



New South Wales

Children and Young Persons (Care and Protection) Amendment Bill 2006

Explanatory note

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

Overview of Bill

The object of this Bill is to make a number of miscellaneous amendments to the *Children and Young Persons (Care and Protection) Act 1998* (***the Act***) in relation to the care and protection of, and the provision of services to, children and young persons, including amendments relating to the following:

- (a) the confidentiality and other protection afforded to those concerned in the making of reports about children and young persons,
- (b) procedural matters concerning Children's Court proceedings,
- (c) the disclosure of information about children and young persons,
- (d) access by children to their personal information and documents,
- (e) the regulation of out of school hours care services,
- (f) penalties for offences under the Act.

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 that gives effect to the amendments to the *Children and Young Persons (Care and Protection) Act 1998* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by the Act.

Schedule 1 Amendments

Schedule 1 [1] inserts a definition of *high level identification information* in the Act. Provision is made by the Bill for limiting the disclosure of high level identification information by the Director-General (under section 51 or 154, as amended by Schedule 1 [13]–[15] and [51] and [52], respectively). A definition of *non-court proceedings*, a term used in the amendments proposed to be made by Schedule 1 [40]–[42], is also inserted.

Schedule 1 [2] amends section 29 (1) (f) so as to provide that a duty of confidentiality in relation to the identity of a person who makes a report about a child or young person in good faith to the Director-General (or to a person who has the power or responsibility to protect the child or young person) extends to all bodies that subsequently obtain the report.

Schedule 1 [3] extends the protections currently provided by section 29 for persons who make reports referred to above. Under the amendment, the protections extend to a person who does not directly report but who in good faith provides information to another person who makes a report, is concerned in the making of such a report or otherwise causes such a report to be made.

Schedule 1 [4] extends the protections given by section 29 to persons who make certain other reports in good faith. At present, those protections are limited to those who make reports under sections 24, 25, 27 and 122. The proposed amendment will extend the protections to those who make reports under sections 120 (Homelessness of children) and 121 (Homelessness of young persons).

Schedule 1 [5] amends a provision that refers to a child or young person removed from a place of risk or certain other places and who is placed in the “care and protection” of the Director-General (which is not defined) to refer instead to the child or young person being under the “care responsibility” of the Director-General, that is, to the Director-General who will thereby have the authority to exercise the functions specified in section 157 of the Act in relation to the child or young person. This ensures consistency of language with other sections of the Act. **Schedule 1 [6], [8], [11], [12], [18], [48], [58] and [71]–[74]** make amendments for the purposes of consistency of language of the Act that are similar to the amendment made by Schedule 1 [5].

Schedule 1 [9] provides that if an application is made for an extension of an emergency care and protection order before the order expires, the order remains in force until the Children’s Court makes a final determination on the application, even if that determination is after the original expiry date.

Schedule 1 [10] omits a section that is proposed to be transferred by Schedule 1 [31] to Part 2 of Chapter 5 of the Act (as proposed section 90A). The effect of this (together with the amendment to section 45 (4) by Schedule 1 [7]) is that an order prohibiting any person, including the parent of a child or young person, from doing anything that could be done by the parent in carrying out his or her parental responsibilities can be made by the Children’s Court in any care proceedings, including any proceedings in relation to emergency care and protection orders. At present, section 47 is located in a Division that deals only with proceedings in relation to emergency care and protection orders.

Schedule 1 [13] amends section 51 of the Act to provide that the Director-General is not required to release high level identification information in disclosing a child’s whereabouts to his or her parents if that disclosure would be prejudicial to the safety, welfare, well-being or interests of the child. **Schedule 1 [51]** makes the same amendment to another provision of the same kind.

Schedule 1 [14] and [15] replace the term “whereabouts” with the term “high level identification information” in a provision that empowers the Children’s Court to disclose information about a child.

Schedule 1 [16] inserts a note about the operation of provisions dealing with the disclosure of high level identification information about children and young persons.

Schedule 1 [17] provides that the orders sought in a care application can be varied, without the leave of the Children’s Court, at any time before a determination is made under section 72 and, with the leave of the Children’s Court, at any time after that.

Schedule 1 [19] provides that, although the Director-General is required to notify a child or young person who is the subject of a care application of the making of the application, the Children’s Court may order the Director-General not to do so. The amendment also provides that the Children’s Court may order a parent not to show an application or any particular information in the application to the parent’s child or young person, and not to tell the child or young person about the application or any particular information in it.

However, the Children’s Court may make any such order only if, in the opinion of the Children’s Court, the psychological or other harm that is likely to be caused to the child or young person if the child or young person became aware of the application or information outweighs the prejudicial effect of the child’s or young person’s being unaware of the application or information or it would otherwise be detrimental to the safety, welfare or well-being of the child or young person to notify that child or young person of the application or information concerned.

Schedule 1 [20] permits a party to proceedings to file further documentary evidence in connection with a care application, but only with the leave of the Children’s Court.

In particular, the proposed amendment provides that if documentary evidence has been filed in proceedings and the Children's Court subsequently determines under section 93 (3) that the rules of evidence, or specified rules of evidence, are to apply to the proceedings, the party that filed the documentary evidence may file further evidence or withdraw all or part of the evidence filed and file alternative evidence, with the leave of the Children's Court. In giving leave, the Court must be satisfied the grant of leave will not result in undue delay in the matter being finalised.

Schedule 1 [21] amends the reasons for which the Children's Court may make a care order. At present, such an order may be made if the child or young person is in need of care and protection or if the child's or young person's basic physical, psychological or educational needs are not being met, or are likely not to be met, by his or her parents. As a result of the amendment, a care order can be made if those needs are not being met by either the parents or the primary care-givers of the child or young person. **Schedule 1 [22]** makes a consequential amendment.

