  
Omit “primary care-giver who is a”.
- [28] **Section 38E (4)**  
Omit the subsection.
- [29] **Section 60 Definitions**  
Insert “but does not include a parent capacity order” after “section 86” in the definition of *care order*.

**[30] Section 65 Dispute resolution conferences**

Omit section 65 (1) and (1A). Insert instead:

- (1) If it considers it appropriate, the Children's Court may, before or at any stage during the hearing of a care application, refer the application to a Children's Registrar to be dealt with under this section.
- (1A) The Children's Registrar is to arrange and conduct a dispute resolution conference between the parties to the care application.

**[31] Section 65 (2A)**

Insert "or persons specified in section 86 (1A) (b)" after "parties" wherever occurring.

**[32] Section 65 (2A) (b) (iii)**

Omit ", including by referring the application to independent alternative dispute resolution".

**[33] Section 65 (2A) (b) (iv)**

Omit "if it is not appropriate to refer the application to independent alternative dispute resolution,".

**[34] Section 65 (3)**

Insert "or person specified in section 86 (1A) (b)" after "party".

**[35] Section 65 (4) and (5)**

Omit the subsections.

**[36] Section 65A Referral of matters before the Court to ADR**

Omit "attend an alternative dispute resolution service" from section 65A (1).

Insert instead "participate in an alternative dispute resolution process".

**[37] Section 67A**

Insert after section 67:

**67A Consecutive care orders**

- (1) A care order has effect for the period specified in the order commencing on the date on which the Children's Court makes the order (or a later date specified in the order).
- (2) The period may be specified by reference to the occurrence of a future event described in the order.
- (3) Without limiting subsection (2), the Children's Court may specify that a care order is to take effect at the end of the period for which another care order has effect.

**[38] Section 71 Grounds for care orders**

Omit section 71 (1) (i).

**[39] Section 71 (3)**

Insert after section 71 (2):

- (3) This section does not apply to or in respect of a contact order made under section 86 (1A) (b).



**[40] Section 73 Order accepting undertakings**

Insert “(other than an application for a guardianship order)” after “person” where firstly occurring in section 73 (1).

**[41] Section 74 Order for provision of support services**

Omit “that child or young person” from section 74 (1).

Insert instead “a child or young person (other than a child or young person the subject of an application for a guardianship order)”.

**[42] Section 75 Order to attend therapeutic treatment**

Insert after section 75 (3):

- (4) An order cannot be made under this section in proceedings in relation to an application for a guardianship order.

**[43] Section 76 Order for supervision**

Insert “(other than an application for a guardianship order)” after “application” in section 76 (1).

**[44] Section 76 (3A)**

Insert after section 76 (3):

- (3A) Despite subsection (3), the Children’s Court may specify a maximum period of supervision that is longer than 12 months (but that does not exceed 24 months) if the Children’s Court is satisfied that there are special circumstances that warrant the making of an order of that length and that it is appropriate to do so.

**[45] Section 76 (6)**

Omit “not exceeding 12 months”.

Insert instead “that together with the period specified under subsection (3) or (3A) does not exceed 24 months in total”.

**[46] Section 76 (7)**

Insert after section 76 (6):

- (7) The Children’s Court may, of its own motion or on application by the Director-General, and after giving the parties an opportunity to be heard, revoke an order before the end of the period of supervision specified under subsection (3A) at any time after the expiration of the first 12 months of that period if it considers that there is no longer need for supervision in order to protect the child or young person.

**[47] Section 78A Permanency planning**

Omit “principle set out in section 9 (2) (e)” from section 78A (1) (a).

Insert instead “principles set out in section 9 (2) (e) and (g)”.

**[48] Section 78A (4)**

Omit “sole parental responsibility or”.

**[49] Sections 79–79C**

Omit section 79. Insert instead:

**79 Order (other than guardianship order) allocating parental responsibility**

- (1) The Children’s Court may make an order under this section allocating all aspects of parental responsibility, or one or more specific aspects of parental responsibility, for a child or young person who it finds is in need of care and protection for a period specified in the order:
  - (a) to one parent to the exclusion of the other, or to both parents jointly, or
  - (b) solely to the Minister, or
  - (c) to one or both parents and to the Minister jointly, or
  - (d) to one or both parents and to another person or persons jointly, or
  - (e) to the Minister and another suitable person or persons jointly, or
  - (f) to a suitable person or persons jointly.
- (2) The specific aspects of parental responsibility that may be allocated by an order of the Children’s Court under subsection (1) include, but are not limited to, the following:
  - (a) the residence of the child or young person,
  - (b) contact,
  - (c) the education and training of the child or young person,
  - (d) the religious and cultural upbringing of the child or young person,
  - (e) the medical and dental treatment of the child or young person.
- (3) The Children’s Court must not make an order allocating parental responsibility unless it has given particular consideration to the permanent placement principles and is satisfied that the order is in the best interests of the child or young person.
- (4) Without limiting subsection (3), the Children’s Court must not make an order under this section if, taking into account the permanent placement principles, it would be more appropriate to make a guardianship order than an order under this section.
- (5) The Children’s Court must not make an order allocating parental responsibility for a child or young person if the order would be inconsistent with:
  - (a) any order made with respect to the child or young person by the Supreme Court in the exercise of its jurisdiction with respect to the custody and guardianship of children, or
  - (b) a guardianship order with respect to the young person made by the Guardianship Tribunal.
- (6) If an order allocates all aspects of parental responsibility for a child or young person to the Minister, the Minister must, so far as is reasonably practicable, have regard to the views of the persons who had parental responsibility for the child or young person before the order was made while still recognising that the safety, welfare and well-being of the child or young person remains the paramount consideration.
- (7) If aspects of parental responsibility are allocated jointly between the Minister and another person or persons, either the Minister or the other person may

exercise those aspects but, if they disagree concerning their exercise, the disagreement is to be resolved by order of the Children's Court.

- (8) The Children's Court must not make an order allocating parental responsibility jointly between two or more persons unless it is satisfied that the persons can work together co-operatively in the best interests of the child or young person.

#### **79A Allocation of parental responsibility by guardianship order**

- (1) In this Act:

**guardian** means a person who has been allocated all aspects of parental responsibility for a child or young person until the child or young person reaches 18 years of age by a guardianship order made under this section.

**prospective guardian** means the person to whom it is proposed to allocate parental responsibility for a child or young person under a guardianship order.

