



New South Wales

Children and Young Persons (Care and Protection) Amendment (Auditing of Out-of-Home Care Providers) Bill 2017

Explanatory note

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

Overview of Bill

The object of this Bill is to require the Auditor-General to conduct performance audits of non-government agencies that receive State government funding to arrange for children or young persons to be placed in out-of-home care.

The following are the features of the proposed scheme:

- (a) The Minister is required to ensure that the Auditor-General conducts performance audits of the exercise of publicly funded placement functions under an agreement between the Department of Family and Community Services and a designated agency that is a non-government body.
- (b) The Auditor-General is required to conduct such audits and report to the Minister before the agreement under which they are provided is renewed or, if the agreement is not renewed, within 3 months after the relevant agreement ends.
- (c) The Minister is required to table any such report in Parliament.
- (d) The Auditor-General and certain authorised persons may require information in relation to a performance audit and it is an offence to fail to comply with such a requirement.
- (e) Non-government designated agencies are required to pay the costs of any audit of their functions.
- (f) An agreement with a non-government designated agency for the provision of publicly funded placement functions cannot be renewed unless the exercise of the functions has been audited and the Auditor-General's report has been considered by the Secretary.

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 the date of assent to the proposed Act.

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

Schedule 1 [1] inserts a note about the proposed provisions.

Schedule 1 [2] inserts a new Part containing the following provisions about the performance auditing of non-government designated agencies:

- (a) Proposed section 172B defines *publicly funded placement functions* as functions exercised by a designated agency (that is, an organisation that arranges the provision of out-of-home care and is accredited under the regulations), where those functions:
 - (i) involve arranging the placement of a child or young person in out-of-home care (whether statutory, supported or voluntary out-of-home care), and
 - (ii) are paid for by the Department by agreement with that designated agency.
- (b) Proposed section 172C requires the Minister to ensure that the Auditor-General conducts a performance audit of the exercise of the publicly funded placement functions of a non-government designated agency before the agreement under which they are provided is renewed or after an agreement that is not renewed ends.
- (c) Proposed section 172D requires the Auditor-General to conduct those performance audits before any renewal or within 3 months of the relevant agreement ending.
- (d) Proposed section 172E provides for the conduct of performance audits.
- (e) Proposed section 172F provides for the Auditor-General to provide reports to the Minister on the results of any performance audit conducted.
- (f) Proposed section 172G requires the Minister to table in Parliament any report of a performance audit received by the Minister.
- (g) Proposed section 172H provides for the Auditor-General and certain authorised persons to require information in relation to a performance audit dealing with a publicly funded private designated agency.
- (h) Proposed section 172I makes it an offence to obstruct the Auditor-General's conduct of a performance audit.
- (i) Proposed section 172J requires non-government designated agencies to pay the costs of the performance audit of their functions.
- (j) Proposed section 172K prevents an agreement with a non-government designated agency for the provision by that agency of publicly funded placement functions from being renewed unless the Secretary of the Department has had regard to the Auditor-General's report about the exercise of functions under the existing agreement.



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New South Wales

Children and Young Persons (Care and Protection) Amendment (Auditing of Out-of-Home Care Providers) Bill 2017

No. , 2017

A Bill for

An Act to amend the *Children and Young Persons (Care and Protection) Act 1998* to require the Auditor-General to conduct performance audits of non-government agencies that receive State government funding to arrange for children or young persons to be placed in out-of-home care.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Children and Young Persons (Care and Protection) Amendment (Auditing of Out-of-Home Care Providers) Act 2017*.

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2 Commencement

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This Act commences 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 139 Designated agencies		3
Insert at the end of the section:		4
Note. Part 8 of this Chapter makes provision for the Auditor-General to audit the exercise of the publicly funded placement functions of non-government designated agencies.		5 6 7
[2] Chapter 8, Part 8		8
Insert after Part 7:		9
	Part 8 Auditing of publicly funded placement functions	10
172B Definitions		11
In this Part:		12
non-government designated agency means a designated agency that is not a Public Service agency.		13 14
performance audit —see section 172C.		15
publicly funded placement functions means functions exercised by a designated agency:		16 17
(a) that involve arranging the placement of a child or young person in out-of-home care (whether statutory, supported or voluntary out-of-home care), and		18 19 20
(b) that are paid for by the Department by agreement with that designated agency.		21 22
172C Minister to ensure performance auditing of publicly funded placement functions		23 24
(1) The Minister must ensure that the Auditor-General conducts a performance audit of the exercise of the publicly funded placement functions of each non-government designated agency, to:		25 26 27
(a) determine whether that agency exercised those functions effectively, economically and efficiently and in compliance with this Act, the regulations and all other relevant laws, and		28 29 30
(b) identify opportunities for improvement in the effective, economical and efficient exercise of those functions.		31 32
(2) The Minister must ensure that such a performance audit is completed:		33
(a) in the case of a performance audit of the exercise of functions under an agreement with the Department that is proposed to be renewed, before that agreement is renewed, or		34 35 36
(b) in the case of a performance audit of the exercise of functions under an agreement with the Department that has expired without being renewed, or that has been terminated, within 3 months after that expiry or termination.		37 38 39 40