Schedule 1 [23] defines *primary care-giver*, in relation to a child or young person, to mean the person primarily responsible for the care and control, including day-to-day care and control, of the child or young person, who may or may not also be the person with parental or care responsibility for the child or young person.

Schedule 1 [25] provides that only those children who have exhibited sexually abusive behaviour may be the subject of an order to attend a therapeutic or treatment program for sexually abusive behaviours.

Schedule 1 [26] provides that only children convicted of an offence arising from sexually abusive behaviour are to be excluded from the possibility of the making of an order to attend a therapeutic or treatment program for sexually abusive behaviours. At present, any child the subject of criminal proceedings relating to that behaviour must be excluded.

Schedule 1 [27] ensures that orders can be made allocating parental responsibility to the Minister for Community Services and two or more other people (rather than just one other person) jointly. This would, for example, allow for parental responsibility to be allocated to the Minister and grandparents jointly. The amendment also ensures that orders can be made for allocating parental responsibility to more than one person.

Schedule 1 [28] provides that the Children's Court may order a person who makes an application for rescission or variation of a care order to notify those persons whom the Children's Court specifies of the making of the application.

Schedule 1 [29] and [30] provide that if an application for variation of a care order is opposed by the Director-General on a ground that has not been previously considered by the Children's Court, the ground must be proved as if it were a ground of opposition to a fresh application for a care order.

Schedule 1 [31] transfers section 47 of the Act to Part 2 of Chapter 5. The effect of the transfer is explained in the matter relating to Schedule 1 [10]. **Schedule 1 [7]** makes a consequential amendment.

Schedule 1 [32] provides that, in proceedings before the Children's Court under the Act, the standard of proof is proof on the balance of probabilities. **Schedule 1 [24]** makes a consequential amendment.

Schedule 1 [33] provides that despite the fact that a child or young person is presumed to have the capacity to instruct his or her legal representative, the child or young person is not required to attend the Children's Court to give those instructions, unless required to do so under section 96 of the Act.

Schedule 1 [34] provides that if the Children's Court is of the opinion that a party to the proceedings is incapable of giving proper instructions to a legal representative, the Children's Court is to appoint a guardian ad litem for the person under section 100 or 101.

Schedule 1 [35] raises the age at which a child is presumed capable of giving proper instructions to his or her legal representative from 10 to 12 years and makes consequential amendments to other provisions. The presumption is rebuttable.

Schedule 1 [36]–[39] make it clear that if a child or young person is not capable of giving instructions, a guardian ad litem may be appointed.

Schedule 1 [40] extends a provision excluding certain persons from proceedings to all aspects of proceedings not held before the Children's Court. The provision is redrafted as the following proposed sections:

Proposed section 104 provides that while the Children's Court is hearing proceedings, or while any non-court proceedings are being held, with respect to a child or young person the Court may direct the child or young person to leave (or not to be present at) the place where the proceedings are being heard or held in certain circumstances and must, if such a direction is given in relation to court proceedings, also exclude the media.

Proposed section 104A provides for the exclusion of particular persons from proceedings (including non-court proceedings).

Proposed section 104B provides for the exclusion of the general public from proceedings.

Proposed section 104C confers an entitlement on the media to hear proceedings (other than non-court proceedings).

Schedule 1 [41] and [42] extend provisions prohibiting the publication of names and identifying information to all aspects of proceedings not held before the Children's Court.

Schedule 1 [43] extends a provision prohibiting the publication of names and identifying information to protect any child or young person who is the subject of a report under specified provisions of the Act from such publication.

Schedule 1 [45] provides that the prohibition on the publication of names and identifying information about a child or young person applies until the child or young person reaches 25 years of age or dies (whichever occurs first).

Schedule 1 [44] makes a consequential amendment to a prohibition on the publication of names and identifying information about children and young persons the subject of proceedings, so that it applies to protect a child or young person even after the proceedings have been disposed of.

Schedule 1 [46] provides that the prohibition on the publication of names and identifying information does not apply if the child or young person has died.

Schedule 1 [47] provides that the Children's Court may order a person who makes an application for an order for an alternative parenting plan to notify those persons whom the Children's Court may specify of the making of the application.

Schedule 1 [49] makes it clear that Part 2 of Chapter 8 of the Act (Out-of-home care by order of Children's Court) applies to young persons as well as children. The other provisions of the Part refer to both children and young persons.

Schedule 1 [50] provides that a person who makes an application for an order for sole parental responsibility must notify those persons whom the Children's Court may specify of the making of the application.

Schedule 1 [51] provides that a provision of the Act that requires disclosure of a child's whereabouts to the child's parents does not require the Director-General to release high level identification information if that disclosure would be prejudicial to the safety, welfare, well-being or interests of the child.

Schedule 1 [52] replaces the term "whereabouts" with the term "high level identification information" in a provision that empowers the Children's Court to disclose information about a child or young person.

Schedule 1 [53] inserts a note about the disclosure of high level identification information about a child or young person.

Schedule 1 [54]–[57] allow an authorised carer of a child or young person to consent to minor dental surgery or dental treatment involving major surgery that is urgent.

Schedule 1 [59] provides that the Minister is obliged to provide accommodation for a child or young person only if the Minister has sole parental responsibility or parental responsibility in relation to residence of the child or young person.

Schedule 1 [60] provides that the Minister may cause to be published guidelines specifying the circumstances in which assistance may be granted after leaving out-of-home care.

Schedule 1 [61] provides that a child or young person is entitled to have access to information about himself or herself held by the Director-General, when he or she was under the parental responsibility of the Minister, in addition to that held by the designated agency. At present, a child or young person is entitled to access only to

personal information kept by the designated agency that supervised the placement or by his or her authorised carer.