- (2) An order may be made by the Children's Court allocating to a suitable person all aspects of parental responsibility for a child or young person who is in statutory out-of-home care or supported out-of-home care or who it finds is in need of care and protection until the child or young person reaches 18 years of age (a **guardianship order**).
- (3) The Children's Court must not make a guardianship order unless it is satisfied that:
- (a) there is no realistic possibility of restoration of the child or young person to his or her parents, and
  - (b) that the prospective guardian will provide a safe, nurturing, stable and secure environment for the child or young person and will continue to do so in the future, and
  - (c) if the child or young person is an Aboriginal or Torres Strait Islander child or young person—permanent placement of the child or young person under the guardianship order is in accordance with the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles that apply to placement of such a child or young person in statutory out-of-home care under section 13, and
  - (d) if the child or young person is 12 or more years of age and capable of giving consent—the consent of the child or young person is given in the form and manner prescribed by the regulations.
- (4) A guardianship order may allocate parental responsibility jointly to more than one person.
- (5) The Children's Court must not make a guardianship order with respect to a child or young person if the order would be inconsistent with:
- (a) any order made with respect to the child or young person by the Supreme Court in the exercise of its jurisdiction with respect to the custody and guardianship of children, or
  - (b) a guardianship order with respect to the young person made by the Guardianship Tribunal.
- (6) A guardianship order remains in force (unless sooner varied or rescinded under section 90) until the child or young person concerned reaches 18 years of age.
- (7) A guardianship order may only be made as a final order.

**79B Applications for guardianship orders**

- (1) Despite section 61 (1), an application for a guardianship order may be made by the following:
  - (a) the Director-General,
  - (b) with the written consent of the Director-General—the designated agency responsible for supervising the placement of the child or young person,
  - (c) with the written consent of the Director-General—a person who is an authorised carer or who has been assessed, in accordance with the regulations, by the Director-General or designated agency in relation to a child or young person to be a suitable person to be allocated all aspects of parental responsibility for the child or young person.
- (2) The Children’s Court may order an applicant for a guardianship order to notify those persons specified by the Children’s Court of the making of the application.

**Note.** Section 256A sets out the circumstances in which the Children’s Court may dispense with service.
- (3) Subject to any order the Children’s Court may make, the applicant for a guardianship order is to make reasonable efforts to notify each parent of the child or young person of the making of the application for the order.
- (4) Each parent must be given a reasonable opportunity to obtain independent legal advice about the application and is entitled to be heard at the hearing of the matter.
- (5) Without limiting section 90 (1A), an applicant for variation or rescission of a guardianship order made in respect of a child or young person must notify the principal officer of the designated agency that was supervising the placement of the child or young person in out-of-home care immediately before the guardianship order was made of the making of the application.
- (6) Without limiting subsection (2), an applicant for a guardianship order other than the Director-General is to notify the Director-General of the making of the application for the order on the day the application is filed and the Director-General is entitled to be a party to the proceedings.
- (7) An application cannot be made under subsection (1) (c) by a person who is an authorised carer solely in his or her capacity as the principal officer of a designated agency.
- (8) Subject to any order the Children’s Court may make, an applicant for a guardianship order must present the following to the Children’s Court before the order is made:
  - (a) copies of any written consent required to be given in relation to the applicant by subsection (1),
  - (b) a care plan prepared by the applicant,
  - (c) a copy of any report on the health, educational or social well-being of the child or young person that is available to the applicant and that is relevant to the care plan.
- (9) Without limiting the information that must be contained in a care plan, it must contain information about the following:
  - (a) the residence of the child or young person,

- (b) if the Children’s Court has made any contact order under section 86 in relation to contact of the child or young person with his or her parents, relatives, friends or other persons—the arrangements for contact,
  - (c) the education and training of the child or young person,
  - (d) the religious upbringing of the child or young person,
  - (e) the health care of the child or young person,
  - (f) the resources required to provide any services that need to be provided to the child or young person and the availability of those resources,
  - (g) any views the child or young person has expressed about any aspect of the care plan.
- (10) Other requirements and the form of care plan under this section may be prescribed by the regulations.
- (11) The care plan is only enforceable to the extent to which its provisions are embodied in or approved by orders of the Children’s Court.
- (12) In this section:  
*care plan* means a plan to meet the needs of a child or young person that represents a set of proposals to be considered by the Children’s Court.

**79C Financial assistance for children and young persons in respect of whom guardianship orders are made**

- (1) The Director-General may, after the making of the guardianship order, continue to provide financial assistance to the guardian of a child or young person who, immediately before the guardianship order was made, was being provided with financial assistance in respect of the child or young person under section 161 as if (for this purpose only) the child or young person were still in out-of-home care.
- (2) The Director-General may grant financial assistance to the guardian of a child or young person in respect of whom a guardianship order is made who was not being provided with financial assistance under section 161 before the guardianship order was made:
  - (a) if the Director-General considers it is appropriate to provide the financial assistance for the purpose of achieving the objects of the Act, or
  - (b) in such other circumstance as may be prescribed by the regulations.
- (3) Without limiting subsection (2), financial assistance may take the form of a grant, an allowance or a refund of expenditure, or any other form of financial assistance that the Director-General may approve generally, or in a particular case or class of cases.
- (4) A guardian who is provided with financial assistance under this section must make an annual report to the Director-General (in the form required by the Director-General) concerning such matters as may be required by the Director-General relating to the provision of that financial assistance.

**[50] Section 80 Requirement to consider care plan**

Insert “or, in the case of an application for a guardianship order, by the applicant for the order” after “Director-General”.

**[51] Section 81 Parental responsibility of the Minister**

Omit the section.

**[52] Section 82 Report on suitability of arrangements concerning parental responsibility**

Insert “other than a guardianship order” after “order” where firstly occurring in section 82 (1).

**[53] Section 83 Preparation of permanency plan**

Omit “may” from section 83 (4). Insert instead “must”.

**[54] Section 83 (4)**

Insert at the end of the subsection:

**Note.** See section 10A (3) (e) in relation to adoption of Aboriginal and Torres Strait Islander children and young persons.

**[55] Section 83 (5) and (5A)**

Omit section 83 (5). Insert instead:

- (5) The Children’s Court is to decide whether to accept the Director-General’s assessment of whether or not there is a realistic possibility of restoration:
  - (a) in the case of a child who is less than 2 years of age on the date the Children’s Court makes an interim order allocating parental responsibility for the child to a person other than a parent—within 6 months after the Children’s Court makes the interim order, and
  - (b) in the case of a child or young person who is 2 or more years of age on the date the Children’s Court makes an interim order allocating parental responsibility for the child or young person to a person other than a parent—within 12 months after the Children’s Court makes the interim order.
- (5A) However, the Children’s Court may, having regard to the circumstances of the case and if it considers it appropriate and in the best interests of the child or young person, decide, after the end of the applicable period referred to in subsection (5), whether or not there is a realistic possibility of restoration.

