



New South Wales

Children and Young Persons (Care and Protection) Amendment (Family is Culture) Bill 2022

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 (the Act)* to provide for the reforms outlined in section one of the Government’s consultation findings report titled “Family is Culture—Legislative Recommendations”, prepared in response to particular recommendations in the Final Report of the Family is Culture: Independent Review into Aboriginal and Torres Strait Islander Children and Young People in Out-of-Home Care in New South Wales.

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 the Children and Young Persons (Care and Protection) Act 1998 No 157

Requirement to make active efforts

Schedule 1[2] inserts proposed section 9A to require the Secretary to act in accordance with the *principle of active efforts* in exercising functions under the Act. The principle of active efforts means—

- (a) in taking action to safeguard or promote the safety, welfare and well-being of a children or young person—making active efforts to prevent the child or young person from entering out-of-home care, and
- (b) for a child or young person who has been removed from the child’s or young person’s parents or families—
 - (i) making active efforts to restore the child or young person to the child’s or young person’s parents, or
 - (ii) for a child or young person for whom it is not practicable or in the child’s or young person’s best interests to be restored to their parents—to place the child or young person with family, kin or community.

Schedule 1[8] substitutes section 63 to require the Secretary to provide evidence to the Children’s Court of the following matters when making a care application in relation to a child or young person—

- (a) the active efforts made by the Secretary, in accordance with the principle of active efforts, before the application was made and the reasons the active efforts were unsuccessful,
- (b) the alternatives to a care order that were considered by the Secretary before the application was made and the reasons the alternatives were not considered appropriate.

Additional permanent placement principles

Schedule 1[3] amends section 10A(3) to clarify that the second preference for permanent placement of a child or young person is to be placed with a relative, kin or other suitable person, in accordance with a guardianship order made under section 79A(2).

Schedule 1[4] amends section 10A to provide an additional permanent placement principle that, if it is not practicable or in the best interests of the child or young person to be restored to the care of the child’s or young person’s parent or parents, or placed with a relative, kin or other suitable person in accordance with a guardianship order, the next preference is placement with a suitable person or persons jointly in accordance with an order made under the Act, section 79(1)(f), with the support of the Secretary under the Act, section 153(1) or the financial assistance of the Secretary under section 161(1).

Schedule 1[5] and [6] make consequential amendments.

Aboriginal and Torres Strait Islander Children and Young Persons Principle

Schedule 1[7] inserts proposed section 12A, which sets out the *Aboriginal and Torres Strait Islander Children and Young Persons Principle* and provides the elements decision makers must apply when making decisions in relation to a matter involving an Aboriginal or Torres Strait Islander child or young person. The principle reflects the substance of the Aboriginal and Torres Strait Islander Child Placement Principle as published by SNAICC – National Voice for our Children, and comprises the following 5 elements—

- (a) **prevention**—recognising that a child or young person has a right to be brought up within the child’s or young person’s own family, community and culture,
- (b) **partnership**—recognising that Aboriginal and Torres Strait Islander community representatives should participate in the design and delivery of services for children and young persons and in individual decisions about children and young persons,
- (c) **placement**—recognising that, if a child is to be placed in out-of-home care, the child’s placement is to be in accordance with the placement principles for Aboriginal and Torres Strait Islander children and young persons in the Act, section 13,
- (d) **participation**—recognising that a child or young person, and the child’s or young person’s parents and family members, should participate in decisions about the care and protection of the child or young person,
- (e) **connection**—recognising that a child or young person has a right to be supported to maintain connections to family, community, culture and country.

Care plans

Schedule 1[9] amends section 78 to insert additional requirements for a care plan made for an Aboriginal or Torres Strait Islander child or young person for the purposes of an application by the Secretary to the Children's Court for an order, other than an emergency protection order, for the removal of a child or young person from the care of the child's or young person's parents. The additional requirements relate to—

- (a) the preparation of a cultural plan for the child or young person, and
- (b) consultation with the child or young person, their parents, family and kin, and relevant Aboriginal and Torres Strait Islander organisations or entities for the child or young person when preparing the plan, and
- (c) addressing how the plan complies with the permanent placement principles, the Aboriginal and Torres Strait Islander Children and Young Persons Principle and the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles. **Schedule 1[10]** makes a consequential amendment.