Schedule 1 [62] provides that information requested by a child or young person leaving out-of-home care is to be provided orally or in writing, at the option of the child or young person.

Schedule 1 [63] provides that a child or young person is entitled to possession of personal documents about himself or herself held by the Director-General, when he or she was under the parental responsibility of the Minister, in addition to those held by the designated agency. At present, a child or young person is entitled to possession only of documents kept by the designated agency that supervised the placement or by his or her authorised carer.

Schedule 1 [64] makes it clear that a designated agency that was responsible for supervising a child or young person in out-of-home care, has (if it is still in existence) an ongoing obligation to provide access to the records of that child or young person even after the records have been deposited in a records repository. The amendment provides that the Director-General must provide the designated agency that was responsible for supervising the child or young person in out-of-home care with access to the records of that child or young person that have been delivered to the Director-General, or that have been authorised by the Director-General to be deposited in the records repository nominated by the Director-General, if the designated agency requests them in order to comply with a request for the documents from the child or young person concerned.

Schedule 1 [65] provides that Part 6 of Chapter 8 of the Act, which allows a designated agency to disclose certain original documents held in the agency's files to a child or young person, overrides any provisions contained in the *State Records Act 1998* that may prohibit the release of original records.

Schedule 1 [66] omits references to a "young person" from section 177 of the Act, which is about medical and dental treatment with the consent of a person who is not an authorised person under the Act. The section provides that persons authorised to give consent to medical treatment for persons in out-of-home care under the Act are taken to be parents or guardians under the *Minors (Property and Contracts) Act 1970*. The consent of an authorised person under the Act in relation to a young person (that is, a person aged 16 or 17) would not be taken to be an effective consent for the purposes of section 49 of the *Minors (Property and Contracts) Act 1970*. That section has no application in relation to parental consent for medical treatment for young persons.

Schedule 1 [67] and [68] allow a children's service licence to specify a maximum of two authorised supervisors, provided that, on any one day, only one authorised supervisor can have overall responsibility for the service. This will allow for job-share positions to be available to potential authorised supervisors.

Schedule 1 [69] empowers regulations to be made to enable probity checks to be carried out on all persons over 14 years residing at the home of a family day carer or a home based carer.

Schedule 1 [70] empowers regulations to be made for or with respect to the provision of out of school hours care services.

Schedule 1 [75] and [76] enable notices to be served on a person's legal representative where a notice of address for service has been filed in accordance with the rules of the Children's Court.

Schedule 1 [77] provides for the Children's Court to dispense with service of a notice having regard to the physical safety, welfare or well-being of a child or young person or a party to the proceedings.

Schedule 1 [78] increases the maximum penalty that can be imposed by a Local Court from 100 penalty units (presently \$11,000) or the maximum monetary penalty provided by the Act for the offence, whichever is the smaller, to 200 penalty units (presently \$22,000) or the maximum monetary penalty provided by the Act for the offence, whichever is the smaller.

Schedule 1 [79] and [81] separate the provisions of Schedule 3 into Parts.

Schedule 1 [80] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [82] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

First print



New South Wales

Children and Young Persons (Care and Protection) Amendment Bill 2006

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No. , 2006

A Bill for

An Act to amend the *Children and Young Persons (Care and Protection) Act 1998* to make further provision with respect to the care and protection of, and the provision of services to, children and young persons; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Children and Young Persons (Care and Protection) Amendment Act 2006</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157	7 8
The <i>Children and Young Persons (Care and Protection) Act 1998</i> is amended as set out in Schedule 1.	9 10
4 Repeal of Act	11
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	12 13
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	14 15

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 3 Definitions	3
	Insert in alphabetical order:	4
	<i>high level identification information</i> , in relation to a child or young person who is in the care responsibility of the Director-General (whether under a temporary care arrangement or otherwise) or who is in out-of-home care, means the following:	5
	(a) the surnames of the authorised carer of the child or young person and of any other person living in the household of the authorised carer,	6
	(b) the street address and locality of the authorised carer of the child or young person,	7
	(c) the landline telephone number of the authorised carer of the child or young person,	8
	(d) details of the employment or activities of the authorised carer of the child or young person that would be sufficient to identify the authorised carer,	9
	(e) the name of the school that the child or young person is attending,	10
	(f) any other type of information prescribed by the regulations.	11
	<i>non-court proceedings</i> means any aspect of care proceedings that is not conducted before the Children’s Court and includes, but is not limited to, the following:	12
	(a) any counselling,	13
	(b) any preliminary conference under section 65,	14
	(c) any alternative dispute resolution process.	15
[2]	Section 29 Protection of persons who make reports or provide certain information	16
	Insert “or body” after “any person” in section 29 (1) (f).	17
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[3] Section 29 (3A)	1
Insert after section 29 (3):	2
(3A) The protections given by this section to a person who makes a report apply to:	3
(a) any person who provided information on the basis of which the report was made, in good faith, to the person, and	4
(b) any person who otherwise was in good faith concerned in making such a report or causing such a report to be made, in the same way as they apply in respect of the person who actually made the report.	5
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[4] Section 29 (6), definition of “report”	12
Omit “and 122”. Insert instead “, 120, 121 and 122”.	13
[5] Section 43 Removal of children and young persons without warrant	14
Omit “care and protection” from section 43 (5).	15
Insert instead “care responsibility”.	16
[6] Section 45 Prompt application to Children’s Court for care order	17
Omit “assumption of care and protection” from section 45 (1).	18
Insert instead “assumption of care responsibility by the Director-General”.	19
[7] Section 45 (4)	20
Omit “and 70”. Insert instead “, 70 and 90A”.	21
[8] Section 45, note	22
Omit “from care and protection”.	23
Insert instead “from the care responsibility of the Director-General”.	24
[9] Section 46 Emergency care and protection orders	25
Insert after section 46 (4):	26
(5) If an application is made for the extension of an order under this section before the order expires, the order remains in force until the Children’s Court makes a final determination on the application, even if that occurs after the original expiry date.	27
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[10] Section 47 Order prohibiting action	31
Omit the section.	32