**[56] Section 83 (9)**

Omit the subsection. Insert instead:

- (9) In this section, *parent*, in relation to the child or young person concerned, means:
  - (a) the child’s or young person’s birth parent, or
  - (b) if the child or young person has been adopted—the child’s or young person’s adoptive parent.

**[57] Section 86 Contact orders**

Omit section 86 (1). Insert instead:

- (1) An order may be made by the Children’s Court doing any one or more of the following:
  - (a) stipulating minimum requirements concerning the frequency and duration of contact between a child or young person and his or her parents, relatives or other persons of significance to the child or young person,
  - (b) requiring contact with a specified person to be supervised,
  - (c) denying contact with a specified person if contact with that person is not in the best interests of the child or young person.

**[58] Section 86 (1A)–(1F)**

Insert after section 86 (1):

- (1A) A contact order may be made by the Children’s Court:
  - (a) on application made by any party to proceedings before the Children’s Court with respect to a child or young person, or
  - (b) with leave of the Children’s Court—on application made by any of the following persons who were parties to care proceedings with respect to a child or young person:
    - (i) the Director-General,
    - (ii) the child or young person,
    - (iii) a person having parental responsibility for the child or young person,
    - (iv) a person from whom parental responsibility for the child or young person has been removed,
    - (v) any person who considers himself or herself to have a sufficient interest in the welfare of the child or young person, or
  - (c) with leave of the Children’s Court—on application made by any person who considers himself or herself to have a sufficient interest in the welfare of the child or young person.
- (1B) The Children’s Court may grant leave under subsection (1A) (b) or (c) if it appears to the Court that there has been a significant change in any relevant circumstances since a final order was made in the proceedings.
- (1C) The Children’s Court is not required to hear or determine an application made to it with respect to a child or young person by a person referred to in subsection (1A) (c) unless it considers the person to have a sufficient interest in the welfare of the child or young person.
- (1D) Before granting leave under subsection (1A) (b) or (c), the Children’s Court:
  - (a) must take into consideration whether the applicant for the contact order and persons to whom the contact order applies have attempted, or been ordered by the Children’s Court to try, to reach an agreement about contact arrangements by participating in alternative dispute resolution, and
  - (b) may order the applicant and those persons to attend a dispute resolution conference conducted by a Children’s Registrar under section 65 or alternative dispute resolution process under section 65A.
- (1E) Subject to any order the Children’s Court may make, an applicant for a contact order under subsection (1A) (b) who was a party to care proceedings must notify other persons who were parties to the proceedings of the making of the application.

**Note.** Section 256A sets out the circumstances in which the Children’s Court may dispense with the requirement to give notice.
- (1F) A contact order made under subsection (1A) (b) on application of a person who was a party to proceedings in which an earlier contact order was made that has expired may be made in the same or different terms to the expired order.

**[59] Section 86 (2)**

Insert “and must not be made in relation to contact with a child or young person who is the subject of a guardianship order” after “consent”.

**[60] Section 86 (5)–(7)**

Insert after section 86 (4):

- (5) A contact order made under this section has effect for the period specified in the order, unless the order is varied or rescinded under section 86A or 90.
- (6) Despite subsection (5), if the Children’s Court decides (whether by acceptance of the Director-General’s assessment under section 83 or otherwise) that there is no realistic possibility of restoration of a child or young person to his or her parent, the maximum period that may be specified in a contact order made under subsection (1A) concerning the child or young person is 12 months.
- (7) Subsection (6) does not apply to a contact order made on the application of a former party to proceedings in which an earlier contact order was made that has expired.

**[61] Section 86A**

Insert after section 86:

**86A Variation of contact orders by agreement**

- (1) A *contact variation agreement* is an agreement to vary the terms of a contact order in the light of a change in any relevant circumstances since the contact order was made or last varied.
- (2) A contact variation agreement must:
  - (a) be in writing, and
  - (b) be signed and dated by those parties to the proceedings in which the contact order was made who are affected by the variation and, if the contact variation agreement is made less than 12 months after the contact order was made, the legal representative of the child or young person, and
  - (c) be registered with the Children’s Court by those parties within 28 days after the date on which the agreement was signed.
- (3) The contact variation agreement is taken to be registered with the Children’s Court when filed with the registry of the Court without the need for any order or other action by the Court.
- (4) The contact variation agreement takes effect only if (and when) it is registered.
- (5) The contact variation agreement has effect from the date of registration until the end of the period specified in the variation agreement.
- (6) Nothing in this section prevents the variation of a contact order under section 90.

**[62] Section 90 Rescission and variation of care orders**

Omit section 90 (1A). Insert instead:

- (1A) Subject to any order the Children’s Court may make, a person who makes an application under this section must give notice of the application to the persons who were parties to the proceedings in which the care order was made.

**Note.** Section 256A sets out the circumstances in which the Children’s Court may dispense with the requirement to give notice.



**[63] Section 90A Prohibition orders**

Omit “order prohibiting any person, including a parent of a child or young person”.

Insert instead “order (a *prohibition order*) prohibiting any person, including a parent of a child or young person or any person who is not a party to the care proceedings”.

**[64] Section 90A (2)–(4)**

Insert at the end of section 90A:

- (2) A party to care proceedings during which a prohibition order is made may notify the Children’s Court of an alleged breach of the prohibition order.
- (3) The Children’s Court, on being notified of an alleged breach of a prohibition order:
  - (a) must give notice of its intention to consider the alleged breach to the person alleged to have breached the prohibition order, and
  - (b) must give that person an opportunity to be heard concerning the allegation before it determines whether or not the order has been breached, and
  - (c) is to determine whether or not the order has been breached, and
  - (d) if it determines that the order has been breached—may make such orders (including a parent capacity order) as it considers appropriate in all the circumstances.
- (4) The person who is alleged to have breached the prohibition order is entitled to be heard, and may be legally represented, at the hearing of the matter.

**[65] Chapter 5, Part 3**

Insert after section 91:

**Part 3 Parent capacity orders**

**91A Interpretation**

In this Part:

*parent*, in relation to a child or young person, means the following:

- (a) the child’s or young person’s birth parent,
- (b) if the child or young person has been adopted—the child’s or young person’s adoptive parent.

