



New South Wales

Children and Young Persons (Care and Protection) Amendment (Family is Culture Review) Bill 2021

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Children and Young Persons (Care and Protection) Act 1998* and the *Adoption Act 2000* concerning out-of-home care for Aboriginal or Torres Strait Islander children and young people and the adoption of Aboriginal or Torres Strait Islander children, and for related purposes.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

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

Schedule 1[2] inserts proposed section 9(2)(h) into the *Children and Young Persons (Care and Protection) Act 1998* (*the Act*) to include the principle that it is to be presumed that removing an Aboriginal or Torres Strait Islander child or young person from his or her family causes harm.

Schedule 1[3]–[5], [10] and [12] make amendments to the Act consequential on the amendments to the *Adoption Act 2000*, including inserting proposed section 12B which provides for the cultural adoption of Torres Strait Islander children and young people.

Schedule 1[6] inserts proposed section 13(1A) into the Act to include in the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles additional elements that are to be

considered when making placement decisions for Aboriginal or Torres Strait Islander children and young people.

Schedule 1[7] inserts proposed sections 13A, 13B and 13C into the Act. Proposed section 13A will require the Secretary to reduce the need for Aboriginal or Torres Strait Islander children and young people to be removed from their families and placed in out-of-home care by providing support to Aboriginal and Torres Strait Islander families. Proposed section 13B provides for the Children's Court to make a declaration that the Secretary has failed to take steps under section 13A. Proposed section 13C will require the Minister to report to Parliament about the actions taken under proposed section 13A and any declarations by the Children's Court under proposed section 13B.

Schedule 1[8] inserts proposed section 61AA into the Act to require that when the Children's Court is considering an application for a care order for an Aboriginal or Torres Strait Islander child or young person a report is to be given to the Court setting out the action that has been taken to justify the proposed removal of the child or young person from his or her family and the support that has been provided to the family.

Schedule 1[9] amends section 63 to provide that if the Secretary fails to give the Children's Court evidence of the action that has been taken to support a child or young person's family and of the alternatives to a care order that were considered before making an application to the Court for a care order, the Court may dismiss the order or discharge the child or young person from the care of the Secretary or the Minister as appropriate.

Schedule 1[11] inserts proposed section 79AA into the Act to provide that before the Children's Court makes an order allocating parental responsibility, other than a guardianship order, for an Aboriginal or Torres Strait Islander child or young person it must be satisfied the Secretary has provided support to the child or young person's family.

Schedule 1[13] and [14] make amendments to the Act, section 83 and inserts proposed section 83A to extend the period of time in which restoration of an Aboriginal or Torres Strait Islander child or young person to his or her family may be effected before a final care order may be made by the Children's Court.

Schedule 1[15] makes an amendment to the Act, section 87 to provide that before making a care order for an Aboriginal or Torres Strait Islander child or young person the Children's Court must provide an opportunity for a representative of the relevant Aboriginal or Torres Strait Islander community to be heard before the Court.

Schedule 1[16] makes an amendment to the Act, section 93 to provide that the Children's Court may direct that the rules of evidence apply to proceedings.

Schedule 1[17] inserts proposed section 93AA into the Act to provide that in proceedings involving an Aboriginal or Torres Strait Islander child or young person the Children's Court is to presume that the removal of the child or young person from their family or community causes harm and that when giving reasons for a decision the Court is required to explain how it has considered that presumption and the other principles in the Act applying to Aboriginal or Torres Strait Islander children and young people.

Schedule 1[18] makes an amendment to the Act, section 105 to provide a defence to the offence of publishing the name or identifying information about a child or young person involved in Children's Court proceedings.

Schedule 1[19] makes an amendment to the Act, section 106A to remove the requirement for the Children's Court to admit evidence that the parent or primary care-giver of a child or young person has previously had a child or young person removed from their care and not restored.

Schedule 1[20] makes an amendment to the Act, section 248A to ensure that information published by the Secretary or Children's Court is de-identified.

Schedule 1[21] inserts transitional provisions.

Schedule 1[1] make consequential amendments to the definitions section.

