



New South Wales

Children Legislation Amendment (Wood Inquiry Recommendations) 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 various Acts and other legislation to give effect to certain recommendations in the *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (the **Wood Report**). In particular, the Bill:

- (a) amends the *Children and Young Persons (Care and Protection) Act 1998* (the **Care Act**):
 - (i) to raise the “risk of harm” reporting threshold so that a child or young person will not be reported to the Director-General of the Department of Community Services (**DoCS**) unless the circumstances that are causing concern for the safety, welfare or well-being of the child or young person are present to a significant extent, and
 - (ii) to extend the circumstances when a child or young person is at risk of significant harm to include the situation when the child or young person is not receiving an education as required by the *Education Act 1990*, and
 - (iii) to provide for alternative mandatory reporting arrangements under which matters relating to children being at risk of significant harm may initially be assessed within the reporter’s agency instead of being reported directly to DoCS, and

- (iv) to modify the legislative framework for the provision of out-of-home care, and
 - (v) to authorise certain agencies to exchange information concerning the safety, welfare and well-being of children and young persons and to co-ordinate the services those agencies provide, and
 - (vi) to make a number of changes in relation to care proceedings in or before the Children's Court and the making of care orders by the Court, and
- (b) amends the *Children's Court Act 1987* to provide for the appointment of a District Court Judge as the senior judicial officer of the Children's Court (to be known as the President of the Children's Court), and
- (c) amends the *Commission for Children and Young People Act 1998* to extend the child-related employment provisions under that Act (including the requirement for background checking) to a wider class of people, and
- (d) makes a number of other amendments in response to the recommendations of the Wood Report.

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 repeals the *Children (Care and Protection) Act 1987*.

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

Schedule 1.1 Amendments relating to recommendations 6.2 and 10.1

At present under section 23 of the Care Act, a child or young person is *at risk of harm* (which in turn leads to the making of a report to DoCS) if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence of any of the circumstances currently listed in that section (eg neglect or abuse). **Schedule 1.1 [2]** amends the definition by requiring the circumstances concerned to be present to a significant extent. As a consequence, **Schedule 1.1 [1] and [5]** change references to the term "at risk of harm" (including the defined term itself) to "at risk of significant harm".

Schedule 1.1 [3] extends the circumstances in which a child or young person is at risk of significant harm to include, in the case of a child or young person who is subject to the compulsory education requirements under the *Education Act 1990*, the fact that the parents or caregivers have not arranged (or are unable or unwilling to arrange) for the child or young person to receive an education as required by that Act.

Schedule 1.1 [4] makes it clear that the circumstances that constitute a child or young person being at risk of significant harm may relate to a single act or omission or to a series of acts or omissions.

Section 27 of the Care Act currently makes it an offence for certain persons whose work involves (or relates to) the delivery of services to children (eg school teachers) not to make a report to DoCS if the person has grounds to suspect the child is at risk of harm. **Schedule 1.1 [6] and [7]** provide that it will no longer be an offence if the person does not report the matter to DoCS, but it will still be a duty to make the report.

Schedule 1.1 [8] provides for alternative reporting arrangements that will apply in relation to certain mandatory reporters who are required to report to DoCS their suspicion that a child is at risk of significant harm. Under such an arrangement, the mandatory reporter may, instead of reporting to DoCS, refer the matter to an assessment officer in the reporter's agency. The assessment of the matter in accordance with the guidelines of DoCS may result in a report being made to DoCS or other appropriate action being taken in respect of the child. Making such a referral discharges the mandatory reporter's obligation to report the matter to DoCS under section 27 and also attracts the same protections and safeguards as if the reporter had made a report to DoCS.

Schedule 1.2 Amendments relating to recommendations 11.1 and 11.3

Schedule 1.2 [2] and [3] modify the objects of the Care Act and the principles to be applied in the administration of the Act, in particular so as to separate the overriding principle of the Care Act (namely, that the safety, welfare and well-being of a child or young person is paramount in all decisions) from the other principles. **Schedule 1.2 [16], [18] and [26]** are consequential amendments and **Schedule 1.2 [27] and [28]** make amendments for the purposes of consistency in terminology.

Schedule 1.2 [4] and [5] clarify the extent of a non-government agency's obligation to co-operate with requests from DoCS.

Schedule 1.2 [6] provides that a non-government agency in receipt of government funding may make a request for assistance from DoCS on behalf of the child or young person in respect of whom the agency is providing services.

Schedule 1.2 [7] makes it clear that the Director-General of DoCS must assess a request for assistance but is not required to take any further action in response to the request.

Schedule 1.2 [8] modifies the requirement for the Director-General to keep records in relation to reports made to DoCS and the action taken as a consequence of a report.

Schedule 1.2 [9] will permit the disclosure of the identity of a person who has made a report to DoCS if the disclosure is made for the purposes of the investigation of a serious offence against a child or young person and is necessary for the protection of a child or young person (whether or not the victim of the alleged offence). However, it will be necessary for a senior officer of a law enforcement agency, or for the person or body making the disclosure, to certify that it was not practical to obtain the consent of the reporter to having his or her identity disclosed or to certify that obtaining that

consent would prejudice the investigation of the offence. The person or body disclosing the identity of the reporter will also be required to notify the reporter about the disclosure. **Schedule 1.2 [10]** is a consequential amendment.

Schedule 1.2 [11] provides that the Children's Court Clinic will not have the option of informing the Children's Court that it is unwilling to prepare an assessment report for the Children's Court.

Schedule 1.2 [12] will enable the Children's Court to order the Children's Court Clinic or other person appointed to prepare an assessment report to provide to the Court such other information as may be within the expertise of the clinic or other person to provide.

Schedule 1.2 [13] and [14] make it clear that the reasons specified in section 71 of the Care Act for which the Children's Court may make a care order are not exhaustive.

Schedule 1.2 [15], [17] and [21] provide that permanency planning for children or young persons is not required to provide detail about the exact long-term placement of the child or young person concerned.

Schedule 1.2 [19] restricts the Children's Court's capacity to allocate parental responsibility for a child or young person to a designated agency.

Schedule 1.2 [20] provides that the Children's Court may order a party to proceedings in which it allocates parental responsibility of a child or young person to report to the Court at a later time on the suitability of the care and protection arrangements. The Court may invite the parties to apply to vary or rescind the arrangements, but it no longer has an on-going monitoring role in relation to orders allocating parental responsibility.

Schedule 1.2 [22] limits the circumstances in which the Children's Court may make a contact order in care proceedings.

Schedule 1.2 [23] enables regulations to be made in relation to the referral, to alternative dispute resolution services, of disputes involving contact between children and their parents or other family members, but only in relation to matters in respect of which the Children's Court does not have power to make a contact order.

Schedule 1.2 [24] provides that an application to the Children's Court for the rescission or variation of a care order may be made by the child or young person concerned.

Schedule 1.2 [25] repeals provisions relating to the making of compulsory assistance orders by the Children's Court. **Schedule 1.2 [1] and [30]** are consequential amendments.

Schedule 1.2 [29] enables the regulations to make provision with respect to the collection of information by the Director-General of DoCS and the Children's Court and requiring the Director-General and the Court to make certain information publicly available.

Schedule 1.3 Amendments relating to recommendations 11.1 (xvii) and 16.16 (i) and (viii)

Schedule 1.3 [4] modifies the definition of *out-of-home care* by providing for 3 types of out-of-home care under the Care Act. *Statutory out-of-home care* is essentially foster care provided pursuant to an order of the Children's Court. *Supported out-of-home care* comprises temporary care arrangements made by the Director-General of DoCS and foster care that is supported by the Director-General. *Voluntary out-of-home care* comprises voluntary arrangements made by parents with organisations that provide out-of-home care. As a result of the reclassification of out-of-home care, various provisions of the Care Act are modified so that they only apply to a particular type of out-of-home care (see **Schedule 1.3 [1], [2], [7] and [9]–[14]**). **Schedule 1.3 [3]** is also consequential on the modification of the scheme for the provision of out-of-home care.

Schedule 1.3 [5] provides that statutory out-of-home care may, as is the case at present, only be provided by a carer who is authorised by a designated agency that is accredited by the Children's Guardian in accordance with the regulations. However, the prohibition on providing unauthorised statutory out-of-home care does not prevent the child or young person from returning to live with his or her parents during the last 6 months of the placement in out-of-home care if the arrangements concerned are in accordance with a care plan approved by the Children's Court.

Schedule 1.3 [6] prevents the parents of a child or young person from being given care responsibility of, or being authorised by a designated agency as the authorised carer of, the child or young person if the Children's Court has, in making a care order for the child or young person, accepted that there is no realistic possibility of the child or young person being restored to his or her parents.

Schedule 1.3 [8] inserts provisions relating to supported out-of-home care (which will always involve DoCS in some capacity) and voluntary out-of-home care which is arranged by the parents and does not necessarily involve DoCS. The provisions relating to temporary care arrangements made by the Director-General of DoCS are similar to the current provisions of the Care Act.

Schedule 1.3 [15] prohibits a parent from placing a child or young person in out-of-home care that is provided by an organisation unless the organisation is a designated agency or is registered by the Children's Guardian.

Schedule 1.4 Amendments relating to recommendation 16.16 (ii)–(vii)

Schedule 1.4 [1] and [2] remove the Children's Guardian from the list of persons who may make an application to the Children's Court for the rescission or variation of a care order and provide that the Children's Guardian is no longer required to be notified about such an application.

Schedule 1.4 [3] provides that the Director-General of DoCS, rather than the Children's Guardian, will be able to consent to the publication of the name of a child or young person who is under the parental responsibility of the Minister if the publication is of benefit to the child or young person.

Schedule 1.4 [4] provides that the Children's Guardian will no longer have the function of exercising the Minister's parental responsibilities for a child or young person nor the function of examining care plans for children or young persons in out-of-home care.

Schedule 1.4 [5] removes the Children's Guardian's power to resolve disputes arising under the Care Act.

Schedule 1.4 [6] rationalises the delegation power of the Children's Guardian.

Schedule 1.5 Amendment relating to recommendations 24.1 and 24.6

Schedule 1.5 establishes a scheme for the sharing of information between certain agencies (primarily human services and justice or law enforcement agencies) relating to the safety, welfare or well-being of children and young persons. The scheme also requires these agencies to take reasonable steps to co-ordinate decision-making and delivery of services regarding children and young persons. Under the proposed scheme, agencies will be authorised to provide and receive information that would assist decision-making in relation to children's services or that would assist in the management of risks to children and young persons. The provision of information may also be requested by an agency and the agency that receives the request will be required to comply with it. Provision is made under the proposed scheme for the safeguarding of information that is shared and for the protection of persons from liability for providing information under the scheme.