[11] Chapter 5, Part 1, Division 5	1
Omit “care and protection” from the note to the Division.	2
Insert instead “care responsibility”.	3
[12] Section 51 Duty of Director-General to give information to certain persons	4
Omit “care and protection” wherever occurring in section 51 (1).	5
Insert instead “care responsibility”.	6
[13] Section 51 (1) (b)	7
Omit the paragraph. Insert instead:	8
(b) must, in the case of a child, ensure that the child’s parents are kept informed of the whereabouts of the child:	9
(i) if the Director-General has no reason to believe that the disclosure of the child’s whereabouts would be prejudicial to the safety, welfare, well-being or interests of the child—by disclosing the whereabouts of the child, or	10
(ii) if the Director-General has reason to believe that the disclosure of the child’s whereabouts would be prejudicial to the safety, welfare, well-being or interests of the child—by disclosing only information about the whereabouts of the child that is not high level identification information.	11
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[14] Section 51 (2)	23
Omit “whose whereabouts have”.	24
Insert instead “high level identification information about whom has”.	25
[15] Section 51 (2)	26
Omit “the whereabouts of”.	27
Insert instead “such of the high level identification information about”.	28
[16] Section 51, note	29
Insert after section 51 (3):	30
Note. If a child or young person is in the care responsibility of the Director-General, high level identification information about the child or young person may be released only on an order of the Children’s Court under this section (or under section 154, if it is a temporary care arrangement).	31
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[17] Section 61 Applications for care orders	1
Omit section 61 (3). Insert instead:	2
(3) The order sought may be varied:	3
(a) without the leave of the Children’s Court at any time before a determination is made under section 72 in relation to the care application concerned, and	4 5 6
(b) after such a determination is made—only with the leave of the Children’s Court.	7 8
[18] Section 63 Evidence of prior alternative action	9
Omit “care and protection” wherever occurring in section 63 (2) (b).	10
Insert instead “care responsibility”.	11
[19] Section 64 Notification of care applications	12
Insert after section 64 (6) before the note:	13
(7) Notification not to be given in certain circumstances	14
Despite the other provisions of this section, the Children’s Court may:	15 16
(a) order the Director-General:	17
(i) not to notify a child or young person of any application, or	18 19
(ii) not to serve a copy of an application or any supporting documentary evidence on a particular parent of any child or young person, or	20 21 22
(b) order a parent not to show an application or documents, or any particular information in the application or documents, to the parent’s child or young person and not to tell the child or young person about the application or document or any particular information in it.	23 24 25 26 27
(8) The Children’s Court may make an order under subsection (7) only if the Children’s Court is of the opinion that:	28 29
(a) the prejudicial effect of the child’s or young person’s being unaware of the application or information is outweighed by the psychological harm that is likely to be caused to the child or young person if the child or young person is notified or becomes aware of the application, or	30 31 32 33 34
(b) it would otherwise be detrimental to the safety, welfare or well-being of the child or young person to notify that child or young person of the application.	35 36 37

(9)	Subsection (7) does not limit the power of the Children’s Court to make orders under section 256A otherwise than in relation to care applications.	1 2 3
[20]	Section 68	4
	Omit the section. Insert instead:	5
	68 Leave to file further documentary evidence	6
(1)	A party to proceedings may, with the leave of the Children’s Court, file further documentary evidence in connection with a care application.	7 8 9
(2)	In particular, if documentary evidence has been filed in proceedings and the Children’s Court subsequently determines under section 93 (3) that the rules of evidence, or specified rules of evidence, are to apply to the proceedings, the party that filed the documentary evidence may, with the leave of the Children’s Court and for the purpose of complying with the relevant rules, file further evidence or may withdraw all or part of the evidence filed and file alternative evidence.	10 11 12 13 14 15 16 17
(3)	Before granting leave under this section, the Court must be satisfied that the grant of leave will not result in undue delay in the matter being finalised.	18 19 20
(4)	Section 64 applies in respect of any further documentary evidence filed under this section in the same way as it applies to the making of the care application concerned.	21 22 23
[21]	Section 71 Grounds for care orders	24
	Insert “or primary care-givers” after “parents” in section 71 (1) (d).	25
[22]	Section 71 (2) (a)	26
	Insert “or primary care-giver’s” after “parent’s”.	27
[23]	Section 71 (3)	28
	Insert after section 71 (2) before the note:	29
(3)	In this section: <i>primary care-giver</i> , in relation to a child or young person, means the person primarily responsible for the care and control, including the day-to-day care and control, of the child or young person (whether or not that person is the person with parental responsibility or care responsibility for the child or young person).	30 31 32 33 34 35 36

[24] Section 72 Determination as to care and protection	1
Omit “, on the balance of probabilities,” from section 72 (1).	2
[25] Section 75 Order to attend therapeutic or treatment program	3
Insert after section 75 (1):	4
(1A) An order under this section may be made only in respect of a child who has exhibited sexually abusive behaviour.	5 6
[26] Section 75 (2)	7
Omit “the subject of”. Insert instead “convicted in”.	8
[27] Section 79 Order allocating parental responsibility	9
Insert “or persons” after “person” wherever occurring in section 79 (1) (a) (ii) and (iii).	10 11
[28] Section 90 Rescission and variation of care orders	12
Insert after section 90 (1):	13
(1A) The Children’s Court may order a person who makes an application under this section to notify those persons whom the Children’s Court specifies of the making of the application.	14 15 16
Note. Section 256A sets out the circumstances in which the Children’s Court may dispense with service.	17 18
[29] Section 90 (5) (b)	19
Insert “or opposed” after “made”.	20
[30] Section 90 (5)	21
Insert “, or of opposition to a fresh application,” after “fresh application”.	22
[31] Section 90A	23
Insert after section 90:	24
90A Order prohibiting action	25
The Children’s Court may, at any stage in care proceedings, make an order prohibiting any person, including a parent of a child or young person, in accordance with such terms as are specified in the order, from doing anything that could be done by the parent in carrying out his or her parental responsibility.	26 27 28 29 30