Schedule 2 Amendment of Children and Young Persons (Care and Protection) Regulation 2012

Schedule 2[1] makes an amendment to the *Children and Young Persons (Care and Protection) Regulation 2012*, clause 49 to provide that only an Aboriginal community controlled organisation can be accredited as a designated agency based on substantial satisfaction of the accreditation criteria.

Schedule 2[2] makes an amendment to the *Children and Young Persons (Care and Protection) Regulation 2012*, clause 54 to extend, from 12 months to 24 months, the period in which a designated agency granted accreditation based on substantial compliance with the accreditation standards must become wholly compliant.

Schedule 2[3] and [4] are consequential amendments.

Schedule 3 Amendment of Adoption Act 2000 No 75

Schedule 3[3] amends the *Adoption Act 2000* to provide that Aboriginal children may not be adopted.

Schedule 3[4] amends the *Adoption Act 2000* to provide that Torres Strait Islander children may not be adopted, other than by cultural adoption under the *Children and Young Persons (Care and Protection) Act 1998*.

Schedule 3[1], [2] and [5]–[16] make consequential amendments including to the Dictionary.

Schedule 4 Amendment of Adoption Regulation 2015

Schedule 4[1] and [2] make amendments to the *Adoption Regulation 2015* that are consequential to the amendments to the *Adoption Act 2000*.

Schedule 5 Amendment of Advocate for Children and Young People Act 2014 No 29

Schedule 5 makes an amendment to the *Advocate for Children and Young People Act 2014* to provide that the Parliamentary Joint Committee on Children and Young People has the function of monitoring the Children's Guardian's functions in the accreditation and oversight of agencies arranging for or providing out-of-home care.

Schedule 6 Amendment of Children (Protection and Parental Responsibility) Act 1997 No 78

Schedule 6 inserts proposed section 7A into the *Children (Protection and Parental Responsibility) Act 1997* to provide that a Court exercising criminal jurisdiction over a child who is under the parental responsibility of the Minister or the Secretary may require a representative of the Secretary to attend the proceedings.

Schedule 7 Amendment of Children's Guardian Act 2019 No 25

Schedule 7 makes an amendment to the *Children's Guardian Act 2019*, section 72 to provide that a for profit organisation can not be accredited as a designated agency.

Schedule 8 Amendment of Ombudsman Act 1974 No 68

Schedule 8 makes an amendment to the *Ombudsman Act 1974*, section 13 to clarify that the Ombudsman may investigate a complaint despite there being related court proceedings, if the Ombudsman is of the opinion that the investigation is unlikely to adversely affect the court proceedings.



New South Wales

Children and Young Persons (Care and Protection) Amendment (Family is Culture Review) Bill 2021

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New South Wales

Children and Young Persons (Care and Protection) Amendment (Family is Culture Review) Bill 2021

No. , 2021

A Bill for

An Act to amend the *Children and Young Persons (Care and Protection) Act 1998* to implement recommendations of the Family is Culture report regarding Indigenous children and young people entering into, and living in, out-of-home care; to restrict the adoption of Indigenous children and young people in out-of-home care; and for related purposes.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Children and Young Persons (Care and Protection) Amendment (Family is Culture Review) Act 2021*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided for in subsections (2) and (3).
- (2) Schedules 1[3]–[5], [10] and [12], 3 and 4 commence on the day that is 3 months after the date of assent to this Act.
- (3) Schedules 2 and 7 commence on the day that is 12 months after the date of assent to this Act.