Schedule 1.6 Other miscellaneous or consequential amendments

Schedule 1.6 contains some minor or miscellaneous amendments to the Care Act, including several amendments that are consequential on other amendments made elsewhere by the proposed Act. In particular, **Schedule 1.6 [6]** will enable regulations of a savings or transitional nature to be made as a consequence of the amendments made by the proposed Act to the Care Act.

Schedule 2 Amendments relating to recommendations 11.2, 13.1, 13.3, 13.4, 13.9 and 13.12

Schedule 2.1 Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157

Schedule 2.1 [1] provides that the Director-General of DoCS is required to apply to the Children's Court for a care order no later than 72 hours after the child or young person concerned is removed under the Care Act or after care responsibility for the child or young person is assumed. At present, such an application is required no later than the next sitting day of the Court.

Schedule 2.1 [2] requires care applications to the Children's Court to be accompanied by a written report in accordance with the rules under the *Children's Court Act 1987*.

Schedule 2.1 [3] and [4] are consequential on the amendments made by Schedule 2.2 to the *Children's Court Act 1987*.

Schedule 2.2 Amendment of Children's Court Act 1987 No 53

Schedule 2.2 [1] and [2] make provision for a new office of President of the Children's Court. The person appointed as the President must be a Judge of the District Court, and will remain a Judge for certain purposes, but will only perform duties as the President of the Children's Court while holding that office. Schedule 2.2 [2] also provides for the appointment of a Children's Magistrate to act as the President in certain circumstances.

Schedule 2.2 [6], [9] and [11] amend or repeal provisions relating to the appointment and functions of the Senior Children's Magistrate who will be replaced by the President as the senior judicial officer of the Children's Court. The functions of the President include exercising the functions of a Children's Magistrate under the *Children's Court Act 1987* or any other Act.

Schedule 2.2 [3]–[5] and [14] confer on the President a role in relation to the appointment of Children's Magistrates, the courses of training required to be undertaken by Children's Magistrates and the manner in which a Children's Magistrate resigns office.

Schedule 2.2 [7] provides that persons employed as Children's Registrars must be qualified lawyers.

Schedule 2.2 [8] makes it clear that the jurisdiction of the Children's Court may be exercised by the President.

Schedule 2.2 [10] provides for the Children's Court Clinic (which primarily has functions under the Care Act in relation to the preparation of assessment reports) to be established and maintained by the Minister for Health rather than the Attorney General.

Schedule 2.2 [12] enables the regulations to provide that an appeal under any Act or law in relation to a decision of the Children's Court when constituted by the President is taken to be an appeal to the Supreme Court instead of the District Court.

Schedule 2.2 [13] enables the President to issue practice notes in relation to the practice and procedure of the Children's Court. Schedule 2.2 [13] also enables the Court, when it is sitting, to give directions in relation to a particular matter for which the rules or practice notes do not make provision.

Schedule 2.2 [15] will enable regulations of a savings or transitional nature to be made as a consequence of the amendments made by the proposed Act to the *Children's Court Act 1987*.

Schedule 2.2 [16] confirms that the person holding office as the Senior Children's Magistrate immediately before the abolition of that office by the proposed Act is entitled to hold office, without any loss of remuneration, as a Magistrate or Children's Magistrate for the remainder of his or her term of appointment as Senior Children's Magistrate. Schedule 2.2 [16] also enables the regulations to make

provision for the transfer of staff from the Children's Court Clinic and to make other changes in relation to the Clinic.

Schedule 2.3 Amendment of Constitution Act 1902 No 32

Schedule 2.3 provides that the office of President of the Children's Court, which has the same status as that of Judge of the District Court, is recognised as a judicial office for the purposes of Part 9 of the *Constitution Act 1902*.

Schedule 2.4 Amendment of Judicial Officers Act 1986 No 100

Schedule 2.4 [1] also recognises the office of President of the Children's Court as a judicial officer for the purposes of the *Judicial Officers Act 1986*.

Schedule 2.4 [2] provides that the Governor is the appropriate authority in relation to the suspension or removal under Part 7 of the *Judicial Officers Act 1986* of a person from the office as President of the Children's Court.

Schedule 2.5 Amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

Schedule 2.5 lists the President of the Children's Court as a public office for the purposes of the *Statutory and Other Offices Remuneration Act 1975* and makes amendments that are consequential on the abolition of the office of Senior Children's Magistrate.

Schedule 2.6 Amendment of Children's Court Rule 2000

Schedule 2.6 [1], [2], [4] and [5] are consequential on the amendments made to the *Children's Court Act 1987* by Schedule 2.2.

Schedule 2.6 [3] prescribes the information to be included in the report that is required to accompany a care application under section 61 of the Care Act.

Schedule 3 Amendments relating to recommendations 23.3, 23.4 and 23.8

Schedule 3.1 Amendment of Commission for Children and Young People Act 1998 No 146

Schedule 3.1 [3] and [5] extend the definition of *child-related employment* in Part 7 of the *Commission for Children and Young People Act 1998* (that Part prohibits certain persons from being employed in child-related employment and requires background checking for certain kinds of child-related employment) to include employment of the following kind:

- (a) employment comprising the provision of a children's service that is licensed under Chapter 12 of the Care Act,
- (b) employment as a person involved in the control or management of a licensed children's service,

- (c) employment as an authorised supervisor in relation to a licensed children’s service,
- (d) employment as an assessment officer (as referred to in proposed section 27A of the Care Act),
- (e) employment as the principal officer of a designated agency under the Care Act,
- (f) employment as the principal officer of an accredited adoption service provider under the *Adoption Act 2000*,
- (g) employment as a self-employed person or as a subcontractor (by, in or on behalf of a relevant agency, which includes DoCS) if it involves direct unsupervised contact with children.

Schedule 3.1 [4] makes it clear that the Director-General of DoCS is the *employer* for the purposes of employment referred to in paragraphs (a) and (b) above and **Schedule 3.1 [6]** inserts a definition for the purposes of that kind of employment. Schedule 3.1 [6] also defines *relevant agency* for the purposes of employment referred to in paragraph (g) above.

At present under Division 3 of Part 7 of the *Commission for Children and Young People Act 1998*, it is the duty of an employer to carry out background checking of the preferred applicant before employing the person in primary child-related employment (which includes paid child-related employment and fostering of children). A background check may involve a check for any relevant criminal record of the person. **Schedule 3.1 [7]** extends the definition of *primary child-related employment* to include working as a student in DoCS and working as a volunteer in providing mentoring services to disadvantaged children or as a volunteer providing personal care services to children with disabilities.

Schedule 3.1 [8] extends the background checking provisions so that they will also apply in relation to an adult person who resides in the home of an authorised carer or children’s service provider (ie the provider of a family day care or home based children’s service under the Care Act). In the case of an adult person residing in the home of an authorised carer the “employer” will be the designated agency that authorises the carer. In the case of an adult person residing at the home of a children’s service provider, the licensee of the service will be the “employer”. It will be the duty of the employer to carry out background checking of the adult person to determine whether it is appropriate for that person to reside at the home of the authorised carer or children’s service provider.

Schedule 3.1 [1] and [2] reflect the extension of the background checking provisions in accordance with the amendment made by Schedule 3.1 [8].

Schedule 3.1 [9] will enable regulations of a savings or transitional nature to be made as a consequence of the amendments made by the proposed Act to the *Commission for Children and Young People Act 1998*.

Schedule 3.2 Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2

Schedule 3.2 [1] requires Official Community Visitors to provide the Children's Guardian with information obtained by the Visitor that the Children's Guardian specifies as being relevant to the Children's Guardian's functions in accrediting organisations as designated agencies under the Care Act.

Schedule 3.2 [2] provides that the death of a child (or a child who is a sibling of a child) who was the subject of a risk of harm report under the Care Act within the period of 3 years before the child's death will not be a death that is subject to review by the Ombudsman under Part 6 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

Schedule 3.2 [3]–[5] provide that the Ombudsman is to report to Parliament every 2 years, instead of annually, on the Ombudsman's work and activities in relation to reviewable deaths of children and other persons in care.

Schedule 3.3 Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157

Schedule 3.3 provides that, in order to facilitate the background checking under the *Commission for Children and Young People Act 1998* of adult persons residing in the home of an authorised carer or licensed provider of a family day care or home based children's service, it will be a condition of the carer's authorisation or the service provider's licence under the Care Act to notify the Director-General of DoCS if an adult person has been residing in the carer's or licensee's home on a regular basis for a period of at least 3 months.

Schedule 3.4 Amendment of Children's Services Regulation 2004

The amendments contained in **Schedule 3.4** are consequential on the amendments made to the *Commission for Children and Young People Act 1998* by Schedule 3.1 [3].



New South Wales

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Note. A reference to a recommendation in a heading to a Schedule or subschedule to this Act is a reference to a recommendation as set out in the *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (November 2008).