*parent capacity order* means an order requiring a parent or primary care-giver of a child or young person to attend or participate in a program, service or course or engage in therapy or treatment aimed at building or enhancing his or her parenting skills.

**91B When parent capacity orders may be made**

A parent capacity order may be made in relation to a parent or primary care-giver of a child or young person by the Children’s Court:

- (a) on the application of the Director-General, or
- (b) on the Children’s Court’s own initiative if it determines under section 90A that a prohibition order has been breached by the parent or primary care-giver.

**91C Applications for parent capacity orders**

- (1) The Director-General is to cause a copy of an application made under section 91B (a) to be served on the parent or primary care-giver in relation to whom the order is sought to be made as soon as is reasonably practicable after the application is filed.
- (2) The copy of the application must be written and arranged in such a form that there is a reasonable likelihood that its contents will be understood by the person on whom it is served.

**91D Dispute resolution conferences**

- (1) If it considers it appropriate, the Children's Court may, before or at any stage during the hearing of an application by the Director-General for a parent capacity order, or after it finds a prohibition order has been breached in proceedings under section 90A, refer the matter to a Children's Registrar to be dealt with under this section.
- (2) The Children's Registrar is to arrange and conduct a dispute resolution conference between the Director-General and the parent or primary care-giver in relation to whom the order is sought (the *parties*).
- (3) The purpose of a dispute resolution conference is to provide the parties with an opportunity to agree on action that should be taken to build or enhance the parenting skills of the parent or primary care-giver.
- (4) In conducting a dispute resolution conference, a Children's Registrar is to act as a conciliator between the parties. In so doing:
  - (a) the Children's Registrar should seek to encourage the parties to agree on action that should be taken (including the formulation of an order that may be made by consent under section 91F), or
  - (b) if the parties cannot agree on the action to be taken, the Children's Registrar should encourage the parties:
    - (i) to identify areas of agreement between the parties, and
    - (ii) to identify issues in dispute between the parties, and
    - (iii) to determine the best way of resolving any issues in dispute, and
    - (iv) to set a timetable for the hearing of the matter by the Children's Court.
- (5) A party may be legally represented at a dispute resolution conference.

**91E Making of parent capacity orders**

- (1) The Children's Court may make a parent capacity order in relation to a parent or primary care-giver of a child or young person (including a parent or primary care-giver found to have breached a prohibition order under section 90A) if it is satisfied that:
  - (a) there is an identified deficiency in the parenting capacity of the parent or primary care-giver that has the potential to place the child or young person at risk of significant harm and it is reasonable and practicable to require the parent or primary care-giver to comply with the order, and
  - (b) the parent or primary care-giver is unlikely to attend or participate in the program, service or course or engage in the therapy or treatment required by the order unless the order is made.
- (2) A parent capacity order may be made whether or not a care application or care order has been made and at any stage in care proceedings.

**91F Orders made by consent**

- (1) The Children's Court may, with the consent of the Director-General and the parent or primary care-giver who will be subject to a parent capacity order, make that order by giving effect to the terms of an agreement reached between the Director-General and the parent or primary care-giver concerning his or her attendance or participation in a program, service or course or engagement in therapy or treatment aimed at building or enhancing his or her parenting skills (a *consent order*).
- (2) A consent order may be made following the conclusion of a dispute resolution conference or at any stage of proceedings on an application for a parent capacity order.
- (3) A consent order may be made by the Children's Court if it considers it reasonable and practicable to do so and that the terms of the order are appropriate in the circumstances.
- (4) The functions conferred on the Children's Court by this section in relation to an application made under section 91B (a) may be exercised by a Children's Registrar.

**Note.** See section 93A (Powers exercised by Children's Registrar).

**91G Duration of parent capacity orders**

- (1) A parent capacity order has effect for the period specified in the order, unless the order is varied or revoked under section 91H.
- (2) The period for which a parent capacity order has effect may be specified by reference to a fixed or ascertainable period or by reference to the occurrence of a specified future event.

**91H Variation or revocation of parent capacity order**

- (1) The Children's Court may at any time vary or revoke a parent capacity order (including a parent capacity order made after a breach of a prohibition order) on application by:
  - (a) the Director-General, or
  - (b) the parent or primary care-giver to whom it relates.
- (2) The Children's Court may vary or revoke a parent capacity order if the Court is satisfied there has been a significant change in any relevant circumstances since the order was made or last varied.
- (3) Subject to any order the Children's Court may make, a person who makes an application under this section must notify other persons who were parties to the proceedings for the making of the parent capacity order of the making of the application.

**Note.** Section 256A sets out the circumstances in which the Children's Court may dispense with the requirement to give notice.
- (4) The Children's Court must, before varying or revoking a parent capacity order under this section:
  - (a) allow all parties a reasonable opportunity to be heard on the matter, and
  - (b) have regard to the factors that the Children's Court is required to have regard to under section 91E in considering whether or not to make a parent capacity order and in considering the terms of a parent capacity order.

**91I Right of appeal**

- (1) A party to proceedings under this Part who is dissatisfied with a parent capacity order of the Children's Court (including a parent capacity order made under section 90A) may, in accordance with the rules of the District Court, appeal to the District Court on a question of law.
- (2) The District Court is to hear and determine the appeal and make such order as it thinks appropriate by reason of its decision, including, without limiting the Court's power to make such orders, an order confirming, varying or setting aside the decision of the Children's Court.
- (3) Subject to any interlocutory order made by the District Court, an appeal does not affect the operation of the order appealed against or prevent the taking of action to implement that order.
- (4) The provisions of Chapter 6 apply to and in respect of the hearing of an appeal under this section in the same way as they apply to and in respect of the hearing of a care application under that Chapter.

**[66] Section 93A**

Insert after section 93:

**93A Powers exercised by Children's Registrar**

- (1) A power conferred by this Act when exercised by a Children's Registrar is taken to have been exercised by the Children's Court.
- (2) The exercise by a Children's Registrar of a power conferred by this Act does not prevent the exercise of the power by the Children's Court.
- (3) No matter or thing done or omitted to be done by a Children's Registrar under section 65, 91D or 244C subjects the Children's Registrar to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of that section.

**[67] Section 105 Publication of names and identifying information**

Insert after section 105 (1A):

- (1B) This section applies to the publication or broadcast of a child or young person's name to the public, or a section of the public, by publication in a newspaper or periodical publication, by radio or television broadcast or other electronic broadcast, by the internet, or by any other means of dissemination.
- (1C) The publication of information to a website that provides the opportunity for, or facilitates or enables, dissemination of information to the public or a section of the public (whether or not the particular publication results in the dissemination of information to the public or a section of the public) constitutes the publication of information to the public or a section of the public for the purposes of this section.