Schedule 1	Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157	1
		2
[1] Section 3 Definitions		3
	Insert in alphabetical order in section 3(1)—	4
	<i>Aboriginal and Torres Strait Islander Child and Young Person Placement Principles</i> —see section 13.	5
	<i>Aboriginal community controlled organisation</i> means an organisation that meets the criteria prescribed by the regulations.	6
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[2] Section 9 Principles for administration of Act		9
	Insert after section 9(2)(g)—	10
	(h) In deciding what action it is necessary to take in order to protect an Aboriginal or Torres Strait Islander child or young person from harm, it is to be presumed that removing an Aboriginal or Torres Strait Islander child or young person from the child’s or young person’s family causes harm.	11
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[3] Section 10A Permanent placement principles		16
	Insert after section 10A(3)(c)—	17
	(c1) if it is not practicable or in the best interests of a Torres Strait Islander child or young person to be placed in accordance with paragraph (a) or (b), the next preference is for cultural adoption of the child or young person as provided for in section 12B,	18
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		21
[4] Section 10A(3)(e)		22
	Omit the paragraph.	23
[5] Sections 12A and 12B		24
	Insert after section 12—	25
12A Aboriginal children and young people cannot be adopted		26
	Adoption must not be considered as an option for an Aboriginal child or young person.	27
	Note. See the <i>Adoption Act 2000</i> , section 33.	28
		29
12B Torres Strait Islander children and young people cannot be adopted other than cultural adoption		30
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	(1) Adoption must not be considered as an option for a Torres Strait Islander child or young person.	32
	Note. See the <i>Adoption Act 2000</i> , section 37.	33
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	(2) Despite subsection (1), the parental rights and responsibilities for a Torres Strait Islander child or young person may be permanently transferred to a cultural parent of the child or young person in accordance with a scheme prescribed by the regulations for the purposes of this section.	35
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	(3) In this section—	39
	<i>cultural parent</i> of a Torres Strait Islander child or young person, is a person who, in accordance with customary child rearing practices in the Torres Strait, agrees with the child or young person’s birth parents to accept the permanent	40
		41
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transfer of the parental rights and responsibility for the child or young person from the birth parents.	1 2
[6] Section 13 Aboriginal and Torres Strait Islander Child and Young Person Placement Principles	3 4
Insert before section 13(1)—	5
(1A) In the application of this Act to matters involving Aboriginal or Torres Strait Islander children and young people, all decision makers must apply each of the following elements of the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles that are relevant to the decision being made—	6 7 8 9 10
(a) prevention , which recognises that children and young people should be brought up by their own family and community,	11 12
(b) partnership , which recognises that Aboriginal or Torres Strait Islander community representatives should be involved in all decision making concerning the protection of children and young people,	13 14 15
(c) placement , which deals with where a child or young person should be placed if removed from their family,	16 17
(d) participation , which aims to ensure that children and young persons and their parents participate in all decision-making concerning the protection of the child or young person,	18 19 20
(e) connection , which recognises that a child or young person in out-of-home care must be supported to maintain their connection to their family, community and culture.	21 22 23
[7] Sections 13A–13C	24
Insert after section 13—	25
13A Aboriginal and Torres Strait Islander family support	26
(1) It is acknowledged that the placement of Aboriginal or Torres Strait Islander children or young persons in out-of-home care can have serious negative consequences for the children or young persons concerned, their families and the indigenous community as a whole.	27 28 29 30
(2) Consequently, it is a principle to be applied in the administration of this Act that the Secretary is to take active steps to reduce the need for Aboriginal or Torres Strait Islander children and young people to be removed from their families and placed in out-of-home care.	31 32 33 34
(3) Without limiting the general application of the principle in subsection (2), the Secretary must take active steps to reduce the need for Aboriginal or Torres Strait Islander children and young people to be removed from their families and placed in out-of-home care, when exercising functions and powers under this Act including, but not limited to functions and powers under section 17, 37, 63 or 85.	35 36 37 38 39 40
(4) Active steps, for the purposes of this section, must be tailored to the circumstances of the individual child or young person and their family and include, but are not limited to—	41 42 43
(a) the provision of family support services that are—	44
(i) accessible, and	45
(ii) adequately resourced, and	46
(iii) culturally appropriate, and	47