Additional requirements for permanency planning

Schedule 1[11] inserts proposed section 79AA, which sets out the matters to which the Children's Court may have regard when deciding whether there are special circumstances that warrant the allocation of parental responsibility to the Minister for more than 24 months.

Schedule 1[12] inserts proposed section 83(3A) to provide that the Secretary assesses that there is not a realistic possibility of restoring the child or young person to the child or young person's parents within a reasonable period, the Secretary must include the following in the permanency plan prepared for the child or young person—

- (a) the reasons for the Secretary's assessment,
- (b) details of the active efforts the Secretary has made to restore the child or young person to the child's or young person's parents, or to place the child or young person with family, kin or community.

Schedule 1[13] amends section 83 to provide that, for the purposes of section 83(5A), before deciding whether to accept the Secretary's assessment of whether or not there is a realistic possibility of restoring the child or young person to the child or young person's parents within a reasonable period, the Children's Court may direct the Secretary to provide the Court with—

- (a) the reasons for the Secretary's assessment, and
- (b) evidence of the active efforts the Secretary has made to restore the child or young person to the child's or young person's parents, or to place the child or young person with family or community.

Schedule 1[15] substitutes section 83(8A) to enable the Secretary to make an assessment that there is a realistic possibility of restoring a child or young person to the child or young person's parents within a period that is longer than 24 months if the Secretary is satisfied that, having regard to any matters prescribed by the regulations, there are exceptional circumstances that warrant the longer period.

Schedule 1[16] inserts proposed section 83A, which sets out, in addition to the requirements in section 83, requirements for the preparation of a permanency plan for an Aboriginal or Torres Strait Islander child or young person. **Schedule 1[14]** makes a consequential amendment.

Making of orders that have a significant impact on persons

Schedule 1[17] amends section 87 to provide that, for the purposes of hearing from a group significantly impacted by a proposed order, if the affected group is an Aboriginal or Torres Strait Islander family or community, the representative or representatives of the group may be a member or members of a relevant Aboriginal or Torres Strait Islander organisation or entity for the child or young person.

General nature of proceedings

Schedule 1[18] amends section 93(3) to require the Children's Court to consider the requirements set out in section 93(1) and (2) before determining whether the rules of evidence, or certain rules of evidence specified by the Children's Court, are to apply to proceedings or parts of proceedings before the Children's Court.

Schedule 1[19] inserts proposed section 93(3A) to enable the Children's Court, on application by a party to the proceedings, to apply the rules of evidence, or certain rules of evidence, in relation to the proof of a fact if, in the Court's opinion, proof of the fact is, or will be, significant to the determination of the proceedings.

Miscellaneous

Schedule 1[1] inserts definitions of *Aboriginal and Torres Strait Islander Children and Young Persons Principle, entity, exercise, function* and *principle of active efforts* for the Act.

Schedules 1[20] and [21] amend section 106A to remove a rebuttable presumption that a child or young person is in need of care and protection if another child or young person has previously been removed from the care and protection of the parent. Evidence of the fact will remain admissible in the proceedings.

Schedule 1[22] amends section 245 to provide for additional decisions that are administratively reviewable by the Civil and Administrative Tribunal.

Schedule 1[23] enables the regulations to make provision for or with respect to processes to be used when identifying children and young persons as Aboriginal or Torres Strait Islander persons for the purposes of administering the Act.

Schedule 1[24] requires the Minister to review the Act to determine whether the policy objectives of the amendments made by the proposed Act remain valid and the amended provisions of the Act remain appropriate for achieving those objectives.

Schedule 1[25] provides for transitional matters.

Schedule 2 Amendment of other legislation

Advocate for Children and Young People Act 2014 No 29

Schedule 2.1 amends section 37(1) of the *Advocate for Children and Young People Act 2014* to add an additional function for the Committee on Children and Young People to monitor and review the exercise by the Children's Guardian of functions under the *Children's Guardian Act 2019* in relation to out-of-home care.

Children (Protection and Parental Responsibility) Act 1997 No 78

Schedule 2.2 substitutes the *Children (Protection and Parental Responsibility) Act 1997*, section 7 to set out that a court exercising criminal jurisdiction in relation to a child may require the attendance of certain persons at the place at which the proceedings are being or are to be conducted.

