

[Act 2000 No 76]



New South Wales

Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill 2000

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* to improve the case management of abused and neglected children and young persons who have been removed from their parents and placed in out-of-home care and for whom a return to their parents does not appear to be a viable option. The amendments made by the Bill will require the consideration of more permanent forms of care, including the possibility of adoption, for children and young persons in these circumstances.

* Amended in committee—see table at end of volume.

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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 on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Children and Young Persons (Care and Protection) Act 1998* set out in Schedule 1.

Schedule 1 Amendments

Principles to be applied in the administration of the Act

Schedule 1 [2] amends section 9 of the Act to reinforce the principle that, in the administration of the Act, the safety, welfare and well-being of the child or young person must be the paramount consideration. It provides that, in particular, the safety, welfare and well-being of a child or young person who has been removed from his or her parents are paramount over the rights of the parents.

Schedule 1 [1] and **[9]** make consequential amendments.

Schedule 1 [3] amends section 9 of the Act to include principles relating to the appropriate placement of a child or young person in a planned permanent arrangement and the entitlement of a child or young person who is placed in out-of-home care to a safe, nurturing, stable and secure environment.

Schedule 1 [4] amends the principles, contained in section 13 of the Act, relating to the placement of a child or young person who is an Aboriginal or Torres Strait Islander in the care of a person who is not an Aboriginal or Torres Strait Islander. The requirement that continuing contact must be ensured between the child or young person and his or her Aboriginal or Torres Strait Islander family, community and culture is replaced with a requirement that all reasonable efforts must be made to ensure such continuing contact.

Care orders

Schedule 1 [7] adds to the grounds on which the Children's Court may make a care order under section 71 of the Act the ground that the parents are incapable of providing a nurturing, stable and secure environment for the child or young person.

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Schedule 1 [13] amends section 90 of the Act to add further requirements that are to be satisfied before the Children's Court may grant leave to an application for the rescission or variation of a care order. The additional grounds are that the application has substantial merit, and that the rescission or variation of the care order is likely to be in the best interests of the safety, welfare and well-being of the child or young person.

Care plans and monitoring by Children's Court of orders concerning parental responsibility

Schedule 1 [8] amends section 78 of the Act to introduce a requirement that a care plan must assess the possibility and benefits of the permanent placement of the child or young person to whom it relates, including the earliest time at which a permanent placement could reasonably be made. The assessment is to have regard solely to the circumstances of the child or young person preceding the time the care plan is presented to the Children's Court. A recommendation for permanent placement may address the possibility of an application being made for the adoption of the child or young person under the *Adoption of Children Act 1965*. If a permanent placement is not recommended, the care plan must include full reasons why it is not recommended.

Schedule 1 [10] amends section 82 of the Act to introduce the same requirements in relation to written reports ordered by the Children's Court in monitoring arrangements for the care and protection of a child or young person after an order has been made that allocates or re-allocates parental responsibility for the child or young person.

Restoration plans

Schedule 1 [11] substitutes section 83 of the Act relating to the preparation of restoration plans. Before a final care order is made in a case concerning a child or young person that is before the Children's Court, the Court must make a determination (in accordance with the principles set out in section 9 of the Act) whether there is a realistic possibility, having regard solely to the circumstances of the child or young person preceding the making of the order and such factors as may be specified by the regulations, of the child or young person being restored to his or her parents. If there is such a possibility, the Director-General is to prepare a restoration plan and submit it to the Court for its consideration. If there is not such a possibility, the Director-General is to prepare a plan for another form of permanent placement for the child or young person and submit it to the Court for its consideration. In preparing such a plan, the Director-General is to consider

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whether or not to support an application for the adoption of the child or young person.

Schedule 1 [12] inserts proposed section 85A into the Act. The proposed section requires the review of a restoration plan in order to determine whether its provisions should be changed, particularly with respect to the length of time during which restoration should be actively pursued, whether arrangements should be made for the permanent placement of the child or young person to whom the plan relates, and whether any consequential application should be made for a care order or for the rescission or variation of a care order.

Expedition of Children's Court proceedings and adjournments

Schedule 1 [14] and **[15]** amend section 94 of the Act to reinforce the principle that all matters before the Children's Court are to proceed as expeditiously as possible. It is provided that the Children's Court must avoid the making of interim orders if it is reasonably likely that a matter could be concluded with greater certainty or with greater expedition, or both, if such an order were not made. It is also provided that the Children's Court should avoid the granting of adjournments to the maximum extent possible and must not grant an adjournment unless it is of the opinion that the adjournment is necessary to ensure the safety, welfare and well-being of the child or young person who is the subject of the proceedings before it.

Schedule 1 [5] and **[6]** make complementary amendments in relation to interim care orders under section 69 of the Act and other interim orders under section 70 of the Act.

Disclosure of information concerning authorised carers to parents

Schedule 1 [16] substitutes section 148 of the Act. Under the section as substituted, the Children's Guardian is authorised to approve the withholding of information from the parents of the child or young person concerning his or her placement in out-of-home care in an additional circumstance, namely, that there are reasonable grounds for believing that the stability of the placement of the child or young person could be adversely affected by the behaviour of his or her parents. Furthermore, it is made an offence, punishable with a maximum penalty of 200 penalty units, for a person (including the designated agency responsible for the placement of a child or young person in out-of-home care with an authorised carer and the Children's Guardian) to provide to the parents of the child or young person, during the first 6 months of the placement, except with the consent of the authorised carer, any information concerning the authorised carer that will identify, or may lead to the identification of, the authorised carer or any person associated with the authorised carer, or the authorised carer's whereabouts.

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Order for sole parental responsibility

Schedule 1 [17]–[19] amend section 149 of the Act. The amendments will enable the authorised carer of a child or young person to apply for the sole parental responsibility of the child or young person at any time with the consent of the person (other than the Minister) who last had that responsibility, or to make such an application after 2 years without having to obtain that consent.

Review of amendments

Schedule 1 [20] inserts proposed section 266 into the Act. The proposed section requires a review to be made of the policy objectives and effect of the amendments made by the proposed Act. The review is to be made not later than 5 years after the commencement of the amendments. A report is to be made of the outcome of the review and the Minister is to table the report, or cause it to be tabled, in each House of Parliament within 3 months after it is received by the Minister.

Savings and transitional provisions

Schedule 1 [21] extends the power to make regulations of a savings or transitional nature to permit such regulations to be made as a consequence of the enactment of the proposed Act.