(iv)	so far as is practicable, designed and delivered by Aboriginal or Torres Strait Islander community controlled organisations, and	1 2
(b)	considering the use of—	3
(i)	parent responsibility contracts as provided for in Chapter 4, Part 3, Division 2, and	4 5
(ii)	parent capacity orders as provided for in Chapter 5, Part 3, and	6
(iii)	temporary care arrangements as provided for in Chapter 8, Part 3, Division 1, and	7 8
(c)	other steps prescribed by the regulations.	9
13B	Declaration by Children’s Court	10
(1)	A relative of an Aboriginal or Torres Strait Islander child or young person may apply to the Children’s Court for a declaration that the Secretary has failed to take active steps under section 13A to reduce the need for the child or young person to be removed from the child or young person’s family and placed in out-of-home care.	11 12 13 14 15
(2)	If the Children’s Court is satisfied that the Secretary has failed to take active steps under section 13A to reduce the need for the child or young person to be removed from the child or young person’s family and placed in out-of-home care, the Children’s Court may make a declaration to that effect.	16 17 18 19
(3)	A declaration by the Children’s Court under this section may include the following—	20 21
(a)	the ways in which the Secretary has failed to take active steps in relation to the particular child or young person,	22 23
(b)	other things the Secretary could have done to fulfil their duty to take active steps in relation to the particular child or young person.	24 25
(4)	An application may be made under this section—	26
(a)	in connection with proceedings for—	27
(i)	a care order under Chapter 5, Part 2, or	28
(ii)	a parent capacity order under Chapter 5, Part 3, or	29
(b)	at another time.	30
13C	Reporting responsibilities of Minister	31
(1)	Within 12 months after the commencement of section 13A, the Minister is to table in both houses of Parliament a plan that sets out the following—	32 33
(a)	the active steps that will be taken under section 13A to provide family support services to Aboriginal and Torres Strait Islander families and communities,	34 35 36
(b)	how the active steps to be taken under section 13A will be delivered,	37
(c)	how the active steps to be taken under section 13A will be funded.	38
(2)	On or before 1 April and 1 October each year, the Minister is to table a report in both houses of Parliament setting out the following for the preceding reporting period—	39 40 41
(a)	the Government’s achievements against the plan required by subsection (1),	42 43
(b)	the Aboriginal community controlled organisations that have been funded to deliver services under the plan required by subsection (1) and the amount of funding each organisation has received,	44 45 46

(c)	the actions the Minister has taken to engage with Aboriginal and Torres Strait Islander people to negotiate and agree on the implementation of programs and strategies that promote self-determination as provided for in section 11,	1 2 3 4
(d)	the means approved by the Minister under section 12 for Aboriginal and Torres Strait Islander families, kinship groups, representative organisations and communities to participate in—	5 6 7
(i)	decisions made concerning the placement of Aboriginal and Torres Strait Islander children and young persons in out-of-home care, and	8 9 10
(ii)	other significant decisions made under this Act that concern Aboriginal or Torres Strait Islander children and young persons,	11 12
(e)	the Minister’s assessment of the effectiveness of the actions reported under paragraphs (c) and (d),	13 14
(f)	each declaration given by the Children’s Court under section 13B.	15
(3)	In this section—	16
	<i>preceding reporting period</i> means the period of 6 months ending on 30 June or 31 December immediately before the report is to be tabled in Parliament.	17 18
[8] Section 61AA		19
	Insert after section 61—	20
61AA Application for care orders— Aboriginal or Torres Strait Islander children and young people		21 22
(1)	This section applies to a care application for an Aboriginal or Torres Strait Islander child or young person other than an application for an emergency care and protection order under section 46.	23 24 25
(2)	The requirements imposed by this section are in addition to the other requirements imposed under this Act.	26 27
(3)	The care application must be accompanied by a report that—	28
(a)	provides a detailed justification for any removal, and	29
(b)	demonstrates the removal is the least intrusive option that could be employed, and	30 31
(c)	sets out the active steps the Secretary has taken under section 13A to reduce the need for the child or young person to be placed in out-of-home care, including the following—	32 33 34
(i)	family support services that were provided to the child or young person’s family,	35 36
(ii)	alternatives to removal that were considered and an explanation of why the alternatives are not satisfactory.	37 38
(4)	The regulations may prescribe information that must be included in a report under subsection (3).	39 40
[9] Section 63 Evidence of prior alternative action		41
	Insert after section 63(1)—	42
(1A)	If the Secretary fails to provide the information required by subsection (1) the Children’s Court may—	43 44
(a)	dismiss the care application made for the child or young person, or	45