Ombudsman Act 1974 No 68

Schedule 2.3 inserts proposed section 13(6) into the *Ombudsman Act 1974* to provide that the Ombudsman may investigate or continue to investigate the conduct of a public authority even if the conduct is, or is likely to become, the subject of court or other proceedings, unless the Ombudsman considers the investigation is likely to adversely affect the proceedings or potential proceedings.



New South Wales

Children and Young Persons (Care and Protection) Amendment (Family is Culture) Bill 2022

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New South Wales

Children and Young Persons (Care and Protection) Amendment (Family is Culture) Bill 2022

No. , 2022

A Bill for

An Act to amend the *Children and Young Persons (Care and Protection) Act 1998* to provide for matters arising from particular recommendations of the Final Report of the Family is Culture: Independent Review into Aboriginal and Torres Strait Islander Children and Young People in Out-of-Home Care in New South Wales; and to amend the *Advocate for Children and Young People Act 2014*, the *Children (Protection and Parental Responsibility) Act 1997* and the *Ombudsman Act 1974* for related purposes.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Children and Young Persons (Care and Protection) Amendment (Family is Culture) Act 2022*.

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2 Commencement

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This Act commences as follows—

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- (a) for Schedule 1[1], to the extent that it inserts the definitions of ***exercise, function*** and ***principle of active efforts***, [2], [8]–[16], [22], [24] and [25]—on a day or days to be appointed by proclamation,
- (b) otherwise—on the date of assent to this Act.

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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 Children and Young Persons Principle</i> —see section 12A(1).	5 6
	<i>entity</i> includes—	7
	(a) a person, and	8
	(b) an unincorporated body.	9
	<i>exercise</i> a function includes perform a duty.	10
	<i>function</i> includes—	11
	(a) a power, and	12
	(b) an authority, and	13
	(c) a duty.	14
	<i>principle of active efforts</i> —see section 9A.	15
[2] Section 9A		16
	Insert after section 9—	17
9A Principle of making “active efforts”		18
(1)	The Secretary must act in accordance with the principle of active efforts in exercising functions under this Act.	19 20
(2)	The <i>principle of active efforts</i> means—	21
	(a) in taking action to safeguard or promote the safety, welfare and well-being of a child or young person—making active efforts to prevent the child or young person from entering out-of-home care, and	22 23 24
	(b) for a child and young person who has been removed from the child’s or young person’s parents or family—	25 26
	(i) making active efforts to restore the child or young person to the child’s or young person’s parents, or	27 28
	(ii) for a child or young person for whom it is not practicable or in the child’s or young person’s best interests to be restored to the child’s or young person’s parents—to place the child or young person with family, kin or community.	29 30 31 32
	Note — See the permanent placement principles in section 10A and the placement principles for Aboriginal and Torres Strait Islander children and young persons in section 13.	33 34 35
(3)	Under the principle of active efforts, the Secretary must also ensure active efforts are—	36 37
	(a) timely, and	38
	(b) practicable, and	39
	(c) aimed at addressing the grounds on which the child or young person is considered to be in need of care and protection, and	40 41
	(d) to the greatest extent practicable—	42
	(i) conducted in partnership with the child or young person and the family, kin and community of the child or young person, and	43 44

(ii)	culturally appropriate, and	1
(e)	otherwise in accordance with any requirements prescribed by the regulations.	2 3
(4)	Without limiting subsections (1)–(3), active efforts include—	4
(a)	providing, facilitating or assisting with access to support services and other resources, and	5 6
(b)	if appropriate services or resources do not exist or are not available— considering alternative ways of addressing the relevant needs of the child or young person and the family, kin or community of the child or young person, and	7 8 9 10
(c)	activities directed at finding and contacting the family, kin and community of the child or young person, and	11 12
(d)	the use of any of the following—	13
(i)	a parent responsibility contract,	14
(ii)	a parent capacity order,	15
(iii)	a temporary care arrangement under Chapter 8, Part 3, Division 1,	16 17
(iv)	alternative dispute resolution under section 37, and	18
(e)	another matter, activity or action prescribed by the regulations.	19
(5)	To avoid doubt, this section is subject to the requirement under section 9(1) that this Act is to be administered under the principle that, in any action or decision concerning a particular child or young person, the safety, welfare and well-being of the child or young person are paramount.	20 21 22 23
[3]	Section 10A Permanent placement principles	24
	Omit “guardianship of a relative, kin or other suitable person” from section 10A(3)(b).	25
	Insert instead “with a relative, kin or other suitable person in accordance with a guardianship order”.	26 27
[4]	Section 10A(3)(b1)	28
	Insert after section 10A(3)(b)—	29
(b1)	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 placement with a suitable person or persons jointly in accordance with an order made under section 79(1)(f), with the support of the Secretary under section 153(1) or financial assistance of the Secretary under section 161(1),	30 31 32 33 34 35
[5]	Section 10A(3)(c)	36
	Omit “or (b)”. Insert instead “, (b) or (b1)”.	37
[6]	Section 10A(3)(d) and (e)	38
	Insert “, (b1)” after “(b)” wherever occurring.	39
[7]	Section 12A	40
	Insert after section 12—	41