[32] Section 93 General nature of proceedings	1
Insert after section 93 (3):	2
(4) In any proceedings before the Children’s Court, the standard of proof is proof on the balance of probabilities.	3 4
(5) Without limiting subsection (4), any requirement under this Act that the Children’s Court be satisfied as to a particular matter is a requirement that the Children’s Court be satisfied on the balance of probabilities.	5 6 7 8
[33] Section 96 Attendance of child or young person and parents	9
Insert after section 96 (2):	10
(2A) The fact that a child or young person is presumed by section 99 (3) to have the capacity to instruct his or her legal representative does not of itself mean that the child or young person is required to attend the Children’s Court to give those instructions. Such a child or young person is required to attend only if required under this section.	11 12 13 14 15 16
[34] Section 98 Right of appearance	17
Insert after section 98 (2):	18
(2A) If the Children’s Court is of the opinion that a party to the proceedings is incapable of giving proper instructions to a legal representative, the Children’s Court is to appoint a guardian ad litem for the person under section 100 or 101 (as the case may require).	19 20 21 22 23
[35] Section 99 Legal representation	24
Omit “10 years” wherever occurring from section 99 (3), (4) and (5).	25
Insert instead “12 years”.	26
[36] Section 99 (4) (a)	27
Insert “(if a guardian ad litem has not been appointed for the child or young person)” after “instructions and”.	28 29
[37] Section 99 (5) (a)	30
Insert “and there is no declaration in force under subsection (4) (b) in respect of the child” after “age”.	31 32
[38] Section 99 (5)	33
Insert “unless a guardian ad litem has been appointed for the child or young person” after “separate representative”.	34 35

[39] Section 100 Guardian ad litem—child or young person	1
Insert “or that the child or young person is, for any reason, not capable of giving proper instructions to a legal representative” after “illness” in section 100 (2).	2 3 4
[40] Sections 104–104C	5
Omit section 104. Insert instead:	6
104 Exclusion of child or young person from proceedings	7
(1) At any time while the Children’s Court is hearing proceedings with respect to a child or young person, the Children’s Court may direct the child or young person to leave the place where the proceedings are being heard.	8 9 10 11
(2) If any non-court proceedings are to be held with respect to a child or young person, the Children’s Court may direct that the child or young person is not to be present at the place where the non-court proceedings are to be held at any particular time during the proceedings.	12 13 14 15 16
(3) The Children’s Court may give a direction under this section only if it is of the opinion that the prejudicial effect of excluding the child or young person is outweighed by the psychological harm that is likely to be caused to the child or young person if the child or young person were to remain or be present.	17 18 19 20 21
(4) If the Children’s Court gives a direction under subsection (1) with respect to a child or young person, and if it is of the opinion that it is in the interests of the child or young person to do so, it must also give a direction with respect to all persons who are engaged in preparing reports of the proceedings for dissemination through a public news medium to leave the place where the proceedings are being heard.	22 23 24 25 26 27 28
104A Exclusion of particular persons from proceedings	29
(1) At any time while the Children’s Court is hearing proceedings with respect to a child or young person, the Children’s Court may direct any person (other than the child or young person) to leave the place where the proceedings are being heard.	30 31 32 33
(2) If any non-court proceedings are to be held with respect to a child or young person, the Children’s Court may direct any person (other than the child or young person) not to be present at the place where the proceedings are to be held at any time during the proceedings concerned.	34 35 36 37 38

(3)	The Children’s Court may give a direction under this section only if it is of the opinion that it is in the interests of the child or young person that such a direction should be given.	1 2 3
(4)	The powers exercisable by the Children’s Court under this section may be exercised even if the person to whom a direction is given is directly interested in the proceedings concerned.	4 5 6
104B	Exclusion of general public from proceedings	7
	At any time while the Children’s Court is hearing proceedings with respect to a child or young person, any person who is not directly interested in the proceedings must, unless the Children’s Court otherwise directs, be excluded from the place where the proceedings are being heard.	8 9 10 11 12
104C	Entitlement of media to hear proceedings	13
	At any time while the Children’s Court is hearing proceedings with respect to a child or young person, any person who is engaged in preparing a report of the proceedings for dissemination through a public news medium is, unless the Children’s Court otherwise directs, entitled to enter and remain in the place where the proceedings are being heard.	14 15 16 17 18 19
[41]	Section 105 Publication of names and identifying information	20
	Insert after section 105 (1) (a):	21
	(a1) who is involved, or is reasonably likely to be involved, in any capacity in any non-court proceedings, or	22 23
[42]	Section 105 (1) (c)	24
	Insert “or in any non-court proceedings” after “Court”.	25
[43]	Section 105 (1) (d)	26
	Insert at the end of section 105 (1) (c):	27
	or	28
	(d) who is the subject of a report under section 24, 25, 27, 120, 121 or 122,	29 30
[44]	Section 105 (1)	31
	Omit “before the proceedings are commenced or after the proceedings have been commenced and before they are disposed of”.	32 33
	Insert instead “whether the publication or broadcast occurs before any proceedings have commenced, during the proceedings or after they are disposed of”.	34 35 36