**[68] Section 114 Alternative dispute resolution**

Insert "alternative" after "any form of" in section 114 (2).

**[69] Section 116 Application for order for alternative parenting plan**

Omit section 116 (4). Insert instead:

- (4) Subject to any order the Children’s Court may make, a person who makes an application under this section must notify the other persons referred to in subsection (1) of the making of the application.

**Note.** Section 256A sets out the circumstances in which the Children’s Court may dispense with the requirement to give notice.

**[70] Section 117 Adjournment**

Omit “mediation”. Insert instead “alternative dispute resolution”.

**[71] Section 122 Mandatory reporting of child who lives away from home without parental permission**

Insert “(other than an excluded person)” after “A person”.

**[72] Section 122 (2)**

Insert at the end of section 122:

- (2) In this section:  
***excluded person*** means a person who:
- (a) is a friend or relative of the child who maintains both a close personal relationship with the child through frequent personal contact and a personal interest in the child’s welfare, and
  - (b) does not provide support to the child wholly or substantially on a commercial basis.

**[73] Section 135 Definition and types of “out-of-home care”**

Insert “or kin” after “relative” in section 135 (3) (b).

**[74] Section 135 (3) (b1)**

Insert after section 135 (3) (b):

- (b1) any care of a child or young person provided by a person who has parental responsibility for the child or young person under a guardianship order, or

**[75] Section 137 Authorised carers**

Insert at the end of section 137 (1) (c):

- , or
- (d) subject to the regulations, a person who is assessed to be suitable to be approved to adopt a child under section 45 of the *Adoption Act 2000*.

**[76] Section 149 Order for sole parental responsibility**

Omit the section.

**[77] Section 149AA Care plan and other relevant information to be presented before order made under section 149**

Omit the section.

**[78] Section 149A Variation or rescission of order for sole parental responsibility**

Omit the section.

**[79] Section 153 Operation of other arrangements**

Insert “(other than a child or young person referred to in subsection (3))” after “person” where firstly occurring in section 153 (2).

**[80] Section 153 (3) and (4)**

Omit section 153 (3). Insert instead:

- (3) A child or young person who has been placed in out-of home care with a relative or kin otherwise than by a court ordered placement under an arrangement under this section supported by the Director-General must not remain in the out-of-home care provided under the arrangement for more than 2 years.
- (4) In this section:  
*court ordered placement* means the placement of a child or young person with a relative or kin of the person who has been allocated all aspects of parental responsibility for the child or young person by virtue of an order of the Children’s Court or a parenting order in favour of the relative or kin under the *Family Law Act 1975* of the Commonwealth.

**[81] Section 155 Review of supported out-of-home care arrangements**

Insert after section 155 (3):

- (3A) Subsection (1) does not require the designated agency having supervisory responsibility for a child or young person who is in a court ordered placement (within the meaning of section 153), and in respect of whom supported out-of-home care is provided, to conduct an annual review if a review of the placement of the child or young person conducted under another provision of this Act has determined that the placement is safe and secure.
- (3B) The authorised carer of a child or young person determined to be in a safe or secure placement as referred to in subsection (3A) must submit a self-assessment report to the designated agency having supervisory responsibility for the child or young person at least once in every period of 12 months after the child or young person is placed in supported out-of-home care.
- (3C) The self-assessment report is to address such matters as may be required by the designated agency (including verification that the child or young person resides with the authorised carer and of the need for on-going provision of support).

**[82] Section 161 Financial assistance for children and young persons in out-of-home care**

Insert at the end of section 161 (4) (b):

- , or
- (c) in other circumstances prescribed by the regulations.

**[83] Section 172A**

Insert after section 172:

**172A Director-General to report annually on deaths of children and young persons**

- (1) The Director -General must make a written report to the Minister every year on the reportable deaths known to the Director-General that occurred during the previous calendar year.

- (2) In this section:
- reportable death** means the death of any child or young person:
- (a) who was the subject of a risk of significant harm report made during the period of 3 years immediately preceding the death of the child, or
  - (b) who was a sibling of a child or young person who was the subject of a risk of significant harm report made during the period of 3 years immediately preceding the death of the sibling, or
  - (c) for whom the Minister has parental responsibility under this Act, or
  - (d) who is in statutory out-of-home care or supported out-of-home care, or
  - (e) for whom the Director-General or a designated agency has care responsibility under section 49, or
  - (f) who is the subject of a sole parental responsibility order made under section 149 (as in force immediately before its repeal by the *Child Protection Legislation Amendment Act 2014*).
- risk of significant harm report** means a report given to the Director-General under this Act that, in the assessment of the Director-General, indicates that a child or young person is at risk of significant harm (within the meaning of Part 2 of Chapter 3).
- Note.** See section 23 (Child or young person at risk of significant harm).
- (3) A report under this section must include the following:
- (a) the number of reportable deaths that occurred during the calendar year to which the report relates,
  - (b) the general circumstances of each of those reportable deaths, if known,
  - (c) details relating to the implementation of any Departmental practice changes in response to, or resulting from, those reportable deaths.
- (4) A report under this section is to be made to the Minister as soon as practicable after the end of the calendar year to which the report relates.
- (5) The Minister is to cause a copy of the report made to the Minister under this section to be tabled in each House of Parliament as soon as practicable after the report is made to the Minister.

**[84] Section 175 Special medical treatment**

Insert at the end of section 175 (2) (c):

- , or
- (d) the Director-General, in the case of special medical treatment described in paragraph (c1) of the definition of **special medical treatment** in subsection (5), grants an exemption under subsection (4A).

**[85] Section 175 (4A) and (4B)**

Insert after section 175 (4):

- (4A) The Director-General may, by order in writing, grant an exemption (either generally or in a particular case) in relation to the administration of a drug referred to in paragraph (c1) of the definition of **special medical treatment** in subsection (5) on the written request of the Director-General of the Ministry of Health.

**Note.** A copy of the general exemption issued by the Director-General can be accessed at the following website:

[www.community.nsw.gov.au/about-us/legislation.html](http://www.community.nsw.gov.au/about-us/legislation.html).

- (4B) If the Director-General of the Ministry of Health makes a written request under subsection (4A) for an exemption in relation to the administration of a particular drug to a particular child and does not receive notification of the decision of the Director-General of the Department within 21 days after the making of the request, the exemption is taken to have been granted on the expiration of the 21-day period.