12A	Aboriginal and Torres Strait Islander Children and Young Persons Principle	1
(1)	This section sets out the <i>Aboriginal and Torres Strait Islander Children and Young Persons Principle</i> , which applies to the administration of this Act in relation to Aboriginal and Torres Strait Islander children and young persons.	2 3 4
(2)	The Aboriginal and Torres Strait Islander Children and Young Persons Principle consists of the following 5 elements—	5 6
(a)	<i>prevention</i> —recognising that a child or young person has a right to be brought up within the child’s or young person’s own family, community and culture,	7 8 9
(b)	<i>partnership</i> —recognising that Aboriginal and Torres Strait Islander community representatives should participate in the design and delivery of services for children and young persons and in individual decisions about children and young persons,	10 11 12 13
(c)	<i>placement</i> —recognising that, if a child is to be placed in out-of-home care, the child’s placement is to be in accordance with the placement principles for Aboriginal and Torres Strait Islander children and young persons in section 13,	14 15 16 17
(d)	<i>participation</i> —recognising that a child or young person, and the child’s or young person’s parents and family members, should participate in decisions about the care and protection of the child or young person,	18 19 20
(e)	<i>connection</i> —recognising that a child or young person has a right to be supported to maintain connections to family, community, culture and country.	21 22 23
(3)	In making a decision under this Act in relation to a matter involving an Aboriginal or Torres Strait Islander child or young person, a decision maker must apply each of the elements of the Aboriginal and Torres Strait Islander Children and Young Persons Principle that are relevant to the decision being made.	24 25 26 27 28
[8]	Section 63	29
	Omit the section. Insert instead—	30
63	Evidence of active efforts to take alternative action	31
(1)	When making a care application in relation to a child or young person, the Secretary must provide evidence to the Children’s Court of the following—	32 33
(a)	the active efforts made by the Secretary, in accordance with the principle of active efforts, before the application was made and the reasons the active efforts were unsuccessful,	34 35 36
(b)	the alternatives to a care order that were considered by the Secretary before the application was made and the reasons the alternatives were not considered appropriate.	37 38 39
(2)	Without limiting subsection (1), the Secretary must provide evidence that, before making the care application, active efforts were made to—	40 41
(a)	provide, facilitate or assist with support for the safety, welfare and well-being of the child or young person, including support for the parents of the child or young person, and	42 43 44
(b)	consider any of the following actions that are relevant—	45
(i)	a parent responsibility contract,	46
(ii)	a parent capacity order,	47