[45] Section 105 (1A)	1
Insert after section 105 (1):	2
(1A) The prohibition in subsection (1) applies to the publication or broadcast of the name of the child or young person concerned until:	3
(a) the child or young person attains the age of 25 years, or	4
(b) the child or young person dies,	5
whichever occurs first.	6
[46] Section 105 (3) (b) (iv)	7
Insert at the end of section 105 (3) (b) (iii):	8
, or	9
(iv) in any case—if the child or young person has died.	10
[47] Section 116 Application for order for alternative parenting plan	11
Insert after section 116 (3):	12
(4) The Children’s Court may order a person who makes an application under this section to notify those persons whom the Children’s Court specifies of the making of the application.	13
Note. Section 256A sets out the circumstances in which the Children’s Court may dispense with service.	14
[48] Section 123 What is “compulsory assistance”?	15
Omit “care and protection” from section 123 (a).	16
Insert instead “care responsibility”.	17
[49] Section 142 Application of Part	18
Insert “or young person” after “child”.	19
[50] Section 149 Order for sole parental responsibility	20
Insert after section 149 (4):	21
(4A) The Children’s Court may order a person who makes an application under this section to notify those persons whom the Children’s Court specifies of the making of the application.	22
Note. Section 256A sets out the circumstances in which the Children’s Court may dispense with service.	23
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[51] Section 154 Effect of temporary care arrangements	1
Omit section 154 (2) (c). Insert instead:	2
(c) must, in the case of a child, ensure that the child’s parents are kept informed of the whereabouts of the child:	3
(i) if the Director-General has no reason to believe that the disclosure of the child’s whereabouts would be prejudicial to the safety, welfare, well-being or interests of the child—by disclosing the whereabouts of the child, or	4
(ii) if the Director-General has reason to believe that the disclosure of the child’s whereabouts would be prejudicial to the safety, welfare, well-being or interests of the child—by disclosing only information about the whereabouts of the child that is not high level identification information.	5
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[52] Section 154 (3)	16
Omit “the whereabouts of”.	17
Insert instead “high level identification information about”.	18
[53] Section 154, note	19
Insert after section 154 (3):	20
Note. If a child or young person is in the care responsibility of the Director-General, high level identification information about the child or young person may be released only on an order of the Children’s Court under section 51 (or under this section, if it is a temporary care arrangement).	21
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[54] Section 157 Care responsibility	26
Omit “and dental” wherever occurring in section 157 (1) (a) and (b).	27
[55] Section 157 (1) (a) and (b)	28
Omit “or dentist” wherever occurring.	29
[56] Section 157 (1) (b1) and (b2)	30
Insert after section 157 (1) (b):	31
(b1) to consent to dental treatment (including treatment involving minor dental surgery) that a dentist has advised needs to be carried out for the child or young person,	32
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(b2) to consent to dental treatment involving dental surgery other than minor dental surgery that a dentist certifies in	35
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	writing needs to be carried out as a matter of urgency in the best interests of the child or young person,	1 2
[57]	Section 157 (5)	3
	Insert after section 157 (4):	4
	(5) In this section:	5
	<i>minor dental surgery</i> means a tooth extraction, the filling of a decayed tooth, root canal work or a repair to a broken or chipped tooth.	6 7 8
	Note. Section 177 gives protection to medical and dental practitioners in relation to children in respect of whom consent is given by the authorised carer under this section, but not in relation to young persons in respect of whom such consent is given. In the case of young persons, the young person's consent is also required.	9 10 11 12 13
[58]	Section 161 Financial assistance for children and young persons in out-of-home care	14 15
	Omit "care and protection" from section 161 (2) (c) (i).	16
	Insert instead "care responsibility".	17
[59]	Section 164 Responsibility of Minister to accommodate certain children and young persons	18 19
	Omit "parental responsibility".	20
	Insert instead "sole parental responsibility or parental responsibility in relation to residence".	21 22
[60]	Section 165 Provision of assistance after leaving out-of-home care	23
	Insert after the note to section 165 (3):	24
	(4) The Minister may cause to be published guidelines specifying the circumstances in which assistance may be granted under this section.	25 26 27
[61]	Section 168 Access to personal information	28
	Insert at the end of section 168 (1) (b):	29
	, or	30
	(c) the Director-General, if the child or young person was under the parental responsibility of the Minister and the Department was not the designated agency that had supervisory responsibility for the child or young person.	31 32 33 34

[62] Section 168 (3)	1
Insert after section 168 (2):	2
(3) Information under this section is to be provided orally or in writing, as the child or young person concerned elects.	3 4
[63] Section 169 Entitlement to certain documents	5
Omit “or his or her authorised carer”.	6
Insert “, by his or her authorised carer or by the Director-General, if the child or young person was under the parental responsibility of the Minister,”.	7 8
[64] Section 170 Retention of records	9
Insert after section 170 (2):	10
(2A) The Director-General must ensure that the designated agency that was responsible for supervising a child or young person in out-of-home care is given access to the records of that child or young person:	11 12 13 14
(a) that have been delivered to the Director-General, or	15
(b) that have been authorised by the Director-General to be deposited in the records repository nominated by the Director-General,	16 17 18
if the designated agency requests the records in order to comply with a request under section 168 or 169.	19 20
[65] Section 170A	21
Insert after section 170:	22
170A Application of State Records Act 1998	23
(1) This Part has effect despite the provisions of the <i>State Records Act 1998</i> .	24 25
(2) Accordingly, the provision of information or documents in accordance with this Part does not constitute an offence under that Act.	26 27 28
[66] Section 177 Ordinary medical and dental treatment	29
Omit “or young person” wherever occurring in section 177 (1) and (2).	30
[67] Section 208 Licences	31
Omit “one person as an authorised supervisor” from section 208 (4).	32
Insert instead “two persons as authorised supervisors”.	33