New South Wales

Children Legislation Amendment (Wood Inquiry Recommendations) Bill 2009

No. , 2009

A Bill for

An Act to amend the *Children and Young Persons (Care and Protection) Act 1998* and other legislation to give effect to recommendations of the Special Commission of Inquiry into Child Protection Services in NSW; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Repeal of Children (Care and Protection) Act 1987 No 54	7
The <i>Children (Care and Protection) Act 1987</i> is repealed.	8

Schedule 1	Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157	1 2 3
1.1	Amendments relating to recommendations 6.2 and 10.1	4
[1]	Section 23 Child or young person at risk of significant harm Omit “ <i>at risk of harm</i> ”. Insert instead “ <i>at risk of significant harm</i> ”.	5 6
[2]	Section 23 Insert “, to a significant extent,” after “because of the presence”.	7 8
[3]	Section 23 (b1) Insert after section 23 (b): (b1) in the case of a child or young person who is required to attend school in accordance with the <i>Education Act 1990</i> —the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,	9 10 11 12 13 14 15 16
[4]	Section 23 (2) Insert at the end of section 23: (2) Any such circumstances may relate to a single act or omission or to a series of acts or omissions. Note. See also sections 154 (2) (a) and 156A (3) for other circumstances in which a child or young person is taken to be at risk of significant harm.	17 18 19 20 21 22
[5]	Sections 24, 25 (including the note), 27 (2) and (3) (b), 30 and 31 Omit “at risk of harm” wherever occurring. Insert instead “at risk of significant harm”.	23 24 25
[6]	Section 27 Mandatory reporting Omit “the person must, as soon as practicable, report to” from section 27 (2). Insert instead “it is the duty of the person to report, as soon as practicable, to”.	26 27 28
[7]	Section 27 (2) Omit the penalty at the end of the subsection.	29 30

[8] Section 27A	1
Insert after section 27:	2
27A Alternative reporting arrangements	3
(1) In this section:	4
<i>assessment officer</i> , in relation to a relevant agency, means a	5
person appointed or designated by the head of the agency as an	6
assessment officer of the agency for the purposes of an	7
arrangement under this section.	8
<i>head</i> of a relevant agency means:	9
(a) (subject to paragraph (b)) the person who is the chief	10
executive officer, or who exercises the functions of chief	11
executive officer, of the agency, or	12
(b) the person prescribed by the regulations.	13
<i>relevant agency</i> means any of the following:	14
(a) the NSW Health Service (including the Health Executive	15
Service referred to in section 121B of the <i>Health Services</i>	16
<i>Act 1997</i>),	17
(b) the NSW Police Force,	18
(c) the Teaching Service,	19
(d) the Department of Health,	20
(e) the Department of Education and Training,	21
(f) the TAFE Commission Division (including the TAFE	22
Commission),	23
(g) the Department of Juvenile Justice,	24
(h) the Department of Ageing, Disability and Home Care,	25
(i) Housing NSW,	26
(j) any other agency or organisation prescribed by the	27
regulations for the purposes of this section.	28
(2) The Director-General and the head of a relevant agency may	29
enter into an arrangement under which a person (<i>the staff</i>	30
<i>member</i>) who:	31
(a) is employed in or engaged by the relevant agency, and	32
(b) is a person to whom section 27 applies,	33
may, in accordance with the terms of the arrangement, refer to an	34
assessment officer of the agency any matter that the staff member	35
would otherwise be required to report to the Director-General	36
under that section.	37

- (3) If the staff member refers such a matter to an assessment officer under any such arrangement, the assessment officer is, in accordance with the assessment guidelines issued by the Director-General for the purposes of this section, to assess whether the matter should be reported to the Director-General under section 27. 1
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- (4) If, in accordance with the assessment guidelines, the matter is assessed as a matter that should be reported to the Director-General under section 27, the assessment officer or the staff member is, as soon as practicable after the assessment, to report the matter to the Director-General under that section. Any such requirement applies in relation to the assessment officer as though the officer was a person to whom section 27 applies. 7
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- (5) If, in accordance with the assessment guidelines, the matter is assessed as a matter that should not be reported to the Director-General under section 27, the assessment officer or the staff member may, if the officer or staff member has concerns for the well-being of the child to whom the matter relates, make such referral or take such action as the officer or staff member considers necessary or appropriate (or as is reasonably available) to safeguard or promote the safety, welfare and well-being of the child. 14
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- (6) If a matter is referred to an assessment officer in accordance with an arrangement under this section, the staff member making the referral is taken to have satisfied his or her obligations under section 27 in relation to the matter concerned. 23
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- (7) Section 29 applies in relation to a referral that is made to an assessment officer under this section in the same way as it applies to a report within the meaning of section 29. For that purpose, a reference in section 29 to the making of a report includes a reference to the referral of a matter to an assessment officer in accordance with an arrangement under this section. 27
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- (8) A certificate purporting to be signed by an assessment officer that a document relating to a child is a referral that has been made to the assessment officer under this section is admissible in any proceedings and, in the absence of evidence to the contrary, is proof that the document is such a referral. 33
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- (9) The following provisions apply in relation to the appointment or designation of assessment officers for the purposes of this section: 38
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- (a) more than one person may be appointed or designated as an assessment officer in relation to a relevant agency, 41
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(b)	any such appointment or designation may (without limitation) be made by reference to the holder of a specified position or to a specified class of persons,	1 2 3
(c)	a person may be appointed or designated as an assessment officer in relation to a relevant agency even though the person is employed in or engaged by another agency.	4 5 6
(10)	The regulations may extend the operation of this section, with such exclusions and modifications as may be prescribed by the regulations, to any person (or a class of persons) who is a person (or class of persons) to whom section 27 applies but who is or are not employed in or engaged by a relevant agency.	7 8 9 10 11
(11)	For avoidance of doubt, the head of the NSW Health Service or the Health Executive Service is, for the purposes of this section, the Director-General of the Department of Health.	12 13 14
1.2	Amendments relating to recommendations 11.1 and 11.3	15
[1]	Section 3 Definitions	16
	Omit the definition of <i>compulsory assistance</i> .	17
[2]	Section 8 What are the objects of this Act?	18
	Omit “taking into account the rights, powers and duties” from section 8 (a).	19
	Insert instead “having regard to the capacity”.	20
[3]	Section 9	21
	Omit the section. Insert instead:	22
9	Principles for administration of Act	23
(1)	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.	24 25 26 27
(2)	Subject to subsection (1), the other principles to be applied in the administration of this Act are as follows:	28 29
(a)	Wherever a child or young person is able to form his or her own views on a matter concerning his or her safety, welfare and well-being, he or she must be given an opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child or young person and the circumstances.	30 31 32 33 34 35 36

- (b) In all actions and decisions made under this Act (whether by legal or administrative process) that significantly affect a child or young person, account must be taken of the culture, disability, language, religion and sexuality of the child or young person and, if relevant, those with parental responsibility for the child or young person. 1
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 - (c) In deciding what action it is necessary to take (whether by legal or administrative process) in order to protect a child or young person from harm, the course to be followed must be the least intrusive intervention in the life of the child or young person and his or her family that is consistent with the paramount concern to protect the child or young person from harm and promote the child's or young person's development. 7
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 - (d) If a child or young person is temporarily or permanently deprived of his or her family environment, or cannot be allowed to remain in that environment in his or her own best interests, the child or young person is entitled to special protection and assistance from the State, and his or her name, identity, language, cultural and religious ties should, as far as possible, be preserved. 15
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 - (e) If a child or young person is placed in out-of-home care, arrangements should be made, in a timely manner, to ensure the provision of a safe, nurturing, stable and secure environment, recognising the child's or young person's circumstances and that, the younger the age of the child, the greater the need for early decisions to be made in relation to a permanent placement. 22
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 - (f) If a child or young person is placed in out-of-home care, the child or young person is entitled to a safe, nurturing, stable and secure environment. Unless it is contrary to his or her best interests, and taking into account the wishes of the child or young person, this will include the retention by the child or young person of relationships with people significant to the child or young person, including birth or adoptive parents, siblings, extended family, peers, family friends and community. 29
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- [4] Section 18 Obligation to co-operate** 38
- Insert “, or the non-government agency,” after “agency”. 39

[5] Section 18 (2)	1
Insert at the end of section 18:	2
(2) Subsection (1) does not, in the case of a non-government agency in receipt of government funding, limit any obligation imposed on the agency in accordance with the agreement under which it receives that funding.	3 4 5 6
[6] Section 21 Request for assistance by parent of child or young person or by funded non-government agency	7 8
Insert at the end of the section (before the note):	9
(2) Without limiting subsection (1), a non-government agency in receipt of government funding may, on behalf of a child or young person in respect of whom the agency provides services in accordance with the agreement under which it receives that funding, seek assistance from the Director-General in order to obtain other services for the child or young person.	10 11 12 13 14 15
[7] Section 22	16
Omit the section. Insert instead:	17
22 Director-General's response to requests for assistance	18
(1) If a person or non-government agency seeks assistance from the Director-General under this Part (whether or not a child or young person is suspected of being in need of care and protection), the Director-General must:	19 20 21 22
(a) provide whatever advice or material assistance, or make such referral, as the Director-General considers necessary, or	23 24 25
(b) take whatever other action the Director-General considers necessary,	26 27
to safeguard or promote the safety, welfare and well-being of the child or young person.	28 29
(2) Subsection (1) does not, however, require the Director-General to take any action other than assessing the request for assistance.	30 31
Note. The Director-General, in responding to a request for assistance, can provide services or arrange for other government departments and agencies, or community organisations, to provide services to assist children, young persons and their families.	32 33 34 35
The Department may also play a role in referring people to services provided under Commonwealth legislation, such as Family Court counselling and access to maintenance entitlements or other benefits.	36 37 38

[8] Section 28	1
Omit the section. Insert instead:	2
28 Record of reports and subsequent action	3
The Director-General must keep a record of:	4
(a) any report made to the Director-General, and	5
(b) any action taken as a direct consequence of the report that has a significant effect on the child or young person to whom the report relates.	6 7 8
[9] Section 29 Protection of persons who make reports or provide certain information	9 10
Insert after section 29 (4):	11
(4A) Subsection (1) (f) also does not prevent the disclosure to a law enforcement agency of the identity of the person who made the report (<i>the reporter</i>), or information from which the identity of the reporter could be deduced, if:	12 13 14 15
(a) the identity of the reporter, or the information, is disclosed in connection with the investigation of a serious offence alleged to have been committed against a child or young person, and	16 17 18 19
(b) the disclosure is necessary for the purposes of safeguarding or promoting the safety, welfare and well-being of any child or young person (whether or not the victim of the alleged offence).	20 21 22 23
(4B) However, subsection (4A) does not apply unless:	24
(a) a senior officer of the law enforcement agency to which the disclosure is made has, before the disclosure is made, certified in writing that obtaining the reporter's consent would prejudice the investigation of the serious offence concerned, or	25 26 27 28 29
(b) the person or body that makes the disclosure has, before making the disclosure, certified in writing that it is impractical to obtain the consent of the reporter.	30 31 32
(4C) The person or body that discloses to a law enforcement agency the identity of the reporter, or the information from which the identity of the reporter could be deduced, is required to notify the reporter of the disclosure unless:	33 34 35 36
(a) it is not reasonably practicable in the circumstances to do so, or	37 38