**[86] Section 175 (5), definition of “special medical treatment”**

Insert after paragraph (c) of the definition:

- (c1) any medical treatment that involves the administration of a drug of addiction within the meaning of the *Poisons and Therapeutic Goods Act 1966* over a period or periods totalling more than 10 days in any period of 30 days, or

**Note.** A drug of addiction is a substance specified in Schedule Eight of the Poisons List proclaimed under the *Poisons and Therapeutic Goods Act 1966*. The Poisons List adopts by reference, with certain modifications, Schedules 1–8 of the Poisons Standard under the *Therapeutic Goods Act 1989* of the Commonwealth. See also the Poisons List information available at [www.health.nsw.gov.au/resources/publichealth/pharmaceutical/poisons\\_list\\_\\_pdf.asp](http://www.health.nsw.gov.au/resources/publichealth/pharmaceutical/poisons_list__pdf.asp).

- (c2) any medical treatment that involves an experimental procedure that does not conform to the document entitled *National Statement on Ethical Conduct in Human Research 2007* published by the National Health and Medical Research Council in 2007 and updated in 2013, or

**Note.** A copy of the *National Statement on Ethical Conduct in Human Research 2007* can be found at [www.nhmrc.gov.au/guidelines/publications/e72](http://www.nhmrc.gov.au/guidelines/publications/e72).

**[87] Chapter 9, Part 3**

Insert after section 177:

### **Part 3 Miscellaneous**

#### **177A Regulations**

- (1) The regulations may make provision for or with respect to the procedures to be followed by the designated agency having supervisory responsibility for a child or young person in out-of-home care in authorising, consenting to or monitoring the physical, psychological, psychiatric or other medical examinations, treatment and control of the behaviour of the child or young person under this Chapter.
- (2) Without limiting subsection (1), the regulations may require a designated agency to carry out such procedures in accordance with any publicly available guidelines that may be prescribed by the regulations.

**[88] Section 181 Principal functions of Children’s Guardian**

Insert “the carrying out of” after “monitor” wherever occurring in section 181 (1) (e) and (f).

**[89] Section 181 (1) (k)**

Insert after section 181 (1) (j):

- (k) to accredit adoption service providers under the *Adoption Act 2000* and to monitor the carrying out of the responsibilities with respect to the provision of adoption services under that Act and the regulations of those providers and the Director-General.



**[90] Chapter 15A**

Insert after section 244:

## **Chapter 15A Alternative dispute resolution**

### **244A Interpretation**

In this Act:

*alternative dispute resolution* means any process (other than a process involving a judicial determination) conducted under this Act in which an impartial person assists persons in dispute to resolve issues between them, and includes (without limitation) the following:

- (a) alternative dispute resolution conducted under section 37,
- (b) a dispute resolution conference conducted under section 65,
- (c) alternative dispute resolution conducted under section 65A,
- (d) a dispute resolution conference conducted under section 91D,
- (e) alternative dispute resolution conducted under section 114.

### **244B Protection of information disclosed in alternative dispute resolution**

- (1) Evidence of anything said or of any admission made in the course of alternative dispute resolution is not admissible in any proceedings before any court, tribunal or body.
- (2) Evidence of the conduct of any party in the course of alternative dispute resolution is not admissible in any proceedings before any court, tribunal or body.
- (3) A document prepared for the purposes of, or in the course of, or as a result of, alternative dispute resolution is not admissible in evidence in any proceedings before any court, tribunal or body.
- (4) Subsections (1)–(3) do not apply with respect to any evidence or document:
  - (a) if the persons participating in, or identified during, the alternative dispute resolution and in the case of a document, all persons identified in the document, consent to the admission of the evidence or document, or
  - (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 244C (2) (b) or (c), (3) or (4).

### **244C Confidentiality of information disclosed in alternative dispute resolution**

- (1) A person who conducts or participates in any alternative dispute resolution process must not disclose anything said or done or any admission made during the process to any other person, except as permitted by subsections (2)–(4).
- (2) A person conducting alternative dispute resolution may disclose information obtained in connection with the alternative dispute resolution only in any one or more of the following circumstances:
  - (a) with the consent of the person from whom the information was obtained,
  - (b) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,

- (c) if, as a result of obtaining the information, the person conducting alternative dispute resolution has reasonable grounds to suspect that a child or young person is at risk of significant harm within the meaning of Part 2 of Chapter 3,  
**Note.** See section 23.
- (d) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.
- (3) A person participating in alternative dispute resolution may disclose information obtained in connection with the administration or execution of this Chapter only if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property.
- (4) Any person conducting or participating in alternative dispute resolution may disclose information obtained in connection with the alternative dispute resolution if the disclosure is reasonably required for the purpose of referring any person conducting the alternative dispute resolution or a legal practitioner participating in the alternative dispute resolution to an appropriate body for any professional misconduct alleged to have been committed in connection with the alternative dispute resolution.

**[91] Section 245**

Insert after section 245 (1) (k):

- (l) a decision of the Director-General or a designated agency as to the suitability of a person to be a guardian.

**[92] Section 245B Interpretation**

Omit section 245B (1). Insert instead:

- (1) In this Chapter:  
***prescribed body*** means:
  - (a) any body or organisation specified in section 248 (6) or that is prescribed by the regulations for the purposes of that section, or
  - (b) any other body or class of bodies (including an unincorporated body or bodies) or organisation prescribed by the regulations for the purposes of this section.

**[93] Schedule 3 Savings, transitional and other provisions**

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

**[94] Schedule 3, Part 10:**

Insert after clause 30:

**Part 10 Provisions consequent on enactment of Child Protection Legislation Amendment Act 2014**

**31 Definition**

In this Part:

*amending Act* means the *Child Protection Legislation Amendment Act 2014*.

**32 Parent responsibility contracts**

- (1) An amendment made to sections 38A–38E by the amending Act extends (except as provided by subclause (2)) to a parent responsibility contract that is in force immediately before the commencement of the amendment.
- (2) Section 38E (4) as in force immediately before its repeal by the amending Act continues to apply to and in respect of a parent responsibility contract that is in force immediately before that repeal unless its terms are varied under sections 38A–38E as amended by the amending Act.

**33 Contact orders**

- (1) An application may be made under section 86 (1A), as inserted by the amending Act, by a party to proceedings commenced (irrespective of whether or not finally determined) before the commencement of the insertion.
- (2) Section 86A, as inserted by the amending Act, extends to the variation of a contact order made before that insertion.