[68] Section 208 (4)	1
Insert “However, if a licence specifies two persons, the licence must provide that, on any given day or at any given time, one authorised supervisor is to have overall responsibility for the service.” after “relates.”	2 3 4
[69] Section 220 Regulations	5
Insert after section 220 (a):	6
(a1) the probity checks that may be made on all persons over the age of 14 years who, or who are proposed to, reside at the home of a person who provides a family day care children’s service or a home based children’s service,	7 8 9 10
[70] Chapter 12A	11
Insert after section 220:	12
Chapter 12A Out of school hours care services	13
220A Meaning of “out of school hours care service”	14
(1) In this Chapter:	15
<i>children who are at school</i> means children who ordinarily attend school and includes children enrolled at a school but not yet attending the school by reason of the fact that the first term of the school year has not commenced.	16 17 18 19
<i>out of school hours care service</i> means a service that provides, outside school hours on school days, or at any time during school vacations, care to children who are at school.	20 21 22
<i>school</i> means a government school established under, or a non-government school registered under, the <i>Education Act 1990</i> .	23 24 25
(2) However, <i>out of school hours care service</i> does not include any of the following:	26 27
(a) a service provided by a designated agency,	28
(b) a babysitting, playgroup or child-minding service that is organised informally by the parents of the children concerned,	29 30 31
(c) a service provided for fewer than 5 children (disregarding any children who are related to the person providing the service) at the premises at which at least one of the children resides, being a service that is not advertised to the general public,	32 33 34 35 36

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| (d) | a regular child-minding service: | 1 |
| (i) | that is provided in connection with a hospital, health service or a recreational or commercial facility (such as a gymnasium or a casino), and | 2
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| (ii) | that is provided by or on behalf of the person conducting the hospital, health service or facility, and | 5
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| (iii) | that is provided to care for children only: | 8 |
| (A) | while the children are being treated at the hospital or health service, or | 9
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| (B) | while the children's parents or authorised carers are visiting or being treated at the hospital or health service or are using the recreational or commercial facility, | 11
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| (e) | a service that is concerned primarily with the provision of: | 15 |
| (i) | lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or | 16
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| (ii) | private tutoring, | 19 |
| (f) | a service under which formal education in accordance with the school curriculum set out in Part 3 of the <i>Education Act 1990</i> is provided by a government school or a registered non-government school within the meaning of that Act, | 20
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| (g) | a service provided at exempt premises. | 24 |
| (3) | In this section, <i>exempt premises</i> means: | 25 |
| (a) | any premises belonging to a class of premises prescribed by the regulations for the purposes of this section, or | 26
27 |
| (b) | in relation to any provision of this Act or the regulations, any premises declared to be exempt premises for the purposes of that provision by an order of the Minister published in the Gazette, being an order that is in force. | 28
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| (4) | The Minister may make orders of the kind referred to in subsection (3) (b). | 32
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220B	Regulations for or with respect to out of school hours care services	1
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	Without limiting section 264 (Regulations), the regulations may make provision for or with respect to the following:	3
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	Standards for out of school hours care services	5
	(a) imposing standards for out of school hours care services, creating the offence of failure to meet those standards and creating defences to that offence,	6
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	(b) the evidence that may be required to be provided to prove compliance with any such standard,	10
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	Registration of out of school hours care services	12
	(c) imposing a prohibition on the provision of an out of school hours care service unless the service is registered, and creating the offence of breaching that prohibition,	13
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	Applications for registration	17
	(d) the persons who may apply for registration,	18
	(e) the manner in which, and the time within which, an application may be made,	19
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	(f) fees payable for an application and the waiver, reduction, deferral and refund of such fees,	21
		22
	(g) requiring that supporting documents and information in relation to an application be lodged (before or after the time of registration),	23
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		25
	(h) the consideration and determination of applications, including (but not limited to) the following:	26
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	(i) the time within which an application (or a particular stage of an application) is to be dealt with,	28
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	(ii) the grounds on which an application (or a particular stage of an application) may be rejected,	31
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	(iii) the grounds on which an application may be refused,	34
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	(iv) the way in which the rejection or determination of the application (or a particular stage of an application) is to be communicated to the applicant,	36
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Probity checks	1
(i) the probity checks that may be made on all persons who are, or who are proposed to be, managing an out of school hours care service (or proposed out of school hours care service) or who will have unsupervised direct access to children,	2 3 4 5 6
(j) the fees that may be charged for carrying out such checks,	7 8
Registration	9
(k) the duration of registration,	10
(l) providing for the imposition of conditions on out of school hours care services, including the following conditions:	11 12 13
(i) conditions regulating the premises from which the service is to be provided,	14 15
(ii) conditions regulating the times during which the service is to be available,	16 17
(iii) conditions regulating the number of children, and the age groups of the children, for whom the service may be provided,	18 19 20
(iv) conditions requiring the provision of information to parents or authorised carers,	21 22
(m) creating penalties for breach of a condition,	23
Variation, suspension and revocation of registration	24
(n) the grounds on which registration may be suspended, varied (including by the imposition, amendment or withdrawal of conditions) or revoked,	25 26 27 28
(o) requiring the giving of notice of an intention to suspend, vary or revoke registration,	29 30
(p) allowing a registered out of school hours care service provider time to make submissions in relation to any such intention,	31 32 33
(q) the effect of a suspension, variation or revocation of registration,	34 35
(r) the restoration of registration that has been suspended or revoked,	36 37
(s) the fees payable for the variation of registration,	38
Registered providers	39
(t) the functions of the registered out of school hours care service provider under registration,	40 41