	(b) the law enforcement agency to which the disclosure is made has advised the person or body that notifying the reporter would prejudice the investigation of the serious offence concerned.	1 2 3 4
[10]	Section 29 (6)	5
	Insert in alphabetical order:	6
	<i>law enforcement agency</i> means any of the following:	7
	(a) the NSW Police Force,	8
	(b) the Australian Federal Police,	9
	(c) the police force of another State or Territory,	10
	(d) a person or body prescribed by the regulations for the purposes of this definition.	11 12
	<i>senior officer</i> means:	13
	(a) in relation to the NSW Police Force—a commissioned police officer within the meaning of the <i>Police Act 1990</i> , or	14 15 16
	(b) in relation to any other law enforcement agency—a person (or class of persons) prescribed by the regulations as a senior officer of the agency.	17 18 19
[11]	Section 58 Provision of assessment reports and other information	20
	Omit “or unwilling” wherever occurring.	21
[12]	Section 58 (3)–(5)	22
	Insert after section 58 (2):	23
	(3) The Children’s Court may, of its own motion, order:	24
	(a) the Children’s Court Clinic, or	25
	(b) a person appointed under subsection (2),	26
	to provide the Court with such other information as may be within the expertise of the Children’s Court Clinic or the appointed person (as the case requires) to provide.	27 28 29
	(4) The Children’s Court may order the Children’s Court Clinic to provide any such information regardless of whether an assessment order has been made in relation to the child or young person concerned.	30 31 32 33
	(5) Any information provided to the Children’s Court pursuant to an order under subsection (3) is taken to be a report to the Children’s Court rather than evidence tendered by a party.	34 35 36

[13] Section 71 Grounds for care orders	1
Omit “any of the following reasons” from section 71 (1).	2
Insert instead “any reason including, without limitation, any of the following”.	3
[14] Section 71A Effect of conduct outside New South Wales	4
Omit “referred to in”. Insert instead “for the purposes of”.	5
[15] Section 78 Care plans	6
Insert “in general terms” after “relates” in section 78 (2) (b) (i).	7
[16] Section 78A Permanency planning	8
Omit “section 9 (f)” from section 78A (1) (a). Insert instead “section 9 (2) (e)”.	9
[17] Section 78A (2A)	10
Insert after section 78A (2):	11
(2A) A permanency plan need not provide details as to the exact placement in the long-term of the child or young person concerned but must be sufficiently clear and particularised so as to provide the Children’s Court with a reasonably clear picture as to the way in which the child’s or young person’s needs, welfare and well-being will be met in the foreseeable future.	12 13 14 15 16 17
[18] Section 79 Order allocating parental responsibility	18
Omit “section 9 (d)” from section 79 (3). Insert instead “section 9 (2) (c)”.	19
[19] Section 79 (5)	20
Insert after section 79 (4):	21
(5) The Children’s Court may only make an order that allocates parental responsibility for a child or young person to a designated agency if the designated agency (or principal officer of the agency) is the person specified in an emergency care and protection order made under section 46 in respect of the child or young person.	22 23 24 25 26 27
[20] Section 82	28
Omit the section. Insert instead:	29
82 Report on suitability of arrangements concerning parental responsibility	30 31
(1) The Children’s Court may, when making an order in any care proceedings (the <i>relevant proceedings</i>) allocating parental	32 33

Children Legislation Amendment (Wood Inquiry Recommendations) Bill
2009

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

	responsibility of a child or young person to a person (including the Minister) other than a parent, order a party to the relevant proceedings to prepare a written report concerning the suitability of the arrangements for the care and protection of the child or young person.	1 2 3 4 5
(2)	The report must:	6
	(a) be provided to the Children’s Court within 12 months or such earlier period as the Court may specify, and	7 8
	(b) include an assessment of progress in implementing the care plan, including progress towards the achievement of a permanent placement, and	9 10 11
	(c) unless the Court orders otherwise, be given to each of the other parties to the relevant proceedings.	12 13
(3)	If, after considering the report, the Children’s Court is not satisfied that proper arrangements have been made for the care and protection of the child or young person concerned, the Court is, within 30 days of receiving the report, to notify each party to the relevant proceedings inviting the party to make an application under section 90 in relation to the order. Any such application must be made within 30 days of the party being notified by the Court.	14 15 16 17 18 19 20 21
(4)	The Children’s Court cannot, however, rescind or vary the order, or make a new order allocating parental responsibility, on its own motion.	22 23 24
(5)	Subsection (3) does not limit the circumstances in which a party to the relevant proceedings may make an application under section 90.	25 26 27
[21]	Section 83 Preparation of permanency plan	28
	Insert after section 83 (7):	29
	(7A) For the purposes of subsection (7) (a), the permanency plan need not provide details as to the exact placement in the long-term of the child or young person to whom the plan relates but must be sufficiently clear and particularised so as to provide the Children’s Court with a reasonably clear picture as to the way in which the child’s or young person’s needs, welfare and well-being will be met in the foreseeable future.	30 31 32 33 34 35 36

[22] Section 86 Contact orders	1
Insert after section 86 (1):	2
(1A) The Children’s Court may make an order of the kind referred to in subsection (1) (a) only if:	3 4
(a) it is made as an interim order pending the conclusion of the proceedings, or	5 6
(b) the Court has, under section 83, approved a permanency plan involving restoration in relation to that child or young person.	7 8 9
[23] Section 86 (5) and (6)	10
Insert after section 86 (4):	11
(5) The regulations may make provision for or with respect to the referral, to alternative dispute resolution services, of disputes arising out of contact between a child or young person who is in out-of-home care and his or her parents or other family members.	12 13 14 15
(6) Any such regulation is to apply only in relation to matters in respect of which the Children’s Court does not have power to make a contact order under this section.	16 17 18
[24] Section 90 Rescission and variation of care orders	19
Insert before section 90 (3) (c):	20
(b1) the child or young person, or	21
[25] Chapter 7, Part 3 Compulsory assistance	22
Omit the Part.	23
[26] Sections 149B (2) and 231M (d)	24
Omit “section 9 (g)” wherever occurring. Insert instead “section 9 (2) (f)”.	25
[27] Section 231E Director-General to have regard to certain matters	26
Omit section 231E (a). Insert instead:	27
(a) the principles in section 9, and	28
[28] Sections 231J (2) (a) and 231M (a)	29
Omit “matters referred to” wherever occurring. Insert instead “principles”.	30

[29] Section 248A	1
Insert after section 248:	2
248A Collection of information by Director-General and Children’s Court	3
(1) The regulations may make provision for or with respect to the collection by the Director-General or the Children’s Court of such information (or such classes of information) as may be prescribed by the regulations.	4 5 6 7
(2) Without limiting subsection (1), the regulations may require the Director-General or the Children’s Court:	8 9
(a) to collect any such information, and	10
(b) to keep any such information that is collected by, or that is provided to, the Director-General or the Children’s Court, and	11 12 13
(c) to make any such information publicly available, and	14
(d) to provide any such information to the Minister.	15
(3) Nothing in this or any other Act prevents the Director-General or the Children’s Court from doing anything in accordance with the regulations made under this section.	16 17 18
[30] Section 250 Delegation by Director-General	19
Omit section 250 (1) (b).	20
1.3 Amendments relating to recommendations 11.1 (xvii) and 16.16 (i) and (viii)	21 22
[1] Sections 13 (1) and 16 (3) (b)	23
Insert “statutory” before “out-of-home care” wherever occurring.	24
[2] Section 14 Records relating to Aboriginals and Torres Strait Islanders	25
Insert “statutory or supported” before “out-of-home care” wherever occurring in section 14 (1) and (2).	26 27
[3] Section 134 Objects of this Chapter	28
Omit section 134 (c) and the note at the end of the section. Insert instead:	29
(c) to clarify the roles and responsibilities of those involved in the provision of out-of-home care.	30 31

[4] Sections 135–135C	1
Omit section 135. Insert instead:	2
135 Definition and types of “out-of-home care”	3
(1) For the purposes of this Act, <i>out-of-home care</i> means residential care and control of a child or young person that is provided:	4
(a) by a person other than a parent of the child or young person, and	5
(b) at a place other than the usual home of the child or young person,	6
whether or not for fee, gain or reward.	7
(2) There are 3 types of out-of-home care for the purposes of this Act, as follows:	8
(a) <i>statutory out-of-home care</i> —see section 135A,	9
(b) <i>supported out-of-home care</i> —see section 135B,	10
(c) <i>voluntary out-of-home care</i> —see section 135C.	11
(3) For the purposes of this Act, <i>out-of-home care</i> does not include:	12
(a) daily care and control of a child given by a person in the person’s capacity as a licensed provider of children’s services, or	13
(b) any care provided by a relative of a child or young person unless:	14
(i) the Minister has parental responsibility for the child or young person by virtue of an order of the Children’s Court, or	15
(ii) the child or young person is in the care of the Director-General, or	16
(iii) it is provided pursuant to a supported out-of-home care arrangement as referred to in section 153, or	17
(c) anything prescribed by the regulations not to be out-of-home care.	18
(4) However, a child or young person who is in out-of-home care does not cease to be in that care merely because the child or young person becomes subject to any care or control referred to in subsection (3).	19
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135A	Statutory out-of-home care	1
(1)	<i>Statutory out-of-home care</i> is out-of-home care that is provided in respect of a child or young person for a period of more than 14 days:	2 3 4
	(a) pursuant to a care order of the Children’s Court, or	5
	(b) by virtue of the child or young person being a protected person.	6 7
(2)	Any statutory out-of-home care provided in respect of a child or young person is taken to commence:	8 9
	(a) immediately on the making of a care order for a period of more than 14 days in respect of the child or young person, or	10 11 12
	(b) in any other case—immediately the child or young person is placed with an authorised carer.	13 14
(3)	In this section, <i>protected person</i> means:	15
	(a) a person who is a ward of the Supreme Court, or subject to an order of the Supreme Court in its <i>parens patriae</i> jurisdiction, and of whom the Minister or the Director-General has the custody or care pursuant to an order of the Supreme Court, or	16 17 18 19 20
	(b) a person who is under the parental responsibility of the Director-General pursuant to Part 6 (Parental responsibility for children awaiting adoption) of Chapter 4 of the <i>Adoption Act 2000</i> , or	21 22 23 24
	(c) a person in respect of whom the Minister or the Director-General has parental responsibility, either wholly or partially, pursuant to an order in force under the <i>Family Law Act 1975</i> of the Commonwealth, or	25 26 27 28
	(d) a person who, having been a person referred to in paragraph (a), (b) or (c), was in the custody of a person referred to in section 91 (1) (d) (i) or (ii) of the <i>Children (Care and Protection) Act 1987</i> immediately before its repeal.	29 30 31 32 33
135B	Supported out-of-home care	34
	<i>Supported out-of-home care</i> is out-of-home care in respect of a child or young person that is, as a result of the Director-General forming the opinion that the child or young person is in need of care and protection, arranged, provided or otherwise supported by the Director-General under Part 3 of this Chapter.	35 36 37 38 39

