

[Act 2001 No 91]



New South Wales

# Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill 2001 (No 2)

## 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. The amendments made by the Bill will require the planning of suitable long term placements for children and young persons in these circumstances.

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\* 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* (**the Act**) set out in Schedule 1.

## Schedule 1 Amendments

### Principles to be applied in the administration of the Act

**Schedule 1 [3]** 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 [10]** makes a consequential amendment.

**Schedule 1 [4]** 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, the entitlement of a child or young person who is placed in out-of-home care to a safe, nurturing, stable and secure environment, and the importance of making a placement, particularly in the case of a younger child, in a timely manner.

### Care orders

**Schedule 1 [6]** 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 do not have the capacity to meet the developmental needs of the child or young person.

**Schedule 1 [7]** provides that, in determining the incapacity of a parent for the purposes of section 71 of the Act, incapacity is not to be presumed only because the parent has a physical or intellectual disability, and an opioid or alcohol dependency should not be considered a physical or intellectual disability.

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**Schedule 1 [15]** amends section 90 of the Act to add a further requirement that is 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 ground is 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.

Permanent placement is dealt with in a definition of *permanency planning* which is inserted in the Act as proposed 78A by **Schedule 1 [9]**. *Permanency planning* means the making of a plan that aims to provide a child or young person with a stable and emotionally secure long term placement that meets the needs of the child or young person and that has the following characteristics:

- (a) an intent by significant people in the life of the child or young person to have the home last indefinitely,
- (b) a continuity of relationships, including a commitment by the carers of the child or young person:
  - (i) in relationships with the child or young person, and
  - (ii) to the best interests of the safety, welfare and well-being of the child or young person,
- (c) a legal status, provided by means which may include (but which are not limited to) orders for parental responsibility and orders for adoption, that connects the family members and promotes a long-term sense of belonging.

Long-term placement requires a particular appreciation of the appropriate long-term care option for a child or young person according to his or her particular needs by means, for example, of restoration to the birth parents or a birth parent, remaining with an authorised carer, a sole parental responsibility order, kinship care, out-of-home care or adoption.

**Schedule 1 [11]** amends section 82 of the Act to introduce the same requirement 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.

**Schedule 1 [1]** makes a consequential amendment.

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### **Permanency plans involving restoration**

**Schedule 1 [12]** substitutes section 83 of the Act relating to the preparation of permanency plans involving restoration. 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 permanency plan involving restoration 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 suitable long-term placement for the child or young person and submit it to the Court for its consideration. In preparing such a plan, the Director-General may consider whether adoption is the preferred option for the child or young person. An appeal cannot be made against a determination of the Children's Court under the proposed section.

**Schedule 1 [14]** inserts proposed section 85A into the Act. The proposed section requires the review of a permanency plan involving restoration 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.

**Schedule 1 [2], [13], [19] and [20]** make consequential amendments.

### **Expedition of Children's Court proceedings and adjournments**

**Schedule 1 [16] and [17]** 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 seek to move expeditiously to the making of a final decision concerning the long-term placement of a child or young person. 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, or because of some other cogent or substantial reason.

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**Schedule 1 [5]** makes a complementary amendment in relation to interim care orders by inserting proposed section 70A into the Act. The proposed section provides that the Children's Court should generally seek to avoid the making of interim orders.

#### **Order for parental responsibility**

**Schedule 1 [18]** substitutes section 149 of the Act. The proposed section enables an authorised carer who, for a continuous period of not less than 2 years, has had the care of a child or young person for whom the Minister has parental responsibility to apply for the parental responsibility of the child or young person. An application requires the consent of the persons who had parental responsibility immediately before it was allocated to the Minister. An application also requires the consent of the child, if the child is not less than 12 years of age, or the young person. A child who is less than 12 years of age is required to be notified of the application.

#### **Review of amendments**

**Schedule 1 [21]** 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 [22]** 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.