**34 Orders for sole parental responsibility**

An order that is in force under section 149 of the Act (as in force immediately before its repeal by the amending Act) allocating sole parental responsibility to an authorised carer (or to the authorised carer and his or her partner) continues to have effect, on the repeal, as if that section were still in force.

**35 Other orders allocating parental responsibility**

- (1) An order that is in force under section 79 (1) (a) (iii) of the Act (immediately before the substitution of that subparagraph by the amending Act) allocating all aspects of parental responsibility for a child or young person at a place other than the usual home of the child or young person to a relative or kin of the child or young person until the child or young person reaches 18 years of age (the *original order*) is taken, on the commencement of section 79A, to be a guardianship order allocating all aspects of parental responsibility for the child or young person to that authorised person and his or her spouse.
- (2) Despite section 135 (3) (b1) (as inserted by the amending Act), a relative or kin of a child or young person who, immediately before being taken to have parental responsibility for a child or young person under a guardianship order by the operation of subclause (1), was being provided with financial assistance under section 161 may (subject to subclause (3) and the regulations) continue to be provided financial assistance under that section as if the child or young person were still in out-of-home care for the purposes of this Act.

- (3) A person who is provided with financial assistance in accordance with subclause (2) must make an annual report to the Director-General (in the form required by the Director-General) concerning such matters as may be required by the Director-General relating to the provision of that financial assistance.

**36 Existing supported out-of-home care arrangements**

Except as provided by clause 34, a provision of Chapter 8 that applied to or in respect of the placement of a child or young person in supported out-of-home care before the provision was amended by the amending Act continues to apply to and in respect of that placement as if the provision had not been amended.

**37 Parent capacity orders**

Section 91B (b), as inserted by the amending Act, extends to a prohibition order breached before the insertion.

**38 Alternative dispute resolution**

Chapter 15A, as inserted by the amending Act, does not apply to or in respect of alternative dispute resolution conducted before the commencement of that Chapter under section 37, 65 or 114.

**39 Preparation of permanency plan**

Section 83 (4), as amended by the amending Act, extends to a plan prepared, but that has not been submitted to the Children's Court in accordance with section 83 (3), before the commencement of the amendment.

## **Schedule 2 Amendment of other Acts and Regulation**

### **2.1 Adoption Act 2000 No 75**

**[1] Section 10 Adoption services to be provided by or on behalf of Director-General**

Omit “, and may accredit others to provide,” from section 10 (1).

**[2] Section 10 (2) (e)**

Omit the paragraph.

**[3] Section 11 Unauthorised arrangements for adoption**

Omit section 11 (1) (b). Insert instead:

- (b) an organisation accredited by the Children’s Guardian in accordance with the regulations as an adoption service provider that may provide the service.

**[4] Section 11 (2)**

Omit “under Part 2”. Insert instead “in accordance with the regulations”.

**[5] Chapter 3, Part 2**

Omit the Part. Insert instead:

## **Part 2 Accreditation of adoption service providers**

### **12 Accreditation and review of adoption service providers**

- (1) A charitable or non-profit organisation may apply to the Children’s Guardian for accreditation as an adoption service provider that may provide adoption services specified by the Children’s Guardian.
- (2) The Children’s Guardian is to monitor the carrying out of the responsibilities with respect to the provision of adoption services under this Act and the regulations of the Director -General and accredited adoption service providers.

### **13 Accreditation criteria**

- (1) On the recommendation of the Children’s Guardian, the Minister may, from time to time by order published in the Gazette, approve standards and other criteria for use in determining:
  - (a) whether to grant an application for accreditation as an accredited adoption service provider, and
  - (b) the period for which accreditation is to be granted.
- (2) Standards and criteria may be approved under subsection (1) in respect of a class or classes of applicants.
- (3) Without limiting subsection (1), the criteria approved under that subsection are to be integrated, to the greatest extent practicable, with the criteria for accreditation of a designated agency under the *Children and Young Persons (Care and Protection) Act 1998*.
- (4) Failure to comply with subsection (3) does not affect the validity of any decision of the Children’s Guardian to accredit or not to accredit an applicant.

**[6] Chapter 4, Part 3, heading**

Insert “other than authorised carers” after “parents”.

**[7] Section 41**

Omit the section. Insert instead:

**41 Application of Part**

This Part applies to the assessment of the suitability, and selection, of prospective adoptive parents of a child other than step parents or relatives or authorised carers.

**Note.** Part 3A of this Chapter provides for prospective adoptive parents who are authorised carers.

**[8] Section 45 Assessment of suitability, and selection, of adoptive parents**

Omit section 45 (2). Insert instead:

- (2) The Director-General or appropriate principal officer must not assess a person as suitable to be approved to adopt a child unless the person and every adult person who resides with the person has a working with children check clearance that is in force under the *Child Protection (Working with Children) Act 2012* or is exempted by the regulations under that Act from the requirement to hold such a clearance.

**[9] Chapter 4, Part 3A**

Insert after section 45B:

**Part 3A Selection of authorised carers as adoptive parents**

**45C Application of Part**

This Part applies to the assessment of the suitability, and selection, of prospective adoptive parents who are authorised carers (within the meaning of section 137 (1) (b) of the *Children and Young Persons (Care and Protection) Act 1998*) of a child who is in out-of-home care.

**45D Application to adopt**

The Director-General may, in accordance with the regulations, invite an authorised carer of a child who is in out-of-home care to submit an application to adopt the child.

**45E Form of application**

An application to adopt a child under this Part is to be made in accordance with the regulations.

**45F Assessment of suitability, and selection, of adoptive parents**

The regulations may make provision for or with respect to the assessment of the suitability of authorised carers of children to be approved and selected to adopt the children under this Act.

**45G Background information about prospective adoptive parents to be made available to birth parents**

- (1) If an application to adopt a child is made by an authorised carer, background information relating to the authorised carer that is obtained by the Director-General or principal officer in connection with the application is, at

the request of the birth parents of the child, to be provided to the birth parents before any adoption order may be made in relation to that child.

- (2) In this section, **background information** relating to an authorised carer includes information about the carer's social and cultural background, religious beliefs, domestic relationship and living arrangements, but does not include any information that identifies the carer.

#### **45H Consideration of wishes of parents consenting to adoption**

- (1) A general consent of the parent of a child to the adoption of the child, as referred to in section 53, may express the wishes of the parent as to the preferred background, beliefs or domestic relationship of any prospective adoptive parents of the child.
- (2) Nothing in the *Anti-Discrimination Act 1977* prevents the Director-General or a principal officer of an adoption service provider from identifying (consistently with the best interests of the child) prospective adoptive parents who reflect those wishes in the adoption selection process under this Part.