135C	Voluntary out-of-home care	1
	<i>Voluntary out-of-home care</i> is out-of-home care in respect of a child or young person that is arranged by a parent of the child or young person in the manner referred to in section 156A.	2 3 4
[5]	Section 136	5
	Omit the section. Insert instead:	6
136	Restriction on who may provide statutory out-of-home care	7
(1)	Statutory out-of-home care may be provided in respect of a child or young person only by an authorised carer.	8 9
(2)	A person, other than an authorised carer, who provides statutory out-of-home care in respect of a child or young person is guilty of an offence. Maximum penalty (subsection (2)): 200 penalty units. Note. The provision of supported or voluntary out-of-home care is regulated by Parts 3 and 3A of this Chapter.	10 11 12 13 14 15
(3)	This section does not prevent a child or young person who:	16
(a)	has been placed in statutory out-of-home care, and	17
(b)	is the subject of a permanency plan involving restoration, from living with his or her parents, in accordance with the arrangements under a care plan approved by the Children’s Court, at any time during the period of 6 months before the date on which the child or young person is to be restored to his or her parents in accordance with the permanency plan.	18 19 20 21 22 23
[6]	Section 137 Authorised carers	24
	Insert after section 137 (1):	25
(1A)	If, in relation to a child or young person who is the subject of a care order, the Children’s Court has accepted that there is no realistic possibility of the child or young person being restored to his or her parents, a parent of the child or young person cannot:	26 27 28 29
(a)	be given care responsibility for the child or young person, or	30 31
(b)	be authorised by a designated agency as an authorised carer in respect of the child or young person,	32 33
	unless the decision of the Court that there is no possibility of restoration is rescinded under section 90.	34 35

[7] Section 138 Persons who may arrange for provision of statutory or supported out-of-home care	1 2
Insert “statutory or supported” before “out-of-home care” wherever occurring.	3
[8] Chapter 8, Parts 3 and 3A	4
Omit Part 3. Insert instead:	5
Part 3 Supported out-of-home care	6
Division 1 Temporary care arrangements	7
151 Making of temporary care arrangements	8
(1) The Director-General may make a temporary care arrangement in respect of a child or young person if the child or young person is, in the opinion of the Director-General, in need of care and protection.	9 10 11 12
(2) The Director-General:	13
(a) has the care responsibility of a child or young person who is the subject of a temporary care arrangement, and	14 15
(b) may delegate that care responsibility only to an authorised carer.	16 17
(3) The Director-General must not, in the case of a child, make a temporary care arrangement in respect of the child unless:	18 19
(a) a parent of the child consents to the arrangement and a permanency plan involving restoration is in place in relation to the child, or	20 21 22
(b) the parents of the child are, in the opinion of the Director-General, incapable of consenting to the arrangement.	23 24 25
(4) The regulations may make provision for or with respect to temporary care arrangements under this Division.	26 27
152 Duration, renewal and review of temporary care arrangements	28
(1) A temporary care arrangement ceases to be in force:	29
(a) on the receipt by the Director-General of a request for the termination of the arrangement made by the person by whom the application for the making of the arrangement was made, or	30 31 32 33
(b) on the child or young person the subject of the arrangement attaining the age of 18 years, or	34 35

- (c) on the expiration of the period of:
 - (i) except as provided by subparagraph (ii)—3 months,
or
 - (ii) if the Director-General has renewed the
arrangement pursuant to subsection (2)—6 months,
after the making of the arrangement, or
 - (d) on its termination by the Director-General under
subsection (5),
whichever first occurs.
- (2) At the expiration of 3 months after the making of a temporary
care arrangement in respect of a child or young person, the
Director-General may, if of the opinion that the child or young
person is still in need of care and protection, renew the
arrangement for a further period of 3 months.
- (3) Section 151 applies to the renewal of a temporary care
arrangement in the same way as it applies to the making of such
an arrangement.
- (4) A temporary care arrangement cannot be made or renewed in
respect of a child or young person if the child or young person
has, during the previous 12 months, been the subject of a
temporary care arrangement for a period, or for periods in the
aggregate, exceeding 6 months.
- (5) The Director-General may, whether on the application of the
child or young person, or a parent of the child or young person,
or on the Director-General's own motion, terminate a temporary
care arrangement in respect of a child or young person if:
- (a) the Director-General is of the opinion that the child or
young person is no longer in need of care and protection, or
 - (b) a care application is made in respect of the child or young
person.
- (6) An application for the review of a temporary care arrangement
may, in accordance with the regulations, be made to the
Children's Court:
- (a) by or on behalf of the child or young person the subject of
the arrangement, or
 - (b) by a person having parental responsibility for the child or
young person.

- (7) The decision of the Children's Court in respect of an application for a review is to be given effect to as if it were the decision of the Director-General with respect to the making of a temporary care arrangement under section 151. 1
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Division 2 Other supported out-of-home care arrangements 5
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153 Operation of other arrangements 7

- (1) The Director-General may provide support in respect of the placement of a child or young person in out-of-home care that has been arranged otherwise than under a temporary care arrangement as referred to in Division 1. 8
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- (2) If a child or young person has been placed in out-of-home care under any such other arrangement supported by the Director-General, the child or young person must not remain in the out-of-home care provided under the arrangement for a period in excess of 21 days unless the designated agency having supervisory responsibility for the child or young person is satisfied, following appropriate assessment, that the child or young person is unable to remain with his or her parent or parents. 12
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- (3) Within 7 days after the expiration of the 21-day period, the designated agency must: 21
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- (a) develop and implement a permanency plan involving restoration, or 23
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- (b) develop a care plan, 25
in respect of the child or young person. 26

Division 3 General provisions 27

154 Restriction on who may provide supported out-of-home care 28

- (1) Supported out-of-home care may be provided in respect of a child or young person only by the Director-General or an authorised carer. 29
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- (2) If a person, other than the Director-General or an authorised carer, provides out-of-home care in respect of a child or young person: 32
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- (a) the child or young person is, for the purposes of Parts 2 and 3 of Chapter 3, taken to be at risk of significant harm, and 35
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- (b) the Director-General may direct the person, by notice in writing, to cease providing the out-of-home care within the time specified in the notice. 1
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- (3) A person who fails to comply with a notice given to the person under subsection (2) (b) is guilty of an offence. 4
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Maximum penalty: 200 penalty units. 6
- 155 Review of supported out-of-home care arrangements** 7
- (1) If a child or young person has been in supported out-of-home care for a period, or for periods in the aggregate, exceeding 3 months in any period of 12 months, the designated agency having supervisory responsibility for the child or young person must conduct a review of the out-of-home care arrangements at least once in every period of 12 months. 8
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- (2) Any such annual review, in considering the needs of the child or young person, is to have regard to the following: 14
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- (a) the number of periods and the total time the child or young person has spent in supported out-of-home care, 16
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- (b) the number and outcome of previous reviews of the supported out-of-home care arrangements, 18
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- (c) the legal status of the child or young person, 20
- (d) the issues that need to be addressed while the child or young person is in supported out-of-home care, what is to be done and who is to undertake responsibility, 21
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- (e) the responsibilities of all parties concerning care, 24
- (f) any special requirements of the child or young person relating to culture, language, religion or disability, 25
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- (g) the appropriateness of making a care application. 27
- (3) At the conclusion of the annual review, the designated agency is to determine: 28
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- (a) whether restoration of the child or young person to family care is possible and, if not, how the parenting needs of the child or young person are to be met, and 30
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- (b) whether a care application should be made in order to provide for the reallocation of parental responsibility in relation to the child or young person. 33
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- (4) In addition to the annual review under subsection (1), reviews concerning the child or young person are to be conducted by the designated agency: 36
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- (a) within 21 days after the death of the authorised carer, and 1
- (b) before a planned change of placement, and 2
- (c) within 21 days after an unplanned change of placement. 3

Part 3A Voluntary out-of-home care 4

156 Preliminary 5

- (1) In this Part: 6
 - relevant agency* means: 7
 - (a) a designated agency, or 8
 - (b) any other organisation that provides out-of-home care in 9
respect of children or young persons and that is registered 10
for the time being by the Children’s Guardian for the 11
purposes of this Part. 12
- (2) The regulations may make provision for or with respect to: 13
 - (a) voluntary arrangements under this Part for out-of-home 14
care, and 15
 - (b) the registration of organisations for the purposes of this 16
Part. 17

156A Voluntary arrangements for out-of-home care 18

- (1) A parent of a child or young person may make an arrangement 19
with a relevant agency for the child or young person to be placed 20
in out-of-home care that is provided or arranged by the agency. 21
Any such arrangement is referred to in this section as a *voluntary* 22
arrangement. 23
 - Note.** Section 172A prohibits parents from placing children or young 24
persons in out-of-home care that is provided or arranged by 25
organisations that are not relevant agencies. 26
- (2) If a child or young person is placed in out-of-home care under a 27
voluntary arrangement: 28
 - (a) the child or young person must not remain in out-of-home 29
care for more than 3 months in any period of 12 months 30
unless the care is provided by, or is under the supervision 31
of, a designated agency, and 32
 - (b) the child or young person must not remain in out-of-home 33
care for more than 180 days in any period of 12 months 34
unless the designated agency responsible for the child or 35
young person has, in accordance with the guidelines issued 36
by the Children’s Guardian for the purposes of this section, 37

	prepared a plan that meets the needs of the child or young person under the arrangement.	1 2
(3)	If subsection (2) is not complied with in relation to the provision of out-of-home care under a voluntary arrangement, the child or young person to whom the arrangement applies is, for the purposes of Parts 2 and 3 of Chapter 3, taken to be at risk of significant harm.	3 4 5 6 7
(4)	The Children’s Guardian is to formulate intake procedures and procedures relating to assessments and inter-agency co-ordination in order to ensure:	8 9 10
	(a) that children and young persons are not placed in out-of-home care under a voluntary arrangement if adequate services can be provided to enable them to remain with their families, and	11 12 13 14
	(b) that proper case planning occurs for all children and young persons placed in any such out-of-home care.	15 16
[9]	Chapter 8, Part 5, heading	17
	Insert “statutory or supported” before “out-of-home care”.	18
[10]	Section 159A	19
	Insert before section 159:	20
	159A Part applies to statutory and supported out-of-home care only	21
	A reference in this Part to out-of-home care is a reference only to statutory or supported out-of-home care.	22 23
[11]	Section 161 Financial assistance for children and young persons in statutory or supported out-of-home care	24 25
	Omit section 161 (2).	26
[12]	Chapter 8, Part 6, heading	27
	Insert “statutory” before “out-of-home care”.	28
[13]	Section 165A	29
	Insert before section 165:	30
	165A Part applies to statutory out-of-home care only	31
	A reference in this Part to out-of-home care is a reference only to statutory out-of-home care.	32 33