(iii)	a temporary care arrangement under Chapter 8, Part 3, Division 1,	1
(iv)	an alternative dispute resolution process under section 37.	2
(3)	Subsections (1)(a) and (2) do not apply in relation to a care application that is seeking an emergency care and protection order.	3
(4)	The Children’s Court may adjourn proceedings if the Court is not satisfied with the evidence provided by the Secretary under subsection (1).	4
	Note— See also sections 69 and 70, which provide that the Children’s Court may make interim care orders in relation to a child or young person and any other interim orders the Children’s Court considers appropriate for the safety, welfare and well-being of a child or young person pending the conclusion of the proceedings, including less intrusive interim orders.	5
(5)	The Children’s Court must not take either of the following actions merely because, in the Court’s opinion, an appropriate alternative action that could have been taken in relation to the child or young person was not considered or taken—	6
(a)	dismiss a care application in relation to the child or young person,	7
(b)	discharge the child or young person from the care responsibility of the Secretary.	8
[9] Section 78 Care plans		9
	Insert after section 78(2)—	10
(2A)	If the care plan is for an Aboriginal or Torres Strait Islander child or young person, the plan must also—	11
(a)	include a cultural plan that sets out how the following will be maintained and developed—	12
(i)	the child’s or young person’s connection with their Aboriginal or Torres Strait Islander family and community,	13
(ii)	the child’s or young person’s Aboriginal or Torres Strait Islander identity, and	14
(b)	be developed, to the greatest extent practicable, in consultation with—	15
(i)	the child or young person, and	16
(ii)	the parents, family and kin of the child or young person, and	17
(iii)	relevant Aboriginal or Torres Strait Islander organisations or entities for the child or young person, and	18
(c)	address how the plan has complied with the following—	19
(i)	the permanent placement principles,	20
(ii)	the Aboriginal and Torres Strait Islander Children and Young Persons Principle,	21
(iii)	the placement principles for Aboriginal and Torres Strait Islander children and young persons set out in section 13.	22
[10] Section 78A Permanency planning		23
	Omit section 78A(3).	24
[11] Section 79AA		25
	Insert after section 79—	26

79AA	Special circumstances that warrant allocation of parental responsibilities to Minister for more than 24 months	1
		2
(1)	This section applies if the Children’s Court is deciding, under section 79(10), whether or not there are special circumstances that warrant the allocation of parental responsibility to the Minister for a period of more than 24 months.	3
		4
		5
(2)	Without limiting the matters to which the Children’s Court may have regard in making its decision, the Court may have regard to the following—	6
		7
(a)	whether support services and other resources that are reasonably required to support the restoration of the child or young person to the child’s or young person’s parents are available to the parents,	8
		9
		10
(b)	if the services and other resources mentioned in paragraph (a) are not available at the time the Court is making its decision—whether a longer period of allocation of parental responsibility to the Minister is needed to facilitate access to the services or other resources,	11
		12
		13
		14
(c)	the active efforts made by the Secretary to restore the child or young person to the child’s or young person’s parents,	15
		16
(d)	any other matters prescribed by the regulations.	17
		17
[12]	Section 83 Preparation of permanency plan	18
	Insert after section 83(3)—	19
(3A)	A permanency plan prepared under subsection (3) must include the following—	20
		21
(a)	the reasons for the Secretary’s assessment that there is not a realistic possibility of restoration within a reasonable period, and	22
		23
(b)	details of the active efforts the Secretary has made to—	24
(i)	restore the child or young person to the child’s or young person’s parents, or	25
		26
(ii)	if restoration to the child’s or young person’s parents is not practicable or in the best interests of the child or young person—place the child or young person with family, kin or community.	27
		28
		29
[13]	Section 83(5B)	30
	Insert after section 83(5A)—	31
(5B)	Before deciding whether to accept the Secretary’s assessment of whether or not there is a realistic possibility of restoration within a reasonable period, the Children’s Court may direct the Secretary to provide the Court with—	32
		33
		34
(a)	the reasons for the Secretary’s assessment that there is not a realistic possibility of restoration within a reasonable period, and	35
		36
(b)	evidence of the active efforts the Secretary has made to—	37
(i)	restore the child or young person to the child’s or young person’s parents, or	38
		39
(ii)	if restoration to the child’s or young person’s parents is not practicable or in the best interests of the child or young person—place the child or young person with family, kin or community.	40
		41
		42
[14]	Section 83(7) note	43
	Insert at the end of section 83(7)—	44