(u)	the carrying out of self-assessments by registered out of school hours care service providers,	1 2
(v)	the supervision of volunteers who assist registered out of school hours care service providers,	3 4
	Records	5
(w)	the records that are to be maintained in relation to an out of school hours care service that a person is registered to provide, including (but not limited to) the following:	6 7 8 9
	(i) the information that the records are to contain,	10 11
	(ii) the format in which they are to be made,	12
	(iii) the person responsible for making and maintaining them,	13 14
	(iv) the persons who may inspect them,	15
	(v) the period for which they are to be retained,	16
	(vi) creating penalties for failure to maintain records,	17 18
	Investigation	19
(x)	the investigative power of the authority responsible for issuing registration, including the power to inspect premises, require the production of documents or information and to require questions to be answered or required,	20 21 22 23 24
	OSHCS co-ordinator	25
(y)	requiring the appointment of a person to act as the Out of School Hours Care Service co-ordinator of the provider of out of school hours care service the subject of registration,	26 27 28 29
(z)	the qualifications and experience of the person to be so appointed,	30 31
	Registration authority	32
(za)	the person or body that will issue registrations and give effect to the regulations,	33 34
	Applying other provisions	35
(zb)	applying provisions of Chapter 12, or the regulations made under Chapter 12, to out of school hours care services.	36 37 38

[71]	Section 229 Unauthorised removal of children and young persons subject to NSW Act	1 2
	Insert “or care responsibility” after “protection” in section 229 (1) (a).	3
[72]	Section 232 Persons under the parental responsibility of the Minister leaving or being removed from care	4 5
	Omit “care and protection” wherever occurring.	6
	Insert instead “care responsibility”.	7
[73]	Section 234 Reasons for removal and other information to be given to certain persons	8 9
	Omit “care and protection” where secondly occurring in section 234 (1).	10
	Insert instead “care responsibility”.	11
[74]	Section 246 Separation of children and young persons from offenders	12
	Omit “care and protection of the Director-General or the Minister”.	13
	Insert instead “care responsibility of the Director-General or in the parental responsibility of the Minister”.	14 15
[75]	Section 256 Service of notices	16
	Insert after section 256 (1) (b):	17
	(b1) if a notice of address for service has been filed in accordance with the rules of the Children’s Court—delivered, or sent by pre-paid post, to that address, or	18 19 20
[76]	Section 256 (2) (a)	21
	Insert “or (b1)” after “(b)”.	22
[77]	Section 256A	23
	Insert after section 256:	24
	256A Children’s Court may dispense with service	25
	(1) If the Children’s Court is satisfied that an unacceptable threat to the physical safety, welfare or well-being of a child or young person or a party to any proceedings would arise if any notice or other instrument required or authorised by this Act was given to, or any document served on, a particular person, the Children’s Court may make an order dispensing with the giving of notice or instrument to, or service on, the person concerned.	26 27 28 29 30 31 32

(2)	An order under this section excuses every other person from the requirement to comply with any provision of this Act that requires notification to, or service on, that person.	1 2 3
[78]	Section 259 Proceedings for offences	4
	Omit “100 penalty units” from section 259 (3).	5
	Insert instead “200 penalty units”.	6
[79]	Schedule 3 Savings, transitional and other provisions	7
	Insert before clause 1:	8
	Part 1 Regulations	9
[80]	Schedule 3, clause 1 (1)	10
	Insert at the end of the subclause:	11
	<i>Children and Young Persons (Care and Protection) Amendment Act 2006</i>	12 13
[81]	Schedule 3, Part 2, heading	14
	Insert before clause 2:	15
	Part 2 Provision consequent on enactment of Children and Young Persons (Care and Protection) Amendment Act 2005	16 17 18
[82]	Schedule 3, Part 3	19
	Insert after clause 2:	20
	Part 3 Provisions consequent on enactment of Children and Young Persons (Care and Protection) Amendment Act 2006	21 22 23
	3 Definition	24
	In this Part:	25
	<i>amending Act</i> means the <i>Children and Young Persons (Care and Protection) Amendment Act 2006</i> .	26 27

4	Protection of persons who make reports or provide certain information	1 2
(1)	The amendment made to section 29 (1) (f) by the amending Act extends to any information disclosed to a body before the commencement of the amendment.	3 4 5
(2)	Section 29 (3A) extends to reports made, actions taken or information provided before the commencement of the subsection.	6 7 8
(3)	Section 29 extends to any report made under section 120 or 121 before the amendment of section 29 (6) by the amending Act.	9 10
5	Emergency care and protection orders	11
	Section 46 (5) extends to an application made before the commencement of the subsection.	12 13
6	Variation of care orders	14
	Section 61 (3), as repealed and re-enacted by the amending Act, extends to any order sought before that repeal and re-enactment.	15 16
7	Notification of care applications	17
	Section 64 (7) and (8) extend to any application made before the commencement of the subsections.	18 19
8	Leave to file further documentary evidence or amend application	20
	Section 68 (2) extends to documentary evidence filed before the commencement of the subsection.	21 22
9	Care proceedings	23
	The amendments made to sections 71, 75, 79 and 90 by the amending Act extend to care proceedings not finally determined when the respective amendments commence.	24 25 26
10	Court procedure	27
(1)	The amendments made to sections 93, 96 and 99, and section 104 as repealed and re-enacted, by the amending Act extend to proceedings not finally determined when the respective amendments and section 104 as re-enacted commence.	28 29 30 31
(2)	The amendments made to section 105 by the amending Act extend to proceedings conducted before the commencement of the amendments.	32 33 34

Schedule 1 Amendments

11	Application for order for alternative parenting plan	1
	Section 116 (4) extends to any application made before the commencement of the subsection.	2 3
12	Order for sole parental responsibility	4
	Section 149 (4A) extends to any application made before the commencement of the subsection.	5 6
13	Regulations concerning probity checks	7
	A regulation for or with respect to probity checks referred to in section 220 (a1) may apply so as to require probity checks on persons residing at a certain home immediately before the regulation commences.	8 9 10 11