	(b) discharge the child or young person who is in the care responsibility of the Secretary from the care responsibility.	1 2
	(1B) If the Children’s Court is satisfied the information provided by the Secretary under subsection (1) demonstrates that alternatives to a care order, including the provision of family support and assistance, were not adequately considered, the Court may—	3 4 5 6
	(a) dismiss the care application made for the child or young person, or	7
	(b) discharge the child or young person who is in the care responsibility of the Secretary from the care responsibility.	8 9
[10]	Section 78A Permanency planning	10
	Omit section 78A(4).	11
[11]	Section 79AA	12
	Insert after section 79—	13
79AA	Aboriginal or Torres Strait Islander children and young people—special considerations	14 15
	(1) Before making an order under section 79(1)(b), (e) or (f) for an Aboriginal or Torres Strait Islander child or young person, the Children’s Court must be satisfied that the Secretary has taken active steps under section 13A to provide support services to the family of the child or young person.	16 17 18 19
	(2) If the Children’s Court is considering making an order under section 79(1)(b) for an Aboriginal or Torres Strait Islander child or young person the Children’s Court must, for the purpose of determining if there are special circumstances under section 79(10), take the following matters into account—	20 21 22 23
	(a) the steps the Secretary has taken under section 13A to provide support services to the family of the child or young person,	24 25
	(b) the availability of other support services that are reasonably required to support the restoration of the child or young person to the child or young person’s parents.	26 27 28
[12]	Section 83 Preparation of permanency plan	29
	Omit section 83(4), note. Insert instead—	30
	Note 1— Section 12A provides that adoption must not be considered as an option for Aboriginal children and young people.	31 32
	Note 2— Section 12B provides that adoption, other than cultural adoption, must not be considered as an option for Torres Strait Islander children and young people.	33 34
[13]	Section 83(5)	35
	Omit subsections (5)–(9). Insert instead—	36
	(5) In this section and section 83A—	37
	parent , in relation to a child or young person, means—	38
	(a) the birth parent of the child or young person, or	39
	(b) if the child or young person has been adopted—the adoptive parent of the child or young person.	40 41
	reasonable period means a period—	42
	(a) not more than 24 months, or	43
	(b) if the child or young person is an Aboriginal or a Torres Strait Islander—not more than 48 months.	44 45

[14] Section 83A	1
Insert after section 83—	2
83A Consideration of permanency plan by Children’s Court	3
(1) The Children’s Court is to decide whether to accept the Secretary’s assessment, under section 83, of whether or not there is a realistic possibility of restoration within a reasonable period—	4 5 6
(a) for 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	7 8 9 10
(b) for 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.	11 12 13 14 15
(2) Despite subsection (1), the Children’s Court may extend, by up to 3 months, the period in which it is to decide if it will accept the Secretary’s assessment of whether or not there is a realistic possibility of restoration if, having regard to the circumstances of the case, the Children’s Court considers it—	16 17 18 19
(a) appropriate, and	20
(b) in the best interests of the child or young person.	21
(3) If the Children’s Court does not accept the Secretary’s assessment, the Children’s Court may direct the Secretary to prepare a different permanency plan.	22 23 24
(4) The Children’s Court must not make a final care order for a child or young person who is not an Aboriginal or a Torres Strait Islander unless it expressly finds—	25 26 27
(a) permanency planning for the child or young person has been appropriately and adequately addressed, and	28 29
(b) prior to approving a permanency plan involving restoration, there is a realistic possibility of restoration within a reasonable period, having regard to—	30 31 32
(i) the circumstances of the child or young person, and	33
(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.	34 35 36
(5) For a child or young person who is an Aboriginal or a Torres Strait Islander, the Children’s Court must not make a final care order unless it expressly finds—	37 38 39
(a) permanency planning for the child or young person has been appropriately and adequately addressed, and	40 41
(b) all efforts have been exhausted to facilitate placement with a member of the child’s or young person’s extended family or kinship group, as recognised by the Aboriginal or Torres Strait Islander community to which the child or young person belongs, and	42 43 44 45
(c) prior to approving a permanency plan that does not involve restoration, there is no realistic possibility of restoration within a reasonable period, having regard to the following—	46 47 48

