



New South Wales

Children and Young Persons (Care and Protection) Amendment Bill 2009

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 Principal Act***) so as:

- (a) to provide that if the Department of Community Services (***the Department***) takes over supervising the placement of a child or young person in out-of-home care because a designated agency has ceased to be able to fulfil its responsibilities in relation to the child or young person, the Department does not take or assume any assets, rights or liabilities of the designated agency, and
- (b) to make it clear that the Children's Guardian and the Director-General of the Department (***the Director-General***) may, for the purpose of exercising their functions, exchange information with, and require the provision of information from, other persons, and
- (c) to make it an offence for certain prescribed persons to fail to comply with a direction of the Children's Guardian to provide information, and
- (d) to enable the making of regulations for or with respect to the licensing of principal and other officers of designated agencies, and

- (e) to enable the making of regulations of a savings or transitional nature consequent on the enactment of the proposed 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 the date of assent to the proposed Act.

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

Section 141 (Inability of designated agency to fulfil responsibilities) of the Principal Act provides that if a designated agency, other than the Department, is designated to supervise the placement of a child or young person in out-of-home care and that agency ceases to be able to fulfil its responsibilities in relation to the child or young person, the Department is to supervise the placement of the child or young person.

Schedule 1 [1] inserts proposed section 141 (1A) into the Principal Act to provide that the Department, in supervising the placement of a child or young person in out-of-home care, does not take or assume any assets, rights or liabilities of the designated agency.

Sections 185 and 248 of the Principal Act provide that the Children's Guardian and the Director-General, respectively, may, for the purposes of providing information to, or exchanging information with, a prescribed person or body, do either or both of the following:

- (a) furnish a prescribed person or body (within the meaning of the section concerned) with information relating to the safety, welfare and well-being of a particular child or young person or class of children or young persons,
- (b) direct a prescribed person or body to furnish information to the Children's Guardian or the Director-General, respectively, relating to the safety, welfare and well-being of a particular child or young person or class of children or young persons.

Schedule 1 [2] and [6] insert proposed sections 185 (1A) and 248 (1AA), respectively, into the Principal Act to provide that the functions referred to above may also be exercised by the Children's Guardian or the Director-General, respectively, for the purpose of exercising their functions. **Schedule 1 [3], [4], [7] and [8]** make consequential amendments.

Schedule 1 [5] inserts proposed section 185 (2A) into the Principal Act to provide that a prescribed person (other than the Director-General or a Department of the Public Service) must comply with a direction of the Children's Guardian to furnish information relating to the safety, welfare and well-being of a particular child or

Children and Young Persons (Care and Protection) Amendment Bill 2009

Explanatory note

young person or class of children or young persons within such reasonable time as is specified in the direction. Failure to comply will be an offence carrying a maximum penalty of 10 penalty units (currently, \$1,100). **Schedule 1 [5]** also substitutes section 185 (2) of the Principal Act to make consequential amendments.

Schedule 1 [9] inserts proposed section 264 (1A) (k) into the Principal Act to provide that regulations may be made under the Principal Act for or with respect to the licensing of principal and other officers of designated agencies.

Schedule 1 [10] amends Schedule 3 to the Principal Act to provide that regulations may be made of a savings or transitional nature consequent on the enactment of the proposed Act.

First print



New South Wales

Children and Young Persons (Care and Protection) Amendment Bill 2009

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157	3



New South Wales

Children and Young Persons (Care and Protection) Amendment Bill 2009

No. , 2009

A Bill for

An Act to amend the *Children and Young Persons (Care and Protection) Act 1998* to make further provision with respect to out-of-home care designated agencies and the provision of information to the Children's Guardian and the Director-General of the Department of Community Services; 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 2009</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157	1 2 3
[1] Section 141 Inability of designated agency to fulfil responsibilities		4
Insert after section 141 (1):		5
(1A) The Department, in supervising the placement of a child or young person in out-of-home care under this section, does not take or assume any assets, rights or liabilities of the designated agency.		6 7 8
[2] Section 185 Provision and exchange of information		9
Insert before section 185 (1):		10
(1A) The functions referred to in subsection (1) may be exercised by the Children’s Guardian for any one or more of the following purposes:		11 12 13
(a) for the purposes of providing information to, or exchanging information with, a prescribed person,		14 15
(b) for the purpose of exercising the functions of the Children’s Guardian.		16 17
[3] Section 185 (1)		18
Omit “For the purposes of providing information to, or exchanging information with, a prescribed person, the”.		19 20
Insert instead “The”.		21
[4] Section 185 (1) (a) and (b)		22
Omit “the prescribed person” wherever occurring.		23
Insert instead “a prescribed person”.		24
[5] Section 185 (2) and (2A)		25
Omit section 185 (2). Insert instead:		26
(2) It is the duty of a prescribed person to whom a direction is given under subsection (1) (b) (being the Director-General or a Department of the Public Service) to comply promptly with the requirements of the direction.		27 28 29 30
(2A) A prescribed person (other than the Director-General or a Department of the Public Service) must comply with a direction		31 32

	of the Children’s Guardian given under subsection (1) (b) within such reasonable time as is specified in the direction.	1 2
	Maximum penalty: 10 penalty units.	3
[6]	Section 248 Provision and exchange of information	4
	Insert before section 248 (1):	5
	(1AA) The functions referred to in subsection (1) may be exercised by the Director-General for any one or more of the following purposes:	6 7 8
	(a) for the purposes of providing information to, or exchanging information with, a prescribed body,	9 10
	(b) for the purpose of exercising the functions of the Director-General.	11 12
[7]	Section 248 (1)	13
	Omit “For the purposes of providing information to, or exchanging information with, a prescribed body, the”.	14 15
	Insert instead “The”.	16
[8]	Section 248 (1) (a) and (b)	17
	Omit “the prescribed body” wherever occurring.	18
	Insert instead “a prescribed body”.	19
[9]	Section 264 Regulations	20
	Insert after section 264 (1A) (j):	21
	(k) the licensing of principal and other officers of designated agencies.	22 23
[10]	Schedule 3 Savings, transitional and other provisions	24
	Insert at the end of clause 1 (1):	25
	<i>Children and Young Persons (Care and Protection) Amendment Act 2009</i>	26 27