[14] Sections 171 and 172	1
Insert “statutory or supported” before “out-of-home care” wherever occurring.	2
[15] Section 172A	3
Insert after section 172:	4
172A Prohibition on parents placing children or young persons in out-of-home care provided by unauthorised organisations	5
A parent of a child or young person must not cause or permit, or make arrangements for, the child or young person to be placed in out-of-home care that is provided or arranged by an organisation unless the organisation is a relevant agency within the meaning of section 156.	7
Maximum penalty: 200 penalty units.	8
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	12
1.4 Amendments relating to recommendation 16.16 (ii)–(vii)	13
[1] Section 90 Rescission and variation of care orders	14
Omit section 90 (3) (b).	15
[2] Section 90 (3A)	16
Omit “and the Children’s Guardian of the application, and the Director-General and the Children’s Guardian are entitled to be parties”.	17
Insert instead “of the application, and the Director-General is entitled to be a party”.	18
	19
	20
[3] Section 105 Publication of names and identifying information	21
Omit “Children’s Guardian” from section 105 (3) (b) (iii) wherever occurring.	22
Insert instead “Director-General”.	23
[4] Section 181 Functions relating to parental responsibility	24
Omit section 181 (1) (a) and (d).	25
[5] Section 183 Power of Children’s Guardian to resolve disputes	26
Omit the section.	27
[6] Section 186 Delegation of functions	28
Omit section 186 (1). Insert instead:	29
(1) The Children’s Guardian may delegate to an authorised person any of the functions of the Children’s Guardian, other than this power of delegation.	30
	31
	32

1.5 Amendment relating to recommendations 24.1 and 24.6	1
Chapter 16A	2
Insert after Chapter 16:	3
Chapter 16A Exchange of information and co-ordination of services	4
	5
245A Object and principles of Chapter	6
(1) The object of this Chapter is to facilitate the provision of services to children and young persons by agencies that have responsibilities relating to the safety, welfare or well-being of children and young persons:	7
	8
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	10
(a) by authorising or requiring those agencies to provide, and by authorising those agencies to receive, information that is relevant to the provision of those services, while protecting the confidentiality of the information, and	11
	12
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	14
(b) by requiring those agencies to take reasonable steps to co-ordinate the provision of those services with other such agencies.	15
	16
	17
(2) The principles underlying this Chapter are as follows:	18
(a) agencies that have responsibilities relating to the safety, welfare or well-being of children or young persons should be able to provide and receive information that promotes the safety, welfare or well-being of children or young persons,	19
	20
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	23
(b) those agencies should work collaboratively in a way that respects each other's functions and expertise,	24
	25
(c) each such agency should be able to communicate with each other agency so as to facilitate the provision of services to children and young persons and their families,	26
	27
	28
(d) because the safety, welfare and well-being of children and young persons are paramount:	29
	30
(i) the need to provide services relating to the care and protection of children and young persons, and	31
	32
(ii) the needs and interests of children and young persons, and of their families, in receiving those services,	33
	34
	35
take precedence over the protection of confidentiality or of an individual's privacy.	36
	37

245B Interpretation	1
(1) In this Chapter:	2
<i>prescribed body</i> means any body or organisation specified in	3
section 248 (6) or that is prescribed by the regulations for the	4
purposes of that section.	5
(2) A reference in this Chapter to a prescribed body includes a	6
reference to the person who is the chief executive officer	7
(however described) of the prescribed body.	8
(3) A reference in this Chapter to information relating to the safety,	9
welfare or well-being of a child or young person includes a	10
reference to information about the following:	11
(a) an unborn child who is the subject of a pre-natal report	12
under section 25,	13
(b) the family of an unborn child the subject of such a report,	14
(c) the expected date and place of birth of an unborn child the	15
subject of such a report.	16
245C Provision of information	17
(1) A prescribed body (the <i>provider</i>) may provide information	18
relating to the safety, welfare or well-being of a particular child	19
or young person or class of children or young persons to another	20
prescribed body (the <i>recipient</i>) if the provider reasonably	21
believes that the provision of the information would assist the	22
recipient:	23
(a) to make any decision, assessment or plan or to initiate or	24
conduct any investigation, or to provide any service,	25
relating to the safety, welfare or well-being of the child or	26
young person or class of children or young persons, or	27
(b) to manage any risk to the child or young person (or class	28
of children or young persons) that might arise in the	29
recipient's capacity as an employer or designated agency.	30
(2) Information may be provided under this section regardless of	31
whether the provider has been requested to provide the	32
information.	33
245D Request for information	34
(1) A prescribed body (the <i>requesting agency</i>) may request another	35
prescribed body to provide the requesting agency with any	36
information held by the other body that relates to the safety,	37
welfare or well-being of a particular child or young person or	38
class of children or young persons.	39

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|-----|--|----|
| (2) | Any such request may be made for the purposes of assisting the requesting agency: | 1 |
| | | 2 |
| (a) | to make any decision, assessment or plan or to initiate or conduct any investigation, or to provide any service, relating to the safety, welfare or well-being of the child or young person or class of children or young persons, or | 3 |
| | | 4 |
| | | 5 |
| | | 6 |
| (b) | to manage any risk to the child or young person (or class of children or young persons) that might arise in the agency's capacity as an employer or designated agency. | 7 |
| | | 8 |
| | | 9 |
| (3) | If a prescribed body receives a request under this section, the prescribed body is required to comply with the request if it reasonably believes, after being provided with sufficient information by the requesting agency to enable the other body to form that belief, that the information may assist the requesting agency for any purpose referred to in subsection (2). | 10 |
| | | 11 |
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| (4) | A prescribed body is not required to provide any information that it has been requested to provide if the body reasonably believes that to do so would: | 16 |
| | | 17 |
| | | 18 |
| (a) | prejudice the investigation of a contravention (or possible contravention) of a law in any particular case, or | 19 |
| | | 20 |
| (b) | prejudice a coronial inquest or inquiry, or | 21 |
| (c) | prejudice any care proceedings, or | 22 |
| (d) | contravene any legal professional or client legal privilege, or | 23 |
| | | 24 |
| (e) | enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained, or | 25 |
| | | 26 |
| | | 27 |
| (f) | endanger a person's life or physical safety, or | 28 |
| (g) | prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention (or possible contravention) of a law, or | 29 |
| | | 30 |
| | | 31 |
| | | 32 |
| (h) | not be in the public interest. | 33 |
| (5) | If a prescribed body refuses to provide information in accordance with a request under this section, the prescribed body must, at the time it notifies the requesting agency of the refusal, provide the requesting agency with reasons in writing for refusing the request. | 34 |
| | | 35 |
| | | 36 |
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245E	Co-ordination of services	1
	Prescribed bodies are, in order to effectively meet their responsibilities in relation to the safety, welfare or well-being of children and young persons, required to take reasonable steps to co-ordinate decision-making and the delivery of services regarding children and young persons.	2 3 4 5 6
245F	Restriction on use of information provided under this Chapter	7
	If any information is provided to a prescribed body under this Chapter, the prescribed body must not, except as otherwise required or permitted by any law, use or disclose the information for any purpose that is not associated with the safety, welfare or well-being of the child or young person (or class of children or young persons) to whom the information relates.	8 9 10 11 12 13
245G	Protection from liability for providing information	14
	(1) This section applies if a person, acting in good faith, provides any information in accordance with this Chapter.	15 16
	(2) Any such person is not liable to any civil or criminal action, or any disciplinary action, for providing the information.	17 18
	(3) In providing the information, the person cannot be held to have breached any code of professional etiquette or ethics or departed from any accepted standards of professional conduct.	19 20 21
245H	Interaction with other laws	22
	(1) A provision of any other Act or law (whether enacted or made before or after the commencement of this section) that prohibits or restricts the disclosure of information does not operate to prevent the provision of information (or affect a duty to provide information) under this Chapter.	23 24 25 26 27
	(2) This Chapter does not limit the operation of Part 3 of Chapter 2 or sections 185 and 248.	28 29
245I	Commonwealth agencies	30
	Nothing in this Chapter is to be construed as imposing a requirement on any of the following bodies:	31 32
	(a) the Federal Court of Australia,	33
	(b) the Federal Magistrates Court of Australia,	34
	(c) Centrelink,	35
	(d) the Commonwealth Department of Immigration and Multicultural and Indigenous Affairs.	36 37

1.6 Other miscellaneous or consequential amendments	1
[1] Section 3 Definitions	2
Insert in alphabetical order:	3
<i>Children’s Court Clinic</i> means the Children’s Court Clinic referred to in section 15B of the <i>Children’s Court Act 1987</i> .	4 5
[2] Section 19	6
Omit the section. Insert instead:	7
19 Interagency co-operation and exchange of information	8
The provisions of this Part do not limit the operation of Chapter 16A or section 248.	9 10
[3] Chapter 3 Request for assistance and reports	11
Omit the diagrams at the beginning of the Chapter.	12
[4] Sections 39, 40 and 41	13
Omit the sections.	14
[5] Section 220 Regulations	15
Omit section 220 (a) and (a1). Insert instead:	16
(a) the probity checks that may be made on all persons who are, or who are proposed to be, engaged in the operation or management of a children’s service (or a proposed children’s service), other than those persons who are employed in child-related employment within the meaning of section 33 of the <i>Commission for Children and Young People Act 1998</i> ,	17 18 19 20 21 22 23
[6] Schedule 3 Savings, transitional and other provisions	24
Insert at the end of clause 1 (1):	25
<i>Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009</i> , to the extent that it amends this Act	26 27