(i)	the circumstances of the child or young person,	1
(ii)	the evidence, if any, that the child's or young person's parents, if given appropriate family support as provided for in section 13A, 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, and	2 3 4 5 6
(d)	the permanency plan includes a cultural plan that explicitly states how it will support continuing contact with the child's or young person's Aboriginal or Torres Strait Islander family, community and culture, and	7 8 9
(e)	the permanency plan has been approved by a recognised Aboriginal community controlled organisation.	10 11
(6)	For the purposes of subsections (4)(a) and (5)(a), the permanency plan need not provide details as to the exact long term placement for the child or young person but must contain sufficient detail to allow the Children's Court to understand—	12 13 14 15
(a)	the child's or young person's needs, and	16
(b)	how the child's or young person's needs will be met.	17
(7)	A permanency plan is of no effect until approved by the Children's Court.	18
	Note— The terms <i>parent</i> and <i>reasonable period</i> are defined in section 83(5).	19
[15]	Section 87 Making of orders that have a significant impact on persons	20
	Insert after section 87(2)—	21
(2A)	If the child or young person the subject of application is an Aboriginal or a Torres Strait Islander, the Children's Court must—	22 23
(a)	consider the effect of the order on the relevant Aboriginal or Torres Strait Islander community, and	24 25
(b)	provide an opportunity to be heard to—	26
(i)	a representative of the relevant community, or	27
(ii)	a member of a recognised Aboriginal community controlled organisation with a relevant connection to the relevant community.	28 29 30
(2B)	Regulations may be made, for the purposes of subsection (2A)(b), for the following—	31 32
(a)	the remuneration of individuals who are heard by the Children's Court,	33
(b)	the payment of the reasonable expenses incurred by an individual who is heard by the Children's Court.	34 35
[16]	Section 93 General nature of proceedings	36
	Insert after section 93(3)—	37
(3A)	The Children's Court may make a determination under subsection (3)—	38
(a)	if both of the following apply—	39
(i)	a party to the proceeding applies for the rules of evidence to apply to the proof of a fact,	40 41
(ii)	the court is of the view that proof of that fact is or will be significant to the determination of the proceedings, or	42 43
(b)	if the court is otherwise of the view that it is in the interests of justice to direct that the rules of evidence apply to the proceedings or part of the proceedings.	44 45 46

[17] Section 93AA	1
Insert after section 93—	2
93AA General principle for proceedings concerning Aboriginal or Torres Strait Islander children or young people	3
	4
(1) In any proceedings before the Children’s Court concerning Aboriginal or Torres Strait Islander children or young people, the Children’s Court must—	5
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(a) presume that the removal of a child or young person from their family or community causes harm including the serious harm arising from disrupting the child or young person’s connection to his or her culture, and	7
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(b) actively consider the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles.	11
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(2) The presumption in subsection (1)(a) is rebuttable.	13
(3) When giving its reasons for a decision under Chapter 5 that involves an Aboriginal or Torres Strait Islander child or young person, the Children’s Court must set out the following—	14
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	16
(a) how the presumption in subsection (1)(a) has been considered,	17
(b) if the presumption in subsection (1)(a) has been rebutted—the grounds for the rebuttal,	18
	19
(c) how the following have been applied—	20
(i) the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles,	21
	22
(ii) the principle of self-determination as provided for in section 11,	23
(iii) the principle of participation as set out in section 12.	24
[18] Section 105 Publication of names and identifying information	25
Insert after section 105(5)—	26
(5A) Despite subsection (5), it is a defence to prosecution for an offence under subsection (2) if it is proved that the person who published or broadcast the name of a child or young person acted in good faith and—	27
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	29
(a) to promote the safety, welfare or well-being of the child or young person, or	30
	31
(b) otherwise in the public interest.	32
[19] Section 106A Admissibility of certain other evidence	33
Omit section 106A(1). Insert instead—	34
(1) The Children’s Court must admit in proceedings before it any evidence adduced that a parent or primary care-giver of a child or young person the subject of a care application is a person who has been named or otherwise identified by the coroner or a police officer, whether by use of the term “person of interest” or otherwise, as a person who may have been involved in causing a reviewable death of a child or young person.	35
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[20] Section 248A Collection of information by Secretary and Children’s Court	41
Insert after section 248A(3)—	42
(4) If information is made publicly available in accordance with regulations made under subsection (2)(c), the information must be made available in a way that	43
	44