#### **[10] Section 46 What is an adoption plan?**

Insert after section 46 (2):

- (2A) A birth parent who has not consented to the adoption of a child (a **non-consenting birth parent**) is, as far as possible, to be given the opportunity to participate in the development of, and agree to, an adoption plan in relation to the child.
- (2B) A non-consenting birth parent who agrees to an adoption plan is, for the purposes of sections 47, 48, 50, 51 and 90, to be treated as if the non-consenting birth parent were a party to the adoption of the child.

#### **[11] Section 193 (1) (a)–(d)**

Omit the paragraphs.

#### **[12] Section 208 Regulations**

Insert “or the Children’s Guardian” after “Director-General” in section 208 (2) (b).

#### **[13] Section 208 (2) (d) and (e)**

Insert after section 208 (2) (c):

- (d) the accreditation of organisations as adoption service providers and the provision of adoption services by such providers,
- (e) the appointment of principal officers of accredited adoption service providers.

#### **[14] Schedule 3 Savings, transitional and other provisions**

Insert after clause 24:

## **Part 7 Provisions consequent on enactment of Child Protection Legislation Amendment Act 2014**

### **25 Definition**

In this Part:

**amending Act** means the *Child Protection Legislation Amendment Act 2014*.

## 26 Existing accreditation and applications for accreditation

- (1) An organisation that, immediately before the substitution of Part 2 of Chapter 3 by the amending Act, was accredited as an adoption service provider under that Part is taken on that substitution to have been accredited under that Part as substituted for the period and subject to the conditions to which it was subject before the substitution.
- (2) An application for accreditation made by an organisation under Part 2 of Chapter 3 before its substitution by the amending Act and not finally dealt with before that substitution is to continue to be dealt with as if the Part had not been substituted unless the applicant elects to have the application dealt with under the Part as substituted.

### [15] Dictionary

Omit the definition of *accreditation notice*.

### [16] Dictionary, definition of “accredited adoption service provider”

Omit “under Chapter 3”.

### [17] Dictionary

Insert in alphabetical order:

*Children’s Guardian* means the Children’s Guardian appointed under section 178 of the *Children and Young Persons (Care and Protection) Act 1998*.

*out-of-home care* has the same meaning as it has in the *Children and Young Persons (Care and Protection) Act 1998*.

### [18] Dictionary, definition of “principal officer”

Omit the definition. Insert instead:

*principal officer* of an accredited adoption service provider means the person who has the overall supervision of the provision by the accredited adoption service provider of adoption services.

## 2.2 Child Protection (Working with Children) Act 2012 No 51

### [1] Sections 11 and 11A

Omit section 11. Insert instead:

#### 11 Prospective adoptive parents and adults residing with them

- (1) This section applies to:
  - (a) a person who has submitted an application under the *Adoption Act 2000* to adopt a child that has not been finally dealt with by the making of or refusal to make an adoption order (a *prospective adoptive parent*), and
  - (b) each adult person who is residing at the home of that prospective adoptive parent during the period beginning when the application is made and ending when it is finally dealt with (an *adult resident*).
- (2) A person to whom this section applies must apply to the Children’s Guardian for a working with children check clearance of the volunteer class unless:
  - (a) the person holds a clearance of any class that is in force, or
  - (b) a current application for a clearance has been made by the person, or



- (c) the person is exempted by the regulations from the requirement to hold a clearance.
- (3) For the purposes of the application of this Act (other than section 9) to a prospective adoptive parent or adult resident, the relevant decision-maker in relation to the prospective adoptive parent is to be treated as the employer of the prospective adoptive parent and adult resident.
- (4) In this section:
  - accredited adoption service provider** has the same meaning as it has in the *Adoption Act 2000*.
  - relevant decision-maker** in relation to a prospective adoptive parent means:
    - (a) if the prospective adoptive parent has made an application to adopt a child to the Director-General of the Department of Family and Community Services—the Director-General, or
    - (b) if the prospective adoptive parent has made an application to adopt a child to an accredited adoption service provider—the principal officer of the service provider.

**11A Prospective guardians and adults residing with them**

- (1) This section applies to:
  - (a) a prospective guardian within the meaning of section 79A of the *Children and Young Persons (Care and Protection) Act 1998*, and
  - (b) each adult person who is residing at the home of that prospective guardian during the period beginning when the application under that section for a guardianship order relating to that prospective guardian is made under that section and ending when it is finally dealt with (an **adult resident**).
- (2) A person to whom this section applies must apply to the Children’s Guardian for a working with children check clearance of the volunteer class unless:
  - (a) the person holds a clearance of any class that is in force, or
  - (b) a current application for a clearance has been made by the person, or
  - (c) the person is exempted by the regulations from the requirement to hold a clearance.
- (3) For the purposes of the application of this Act (other than section 9) to a prospective guardian or adult resident, the relevant decision-maker in relation to the prospective guardian is to be treated as the employer of the prospective guardian and adult resident.
- (4) In this section:
  - relevant decision-maker** in relation to a prospective guardian means:
    - (a) if the application for the guardianship order was made by the Director-General of the Department of Family and Community Services—the Director-General, or
    - (b) in the case of such an application made by any other person or body—the principal officer of the designated agency responsible for assessing the prospective guardian to be a suitable person to be allocated all aspects of parental responsibility for a child or young person.

**[2] Schedule 3 Savings, transitional and other provisions**

Insert after clause 7:

**Part 3 Provision consequent on enactment of Child Protection Legislation Amendment Act 2014**

**8 Potential adoptive parents**

Section 11, as substituted by the *Child Protection Legislation Amendment Act 2014* applies to and in respect of an application to adopt that has been made but not finally dealt with by the making of or refusal to make an adoption order before the commencement of this clause.

**2.3 Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 No 13**

Repeal the Act.

**2.4 Children's Court Regulation 2009**

**Clause 5 Appeals etc under Children and Young Persons (Care and Protection) Act 1998**

Insert after clause 5 (1) (a):

(a1) section 91I (Right of appeal),

**2.5 Guardianship Act 1987 No 257**

**Section 15 Restrictions on Tribunal's power to make guardianship orders**

Insert at the end of section 15 (1) (b):

, or

(c) in the case of a person who is the subject of an order made by the Children's Court in the exercise of its jurisdiction under section 79A of the *Children and Young Persons (Care and Protection) Act 1998*— unless the Children's Court consents to the making of the order.

[Second reading speech made in—

Legislative Assembly on 21 November 2013

Legislative Council on 26 March 2014]