Schedule 2	Amendments relating to	1
	recommendations 11.2, 13.1, 13.3, 13.4,	2
	13.9 and 13.12	3
2.1	Amendment of Children and Young Persons (Care and	4
	Protection) Act 1998 No 157	5
[1]	Section 45 Application to Children’s Court for care order	6
	Omit “the Director-General must apply to the Children’s Court at the first	7
	available opportunity, but no later than the next sitting day of the Children’s	8
	Court after the removal or assumption of care responsibility by the	9
	Director-General,” from section 45 (1).	10
	Insert instead “the Director-General must, no later than 72 hours after the	11
	removal or assumption of care responsibility, make a care application in the	12
	Children’s Court”.	13
[2]	Section 61 Applications for care orders	14
	Omit section 61 (2). Insert instead:	15
	(2) A care application must:	16
	(a) specify the particular care order sought and the grounds on	17
	which it is sought, and	18
	(b) without limiting paragraph (a), be accompanied by a	19
	written report specifying such information as may be	20
	prescribed for the purposes of this section by the rules	21
	made under the <i>Children’s Court Act 1987</i> .	22
[3]	Section 107 Examination and cross-examination of witnesses	23
	Omit “an authorised Magistrate within the meaning of the <i>Children’s Court</i>	24
	<i>Act 1987</i> ” from section 107 (4).	25
	Insert instead “the President of the Children’s Court”.	26
[4]	Section 109 Definitions	27
	Insert at the end of the section:	28
	(2) In this Part, a reference to a Children’s Magistrate includes a	29
	reference to the President of the Children’s Court.	30

2.2 Amendment of Children’s Court Act 1987 No 53	1
[1] Section 3 Definitions	2
Omit the definition of <i>Senior Children’s Magistrate</i> in section 3 (1).	3
Insert instead in alphabetical order:	4
<i>President</i> means the person appointed under section 6A as the President of the Children’s Court.	5 6
[2] Sections 6, 6A and 6B	7
Omit section 6. Insert instead:	8
6 Composition of the Court	9
The Court is composed of the President and such Children’s Magistrates as are appointed under this Act.	10 11
6A President of Children’s Court	12
(1) The Governor may, by commission under the public seal of the State, appoint a qualified person as the President of the Children’s Court.	13 14 15
(2) A person is qualified to be appointed as the President only if the person holds office as a Judge of the District Court.	16 17
(3) Subject to this section, the President holds office for such term (not exceeding 5 years) as is specified in his or her instrument of appointment.	18 19 20
(4) The appointment of a person as the President does not affect:	21
(a) the person’s tenure as a Judge of the District Court, or	22
(b) the person’s rank, title, status, remuneration or other rights or privileges as a Judge of the District Court.	23 24
(5) Service in the office of the President is, for all purposes, taken to be service in the office of Judge of the District Court.	25 26
(6) A person is taken to have vacated office as the President if the person:	27 28
(a) ceases to be a Judge of the District Court, or	29
(b) resigns office by instrument in writing addressed to the Governor.	30 31
(7) A person does not cease to be a Judge of the District Court merely because of:	32 33
(a) his or her resignation from office as the President, or	34

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13.12

(b)	the expiration of his or her term of office as the President.	1
(8)	Despite anything to the contrary in this section, a person appointed as the President is not to exercise the jurisdiction of the District Court while holding office as the President (except, with the approval of the Chief Judge of the District Court, in respect of a matter that was being dealt with by the person immediately before being appointed as the President).	2 3 4 5 6 7
6B	Acting President of Children’s Court	8
(1)	The Governor may, by instrument in writing, appoint a Children’s Magistrate to be the Acting President:	9 10
(a)	during any vacancy in the office of the President, or	11
(b)	during any period for which the President is absent from duty.	12 13
(2)	While acting as the President, the person appointed as the Acting President:	14 15
(a)	has and may exercise the functions of the President, and	16
(b)	is entitled to be paid the same remuneration as the President.	17 18
(3)	However, service in the office of the Acting President is not taken to be service in the office of Judge of the District Court.	19 20
[3]	Section 7 Appointment of Children’s Magistrates	21
	Insert after section 7 (1):	22
(1A)	Any such appointment may only be made in consultation with the President.	23 24
[4]	Section 7 (2) (b)	25
	Omit the paragraph. Insert instead:	26
(b)	has, in the opinion of the Chief Magistrate and the President, such knowledge, qualifications, skills and experience in the law and the social or behavioural sciences, and in dealing with children and young people and their families, as the Chief Magistrate and President each consider necessary to enable the person to exercise the functions of a Children’s Magistrate.	27 28 29 30 31 32 33

[5] Section 7 (2A)	1
Omit “Chief Magistrate may, in consultation with the Senior Children’s Magistrate”.	2
	3
Insert instead “President may, in consultation with the Chief Magistrate”.	4
[6] Sections 8, 9 and 17	5
Omit the sections.	6
[7] Section 10A Children’s Registrars	7
Insert after section 10A (1):	8
(1A) A person cannot be employed as a Children’s Registrar unless the person is an Australian lawyer.	9
	10
[8] Section 13	11
Omit the section. Insert instead:	12
13 Single member to exercise jurisdiction of the Court	13
The jurisdiction of the Court may be exercised:	14
(a) by the President, or	15
(b) by a Children’s Magistrate,	16
sitting alone.	17
[9] Sections 15A (2), 18 and 22 (a)	18
Omit “Senior Children’s Magistrate” wherever occurring.	19
Insert instead “President”.	20
[10] Section 15B Children’s Court Clinic	21
Omit “Attorney General” from section 15B (1).	22
Insert instead “Minister for Health”.	23
[11] Section 16	24
Omit the section. Insert instead:	25
16 Functions of the President	26
(1) The President has the following functions:	27
(a) to administer the Court,	28
(b) to arrange sittings of the Court,	29

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13.12

(c)	to convene, at least once every 6 months, a meeting of Children's Magistrates and such other persons as the President thinks fit,	1 2 3
(d)	to confer regularly with community groups and social agencies on matters involving children and the Court,	4 5
(e)	to provide judicial leadership to the Court,	6
(f)	to develop recommendations for rules,	7
(g)	to oversee the training of Children's Magistrates and prospective Children's Magistrates in accordance with the rules.	8 9 10
(2)	The President may also exercise any of the functions that are conferred or imposed on a Children's Magistrate under this or any other Act.	11 12 13
(3)	The President may require specified functions of Children's Magistrates to be exercised by specified Children's Magistrates or Children's Magistrates of a specified class, and any Children's Magistrate of whom a requirement is made under this subsection must comply with the requirement.	14 15 16 17 18
(4)	The President may delegate to a Children's Magistrate any of the President's functions under this section, other than this power of delegation.	19 20 21
[12] Section 22A		22
	Insert after section 22:	23
22A Appeals in relation to decisions of Presidential Children's Court		24
(1)	In this section: <i>appeal</i> includes the referral of any matter. <i>decision</i> includes any order or judgment. <i>Presidential Children's Court</i> means the Children's Court constituted by the President.	25 26 27 28 29
(2)	An appeal to the District Court under any Act or other law in relation to a decision of the Presidential Children's Court is, despite the provisions of that Act or law, taken to be an appeal to the Supreme Court.	30 31 32 33
(3)	Subsection (2) has effect only to the extent provided by the regulations.	34 35
(4)	For the purposes of subsection (2), the provisions of any Act or law relating to appeals are subject to such modifications as may be prescribed by the regulations.	36 37 38

(5)	The Governor may make regulations for the purposes of this section.	1 2
[13]	Sections 23A and 23B	3
	Insert after section 23:	4
23A	Practice notes	5
(1)	Subject to the rules, the President may issue practice notes in relation to any matter with respect to which rules may be made.	6 7
(2)	A practice note issued under this section:	8
(a)	must be published in the Gazette, and	9
(b)	takes effect on the day on which it is published in the Gazette or, if a later day or days are specified in the practice note for that purpose, on the later day or days so specified.	10 11 12 13
(3)	A practice note issued under this section may be amended or repealed by a further practice note issued under this section.	14 15
(4)	Subject to subsection (5), sections 40 and 41 of the <i>Interpretation Act 1987</i> apply to a practice note issued under this section in the same way as they apply to a statutory rule.	16 17 18
(5)	For the purpose of applying section 40 of the <i>Interpretation Act 1987</i> to a practice note issued under this section, a reference in that section to the publication of a statutory rule is to be read as a reference to the publication of the practice note as provided by subsection (2).	19 20 21 22 23
23B	Court may give directions in circumstances not covered by rules or practice notes	24 25
(1)	In relation to particular proceedings, the Court may, in respect of any matter for which the rules or practice notes do not make provision, give directions that the Court considers appropriate in connection with the practice and procedure to be followed in relation to that matter.	26 27 28 29 30
(2)	Any such direction has no effect to the extent that it is inconsistent with any provision of the <i>Children and Young Persons (Care and Protection) Act 1998</i> relating to proceedings before the Court.	31 32 33 34
(3)	Anything done in accordance with a direction under this section (including the commencing of proceedings and the taking of any step in proceedings) is taken to have been validly done.	35 36 37

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Schedule 2 Amendments relating to recommendations 11.2, 13.1, 13.3, 13.4, 13.9 and
13.12

[14] Schedule 1 Provisions relating to Children’s Magistrates	1
Insert “and to the President” after “Chief Magistrate” in clause 5 (b).	2
[15] Schedule 2 Savings and transitional provisions	3
Insert at the end of clause 1 (1):	4
<i>Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009</i> , to the extent that it amends this Act	5 6
[16] Schedule 2, Part 3	7
Insert after Part 2:	8
Part 3 Provisions consequent on enactment of Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009	9 10 11
6 Definition	12
In this Part:	13
<i>amending Act</i> means the <i>Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009</i> .	14 15
7 Provisions relating to abolished office of Senior Children’s Magistrate	16 17
(1) In accordance with section 56 (2) of the <i>Constitution Act 1902</i> , the person who, immediately before the repeal of section 8 of this Act by the amending Act, held office as Senior Children’s Magistrate is entitled (without loss of remuneration) to hold office as a Magistrate or Children’s Magistrate for the remainder of the term for which the person was appointed as Senior Children’s Magistrate.	18 19 20 21 22 23 24
(2) A reference to the Senior Children’s Magistrate in any other Act (other than the <i>Constitution Act 1902</i>) or statutory instrument is to be construed as a reference to the President.	25 26 27
8 Provisions relating to Children’s Court Clinic	28
The regulations made under clause 1 (1) may make provision for or with respect to:	29 30
(a) transferring the staff of the Children’s Court Clinic, and	31