ensures the identity of a person to whom the information relates must not be readily ascertainable.	1 2
[21] Section 264 Regulations	3
Insert after section 264(1A)(l)—	4
(m) the recognition, for the purposes of section 83A(5)(e) and 87(2A)(b)(ii), of Aboriginal community controlled organisations.	5 6
[22] Schedule 3 Savings, transitional and other provisions	7
Insert at the end of the Schedule, with appropriate Part and clause numbering—	8
 Part Provisions consequent on enactment of Children and Young Persons (Care and Protection) Amendment (Family is Culture Review) Act 2021	 9 10 11
Definition	12
In this Part—	13
<i>amending Act</i> means the <i>Children and Young Persons (Care and Protection) Amendment (Family is Culture Review) Act 2021</i> .	14 15
Pending proceedings before the Children’s Court	16
Sections 61AA, 63(1A) and (1B), 79AA, 93(3A) and 93AA, as inserted by the amending Act, extend to proceedings before the Children’s Court that were pending, but not finally determined, immediately before the commencement of the amending Act.	17 18 19 20
Permanency planning	21
Section 83(5), as substituted by the amending Act, applies to an application before the Children’s Court that was pending, but not finally determined, immediately before the commencement of the section.	22 23 24
Pending applications before the Children’s Court	25
Sections 83A and 87(2A), as inserted by the amending Act, extend to an application before the Children’s Court that was pending, but not finally determined, immediately before the commencement of the amending Act.	26 27 28
Publication of names and identifying information	29
Section 105(5A), as inserted by the amending Act, does not apply to a publication or broadcast made before the commencement of the section.	30 31
Admissibility of certain evidence	32
Section 106A(1), as amended by the amending Act, extends to proceedings before the Children’s Court that were pending, but not finally determined, immediately before the commencement of the amendment.	33 34 35

Schedule 2	Amendment of Children and Young Persons (Care and Protection) Regulation 2012	1
		2
[1]	Clause 49 Determination of application for accreditation	3
	Omit clause 49(1). Insert instead—	4
	(1) The Children’s Guardian may grant accreditation as a designated agency to an applicant if, in the opinion of the Children’s Guardian, the applicant—	5
		6
	(a) for an applicant that is an Aboriginal community controlled organisation—wholly or substantially satisfies the accreditation criteria referred to in clause 48, or	7
		8
		9
	(b) for other applicants—wholly satisfies the accreditation criteria referred to in clause 48.	10
		11
[2]	Clause 54 Accreditation criteria must be wholly satisfied	12
	Omit “within 12 months” wherever occurring in clause 54(1).	13
	Insert instead “within 24 months”.	14
[3]	Clause 66 Accreditation—shortening, suspension and cancellation	15
	Omit clause 66(2)(f).	16
[4]	Clause 66(2)(g)	17
	Omit “, at any time after the agency had been accredited for at least 12 months,”.	18