172D Auditor-General to conduct performance audits	1
(1) The Auditor-General is to conduct a performance audit of the exercise of the publicly funded placement functions of a non-government designated agency within the period required under section 172C (2).	2 3 4
(2) Without limiting the factors to which the Auditor-General may have regard in such an audit, the Auditor-General must have regard to any matters specified by the Minister.	5 6 7
172E Conduct of performance audits	8
(1) The Minister is to ensure that the Auditor-General has access to such information as may be necessary to enable the Auditor-General to conduct the performance audit.	9 10 11
(2) The Auditor-General must not make a report of a performance audit under this Part unless, at least 28 days before making the report, the Auditor-General has given the chief executive of the designated agency concerned a summary of findings and proposed recommendations in relation to the audit.	12 13 14 15
(3) The Auditor-General may make a report of a performance audit under this Part before the expiration of that 28-day period if the chief executive of the designated agency concerned has provided to the Auditor-General any submissions or comments he or she wishes to make.	16 17 18 19
(4) The regulations may make further provision for or with respect to performance audits under this Part.	20 21
(5) This Part does not limit any other function of the Auditor-General under any other law.	22 23
172F Reports of performance audits	24
(1) The Auditor-General is to report to the Minister as to the results of each performance audit under this Part.	25 26
(2) A report on a performance audit:	27
(a) is to include any submissions or comments made by the chief executive of the designated agency concerned in response to the findings of the audit, and	28 29 30
(b) may refer to any irregularities or other matters that the Auditor-General considers call for special notice, and	31 32
(c) may include any other information that the Auditor-General thinks desirable in relation to the functions the subject of the audit.	33 34
(3) If the Auditor-General is of the opinion that a non-government designated agency could, in the future, exercise publicly funded placement functions in a more effective, economical and efficient manner, the Auditor-General may make recommendations to the Minister on appropriate remedial actions to be taken.	35 36 37 38 39

172G	Tabling of reports of performance audits	1
(1)	The Minister must cause the reports provided to the Minister under this Part to be tabled in each House of Parliament within 1 month of receiving the report.	2 3
(2)	If a House of Parliament is not sitting when the Minister seeks to present the report, the Minister is to present the report to the Clerk of the House concerned.	4 5 6
172H	Auditor-General and others may require information	7
(1)	The Auditor-General or a person authorised by the Auditor-General may require a non-government designated agency that is subject to a performance audit under this Part:	8 9 10
(a)	to produce, or cause to be produced, any material required for the performance audit, or	11 12
(b)	to answer any question required for the performance audit.	13
(2)	The material may include any books, accounts, agreements, vouchers, letters or other documents kept or held by the designated agency that relates to any publicly funded placement function.	14 15 16
(3)	A person must not fail, without lawful excuse, when required to do so by the Auditor-General or by a person authorised by the Auditor-General, to produce any account, book or record in the person's possession or under the person's control or to answer any question. Maximum penalty: 50 penalty units.	17 18 19 20 21
(4)	A person is not guilty of an offence under subsection (3) unless it is established that the Auditor-General or person authorised by the Auditor-General:	22 23
(a)	identified himself or herself as the Auditor-General or as a person so authorised, and	24 25
(b)	showed the person the subject of the requirement his or her identification card as the Auditor-General or as a person so authorised (if requested to do so), and	26 27 28
(c)	warned the person that failure to comply with the requirement is an offence.	29 30
172I	Offence of obstructing Auditor-General	31
	A person must not obstruct the Auditor-General, or any other person acting on behalf of the Auditor-General, in the exercise of functions under this Part. Maximum penalty: 50 penalty units.	32 33 34
172J	Costs of performance audits	35
(1)	A non-government designated agency must pay to the Auditor-General any amount that the Minister determines in writing is required to be paid towards defraying the costs and expenses of any performance audit under this Part that relates to that agency.	36 37 38 39
(2)	An amount required to be paid under this section may be recovered by the Auditor-General as a debt due in a court of competent jurisdiction.	40 41
172K	Secretary must consider Auditor-General's report before renewing agreement	42
	The Secretary is to ensure that an agreement with a non-government designated agency for the provision by that agency of publicly funded placement functions is not renewed unless:	43 44 45

- (a) the Minister has been provided by the Auditor-General with a report on a performance audit of the exercise of such functions under the agreement proposed to be renewed, and 1
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- (b) the Secretary has had regard to that report and to any recommendations made by the Auditor-General in that report. 4
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