	Note— Section 83A(3) provides additional matters about which the Children’s Court must make express findings before making a final care order in relation to an Aboriginal or Torres Strait Islander child or young person.	1 2 3
[15]	Section 83(8A)	4
	Omit section 83(8A). Insert instead—	5
	(8A) For the purposes of this section, a <i>reasonable period</i> must not exceed 24 months unless the Secretary is satisfied, having regard to any matters prescribed by the regulations, there are exceptional circumstances that warrant a longer period.	6 7 8 9
[16]	Section 83A	10
	Insert after section 83—	11
83A	Additional requirements for permanency plans for Aboriginal and Torres Strait Islander children and young persons	12 13
	(1) This section sets out requirements for the preparation of a permanency plan for an Aboriginal or Torres Strait Islander child or young person that are in addition to the requirements set out in section 83.	14 15 16
	(2) If the Secretary assesses, under section 83(3), that there is not a realistic possibility of restoring a child or young person to the child’s or young person’s parents within a reasonable period, the Secretary must—	17 18 19
	(a) include in the permanency plan evidence of the active efforts made, in accordance with the principle of active efforts, to determine whether the child or young person can be placed with any of the following, in accordance with the principle for the general order for placement of Aboriginal and Torres Strait Islander children and young persons under section 13(1)—	20 21 22 23 24 25
	(i) a relative,	26
	(ii) a member of kin or community,	27
	(iii) another suitable person, and	28
	(b) include in the permanency plan—	29
	(i) a recommendation that the child or young person be placed with a relative, member of kin or community or other suitable person identified under paragraph (a), or	30 31 32
	(ii) a recommendation that the child or young person not be placed with a relative, member of kin or community or other suitable person and the reasons for the recommendation.	33 34 35
	(3) After considering a permanency plan for an Aboriginal or Torres Strait Islander child or young person, the Children’s Court must not make a final care order unless it expressly finds—	36 37 38
	(a) the plan complies with the following—	39
	(i) the permanent placement principles,	40
	(ii) the Aboriginal and Torres Strait Islander Children and Young Persons Principle,	41 42
	(iii) the placement principles for Aboriginal and Torres Strait Islander children and young persons set out in section 13, and	43 44
	(b) the plan includes a cultural plan that sets out how the following will be maintained and developed—	45 46

	(i) the child’s or young person’s connection with the child’s or young person’s Aboriginal or Torres Strait Islander family and the Aboriginal or Torres Strait Islander community of the child or young person,	1 2 3 4
	(ii) the child’s or young person’s Aboriginal or Torres Strait Islander identity, and	5 6
	(c) the plan has been developed, to the greatest extent practicable, in consultation with—	7 8
	(i) the child or young person, and	9
	(ii) the parents, family and kin of the child or young person, and	10
	(iii) relevant Aboriginal or Torres Strait Islander organisations or entities for the child or young person.	11 12
[17]	Section 87 Making of orders that have a significant impact on persons	13
	Insert after section 87(2)—	14
	(2A) For subsection (2), if the group affected is an Aboriginal or Torres Strait Islander family or community, the representative or representatives of the group approved by the Court may be a member of a relevant Aboriginal or Torres Strait Islander organisation or entity for the child or young person.	15 16 17 18
[18]	Section 93 General nature of proceedings	19
	Insert “, and subject to subsections (1) and (2),” after “proceedings before it” in section 93(3).	20 21
[19]	Section 93(3A)	22
	Insert after section 93(3)—	23
	(3A) Without limiting subsection (3), the Children’s Court may determine that the rules of evidence or certain rules of evidence are to apply in relation to proceedings or parts of proceedings if—	24 25 26
	(a) a party to the proceedings applies to the Court for the rules of evidence or certain rules of evidence to apply in relation to the proof of a fact, and	27 28
	(b) in the Court’s opinion, proof of that fact is or will be significant to the determination of the proceedings or parts of the proceedings.	29 30
[20]	Section 106A Admissibility of certain other evidence	31
	Omit “subsection (1)” from section 106A(2). Insert instead “subsection (1)(b)”.	32
[21]	Section 106A(3)	33
	Omit the subsection. Insert instead—	34
	(3) A parent or primary care-giver in relation to whom evidence referred to in subsection (1)(b) has been adduced may rebut the prima facie evidence referred to in subsection (2) by satisfying the Children’s Court that, on the balance of probabilities, the parent or primary care-giver was not involved in causing the relevant reviewable death of the child or young person.	35 36 37 38 39
[22]	Section 245 Decisions that are administratively reviewable by Civil and Administrative Tribunal	40 41
	Omit section 245(1)(a) and (a1). Insert instead—	42
	(a) a decision of the relevant decision-maker not to authorise a person as an authorised carer, other than the following decisions—	43 44