Schedule 3	Amendment of Adoption Act 2000 No 75	1
[1]	Section 8 What principles are to be applied by persons making decisions about the adoption of a child?	2
	Omit section 8(1)(f) and (g).	3
		4
[2]	Section 24 Who can be adopted?	5
	Insert at the end of section 24(1)—	6
	Note— Sections 33 and 37 provide that an adoption order must not be made in relation to a child who is an Aboriginal or a Torres Strait Islander.	7
		8
[3]	Section 33	9
	Omit sections 33–36. Insert instead—	10
	33 No adoption of Aboriginal children	11
	An adoption order must not be made in relation to an Aboriginal child.	12
[4]	Section 37	13
	Omit sections 37–39. Insert instead—	14
	37 No adoption of Torres Strait Islander children	15
	(1) An adoption order must not be made in relation to a Torres Strait Islander child.	16
		17
	(2) Despite subsection (1) a Torres Strait Islander child or young person may undergo cultural adoption, as provided for in the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	18
		19
		20
[5]	Section 46 What is an adoption plan?	21
	Omit section 46(3).	22
[6]	Section 46(4)	23
	Omit “community-based and relevant Aboriginal or Torres Strait Islander”.	24
	Insert instead “and community-based”.	25
[7]	Section 47 How is an adoption plan made?	26
	Omit “see sections 35 (5) and 39 (4)” from section 47(1), note.	27
	Insert instead “see section 39(4)”.	28
[8]	Sections 64 Consent to adoption of Aboriginal child	29
	Omit the section.	30
[9]	Section 65 Consent to adoption of Torres Strait Islander child	31
	Omit the section.	32
[10]	Section 67 When can Court dispense with consent of person other than the child?	33
	Omit section 67(1)(d)(iii).	34
[11]	Section 80 Preliminary hearings	35
	Omit section 80(2).	36

[12] Section 90 Court to be satisfied as to certain matters	1
Omit section 90(1)(e) and (f). Insert instead—	2
(e) the child is not an Aboriginal child, and	3
(f) the child is not a Torres Strait Islander child, and	4
[13] Section 90(1)(h)	5
Omit “in the case of a child (other than an Aboriginal or Torres Strait Islander child)—”.	6
[14] Section 195 Consultation with Aboriginal persons	7
Omit the section.	8
[15] Section 196 Consultation with Torres Strait Islanders	9
Omit the section.	10
[16] Dictionary	11
Omit the definitions of <i>Aboriginal child placement principles</i> and <i>Torres Strait Islander child placement principles</i> .	12
	13

Schedule 4	Amendment of Adoption Regulation 2015	1
[1]	Clause 80 Form of consent	2
	Omit clause 80(1)(i).	3
[2]	Clause 86 Consent to adoption of Aboriginal child or Torres Strait Islander child	4
	Omit the clause.	5

**Schedule 5 Amendment of Advocate for Children and Young
 People Act 2014 No 29**

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Section 37 Functions of Committee

Insert at the end of section 37(1)(b)(ii)—

or

- (iii) the *Children's Guardian Act 2019* in relation to out-of-home care, including the accreditation and oversight of agencies arranging for or providing out-of-home care,

Schedule 6 Amendment of Children (Protection and Parental Responsibility) Act 1997 No 78 1
2

Section 7A 3

Insert after section 7— 4

7A Attendance of Secretary at proceedings 5

(1) This section applies to a child who, under the *Children and Young Persons (Care and Protection) Act 1998*, is— 6
7

(a) under the parental responsibility of the Minister administering that Act, 8
or 9

(b) in the care responsibility of the Secretary within the meaning of that Act. 10
11

(2) A court exercising criminal jurisdiction over a child to whom this section applies may require the attendance, at the place where the proceedings are being or are to be conducted, of a representative of the Secretary. 12
13
14

**Schedule 7 Amendment of Children's Guardian Act 2019 No
25**

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Section 72 Designated agencies—general

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Omit section 72(1)(b). Insert instead—

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- (b) a charitable or non-profit organisation, or part of a charitable or non-profit organisation, that arranges the provision of out-of-home care.

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Schedule 8 Amendment of Ombudsman Act 1974 No 68

1

Section 13 Decision for investigation

2

Insert after section 13(5)—

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- (6) To avoid doubt, the Ombudsman may investigate a complaint despite there being related court proceedings, either underway or anticipated, if, in the Ombudsman's opinion, the investigation is unlikely to adversely effect those proceedings.

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