(i)	a decision not to authorise a person as a residential care worker,	1
(ii)	a decision not to authorise a person who—	2
(A)	has been granted an authorisation as an authorised carer on a provisional basis, and	3
(B)	had not, at the time the authorisation took effect, made an application but was taken under the regulations to have made an application,	4
		5
		6
		7
	Note— See the <i>Children and Young Persons (Care and Protection) Regulation 2022</i> , section 21(2).	8
		9
(a1)	a decision of the relevant decision-maker to—	10
(i)	suspend a person’s authorisation as an authorised carer, or	11
(ii)	impose conditions on a person’s authorisation as an authorised carer,	12
		13
(b)	a decision of the relevant decision-maker to cancel a person’s authorisation as an authorised carer, other than a decision to—	14
(i)	cancel an authorisation granted on a provisional basis, or	15
(ii)	cancel an authorisation on the occurrence of an event prescribed under section 137(2)(e),	16
		17
		18
[23]	Section 264 Regulations	19
	Insert after section 264(1A)(b)—	20
(b1)	processes to be used when identifying children and young persons as Aboriginal or Torres Strait Islander persons for the purposes of administering this Act,	21
		22
		23
[24]	Section 265	24
	Omit the section. Insert instead—	25
265	Review of particular amendments to Act	26
(1)	The Minister is to review this Act to determine whether—	27
(a)	the policy objectives of the amendments made by the amending Act remain valid, and	28
		29
(b)	the terms of the Act remain appropriate for achieving the policy objectives of the amendments made by the amending Act.	30
		31
(2)	The review is to be undertaken as soon as practicable after the period of 12 months from the commencement of this section (the review period).	32
		33
(3)	A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the review period.	34
		35
(4)	In this section—	36
	amending Act means the <i>Children and Young Persons (Care and Protection) Amendment (Family is Culture) Act 2022</i> .	37
		38
[25]	Schedule 3 Savings, transitional and other provisions	39
	Insert at the end of the Schedule—	40

Part 14	Provision consequent on enactment of Children and Young Persons (Care and Protection) Amendment (Family is Culture) Act 2022	1
		2
		3
57	Existing care applications	4
(1)	This clause applies to a care application made, but not finally determined before the commencement of this clause.	5 6
(2)	To avoid doubt, the following sections of the Act, as inserted or amended by the amending Act, apply only in relation to the determination of care applications made by the Secretary on or after the commencement of this clause—	7 8 9 10
	(a) section 9A,	11
	(b) section 63,	12
	(c) section 78,	13
	(d) section 78A,	14
	(e) section 79AA,	15
	(f) section 83,	16
	(g) section 83A.	17
(3)	In this clause—	18
	<i>amending Act</i> means the <i>Children and Young Persons (Care and Protection) Amendment (Family is Culture) Act 2022</i> .	19 20

Schedule 2	Amendment of other legislation	1
2.1	Advocate for Children and Young People Act 2014 No 29	2
	Section 37 Functions of Committee	3
	Insert at the end of section 37(1)(b)(ii)—	4
	or	5
	(iii) the <i>Children’s Guardian Act 2019</i> in relation to out-of-home care,	6
		7
2.2	Children (Protection and Parental Responsibility) Act 1997 No 78	8
	Section 7	9
	Omit the section. Insert instead—	10
	7 Attendance of parents and other persons at proceedings	11
	(1) A court exercising criminal jurisdiction in relation to a child may require the attendance, at the place at which the proceedings are being or are to be conducted, of—	12
		13
		14
	(a) one or more of the child’s parents, or	15
	(b) if the child is in statutory out-of-home care under which the Minister has parental responsibility for the child—	16
		17
	(i) the Minister, or	18
	(ii) a representative of the Minister, including an officer or employee of a designated agency, or	19
		20
	(c) if the child is in statutory out-of-home care under which the Secretary has parental responsibility for the child—	21
		22
	(i) the Secretary, or	23
	(ii) a representative of the Secretary, including an officer or employee of a designated agency.	24
		25
	(2) For subsection (1)(a), the court may specify which parent or parents are to attend.	26
		27
	(3) In this section—	28
	<i>designated agency</i> has the same meaning as in the <i>Children’s Guardian Act 2019</i> .	29
		30

2.3 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 or continue to investigate conduct even if the conduct is or is likely to become the subject of court or other proceedings, unless the Ombudsman considers the investigation is likely to adversely affect the proceedings or potential proceedings.

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