(b) requiring references to the Children’s Court Clinic in this or any other Act or statutory instrument, or any other instrument, or any contract or agreement, to be construed as a reference,	1 2 3 4
to such public sector agency (or part of a public sector agency) as may be prescribed by the regulations.	5 6
2.3 Amendment of Constitution Act 1902 No 32	7
Section 52 Definition and application	8
Insert “or President of the Children’s Court” after “District Court” in paragraph (d) of the definition of <i>judicial office</i> in section 52 (1).	9 10
2.4 Amendment of Judicial Officers Act 1986 No 100	11
[1] Section 3 Definitions	12
Insert after paragraph (d) of the definition of <i>judicial officer</i> in section 3 (1):	13
(e) the President of the Children’s Court,	14
[2] Section 43 Appropriate authorities to suspend etc	15
Insert “, the President of the Children’s Court” after “member of the Commission”.	16 17
2.5 Amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No 4)	18 19
[1] Schedule 1 Public offices	20
Insert after the matter relating to the office of Judge of the District Court:	21
President of the Children’s Court	22
[2] Schedule 1	23
Omit “the Senior Children’s Magistrate,” from the matter relating to the office of Magistrate.	24 25
[3] Schedule 1	26
Omit the matter relating to the office of Senior Children’s Magistrate.	27

2.6 Amendment of Children’s Court Rule 2000	1
[1] Clauses 10 (b) and (c), 11, 18A, 30 (3) and 37 (1) (a) and (c) (i)	2
Omit “Senior Children’s Magistrate” wherever occurring.	3
Insert instead “President”.	4
[2] Clause 17 Practice directions of the Court	5
Omit the clause.	6
[3] Clause 21	7
Omit the clause. Insert instead:	8
21 Report to accompany care applications	9
For the purposes of section 61 (2) of the <i>Children and Young Persons (Care and Protection) Act 1998</i> , the report that is required to accompany a care application must:	10
(a) provide a summary of the facts, matters and circumstances on which the applicant intends to rely, and	11
	12
(b) state whether or not the child or young person to whom the application relates is currently the subject of an order made by:	13
	14
(i) the Court in the exercise of its jurisdiction under the <i>Children and Young Persons (Care and Protection) Act 1998</i> , or	15
	16
(ii) any other Court in the exercise of its jurisdiction with respect to the custody or guardianship of children or parental responsibility for children.	17
	18
	19
	20
	21
	22
	23
[4] Clause 33 Composition of Children’s Court Clinic	24
Omit “Attorney General” wherever occurring.	25
Insert instead “Minister for Health”.	26
[5] Clause 40 Deputies	27
Omit “, or the deputy of the Director of the Children’s Court Clinic” from clause 40 (1).	28
	29

Schedule 3	Amendments relating to	1
	recommendations 23.3, 23.4 and 23.8	2
3.1	Amendment of Commission for Children and Young People Act 1998 No 146	3
		4
[1]	Section 11 Principal functions of Commission	5
	Omit “for child-related employment” from section 11 (i).	6
	Insert instead “under and”.	7
[2]	Section 31 Object of Part	8
	Omit “for child-related employment” from section 31 (b).	9
[3]	Section 33 Definitions	10
	Insert after paragraph (a) of the definition of <i>child-related employment</i> in section 33 (1):	11
		12
	(a1) means (without limiting paragraph (a)) any employment of the following kind:	13
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	(i) employment comprising the provision of a prescribed children’s service,	15
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	(ii) employment as a person involved in the control or management of a prescribed children’s service,	17
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	(iii) employment as an authorised supervisor (within the meaning of section 199 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> in relation to a prescribed children’s service,	19
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	(iv) employment as an assessment officer within the meaning of section 27A of the <i>Children and Young Persons (Care and Protection) Act 1998</i> ,	23
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	(v) employment as the principal officer of a designated agency within the meaning of the <i>Children and Young Persons (Care and Protection) Act 1998</i> ,	26
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		28
	(vi) employment as the principal officer of an accredited adoption service provider within the meaning of the <i>Adoption Act 2000</i> ,	29
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		31
	(vii) employment as a self-employed person or as a subcontractor (by or on behalf of or in a relevant agency) if that employment involves direct contact with children and the contact is not directly supervised by a person having capacity to direct the	32
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	self-employed person or subcontractor in the course of his or her work, and	1 2
[4]	Section 33 (1), definition of “employer”	3
	Insert at the end of paragraph (b):	4
	, or	5
	(c) in the case of employment comprising the provision of a prescribed children’s service or the performance of work as a person involved in the control or management of a prescribed children’s service—the Director-General of the Department of Community Services.	6 7 8 9 10
[5]	Section 33 (1), definition of “employment”	11
	Insert at the end of paragraph (f):	12
	, or	13
	(g) providing a prescribed children’s service, or	14
	(h) performance of work as a person involved in the control or management of a prescribed children’s service.	15 16
[6]	Section 33 (1)	17
	Insert in alphabetical order:	18
	<i>prescribed children’s service</i> has the same meaning as in section 199 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	19 20 21
	<i>relevant agency</i> means any of the following:	22
	(a) the Department of Community Services,	23
	(b) the Department of Education and Training,	24
	(c) the TAFE Commission Division (including the TAFE Commission),	25 26
	(d) any other agency or organisation prescribed by the regulations for the purposes of this definition.	27 28
	Note. This definition is relevant for the purposes of paragraph (a1) (vii) of the definition of <i>child-related employment</i> .	29 30

[7] Section 37 Background checking mandatory for preferred applicants for certain child-related employment	1 2
Insert after paragraph (c) of the definition of <i>primary child-related employment</i> in section 37 (6):	3 4
(c1) child-related employment of a student that involves working in the Department of Community Services, or	5 6
(c2) child-related employment of a volunteer that involves the mentoring of disadvantaged children, or	7 8
(c3) child-related employment of a volunteer that involves the provision of personal care services to children with disabilities, but only if the work involves an intimate level of contact with those children (such as assistance with bathing, dressing or toileting), or	9 10 11 12 13
[8] Section 45	14
Insert after section 44:	15
45 Application of background checking provisions to adult persons residing with authorised carers or children’s service providers	16 17
(1) In this section:	18
<i>applied provisions</i> means the background checking provisions that are, because of subsection (2), taken to apply to and in respect of a relevant person who resides at the home of an authorised carer or children’s service provider.	19 20 21 22
<i>authorised carer</i> and <i>designated agency</i> have the same meanings as in the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	23 24 25
<i>background checking provisions</i> means the provisions of this Division (including the provisions of section 33 in their application to this Division) that relate to background checking for child-related employment.	26 27 28 29
<i>children’s service provider</i> means:	30
(a) in the case of a family day care children’s service licensed under the <i>Children and Young Persons (Care and Protection) Act 1998</i> —the person who is the family day care carer under that Act for the service, or	31 32 33 34
(b) in the case of a home based children’s service licensed under that Act—the person who is the licensee under that Act for the service.	35 36 37

	<i>relevant person</i> means a person (other than an authorised carer or children's service provider) who is of or above the age of 18 years.	1 2 3
(2)	The background checking provisions apply to and in respect of a relevant person who resides at the home of an authorised carer or children's service provider in the same way as those provisions apply to and in respect of background checking for child-related employment, with:	4 5 6 7 8
	(a) subject to paragraph (b), such adaptations as may be necessary, and	9 10
	(b) such exclusions and modifications as may be prescribed by the regulations.	11 12
(3)	For the purposes of this section, a relevant person is taken to <i>reside</i> at the home of an authorised carer or children's service provider if:	13 14 15
	(a) that home is the place at which the authorised carer or licensed service provides the foster care or the children's service concerned, and	16 17 18
	(b) the person has been living at that home on a regular basis for a period of not less than 3 months.	19 20
(4)	Without limiting subsection (2), the following provisions have effect in relation to the operation of the applied provisions:	21 22
	(a) a reference to an employer is taken to be a reference to:	23
	(i) in the case of a relevant person who resides at the home of an authorised carer—the designated agency that authorises the carer, or	24 25 26
	(ii) in the case of a relevant person who resides at the home of a children's service provider—the licensee of the children's service concerned,	27 28 29
	(b) a reference to a person who is employed or who is an applicant for employment is taken to be a reference to the relevant person who resides at the home of the authorised carer or children's service provider (as the case requires),	30 31 32 33
	(c) it is the duty under section 37 of the designated agency or the licensee of the children's service (as the relevant employer) to carry out all the relevant procedures of background checking of the relevant person to determine whether it is appropriate for that person to reside at the home of the authorised carer or children's service provider concerned.	34 35 36 37 38 39 40

[9] Schedule 3 Savings, transitional and other provisions	1
Insert at the end of clause 1 (1):	2
<i>Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009</i> , to the extent that it amends this Act	3 4
3.2 Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2	5 6
[1] Section 8A	7
Insert after section 8:	8
8A Provision of information to Children’s Guardian	9
(1) An Official Community Visitor is required to provide to the Children’s Guardian, and the Children’s Guardian is authorised to collect and use, any information obtained by the Official Community Visitor under section 8 that is of a class specified by the Children’s Guardian (and notified to the Visitor) as being information that is relevant to the exercise of the functions of the Children’s Guardian in connection with the accreditation of an organisation or government department as a designated agency under the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	10 11 12 13 14 15 16 17 18 19
(2) A provision of any other Act or law that prohibits or restricts the disclosure of information does not operate to prevent the provision of information (or affect a duty to provide information) under this section.	20 21 22 23
[2] Section 35 Application of Part	24
Omit section 35 (1) (b) and (c).	25
[3] Section 43 Reports	26
Omit section 43 (1). Insert instead:	27
(1) The Ombudsman must prepare a report every 2 years on the Ombudsman’s work and activities under this Part for the preceding 2 years. The first such biennial report is to be prepared in respect of the 2-year period ending on 30 June 2010.	28 29 30 31

(1A)	Each report under subsection (1) must be provided to the Presiding Officer of each House of Parliament as soon as practicable after 30 June.	1 2 3
[4] Section 43 (2) (a)		4
	Omit “previous calendar year”. Insert instead “reporting period”.	5
[5] Section 43 (4)		6
	Omit “an annual report under this section”.	7
	Insert instead “a report under subsection (1)”.	8
3.3 Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157		9 10
[1] Section 137 Authorised carers		11
	Insert after section 137 (2):	12
(3)	In the case of an authorised carer who is authorised by a designated agency, it is a condition of the authorisation that the carer must notify the designated agency if any person (other than the carer) who is of or above the age of 18 years is residing at the carer’s home on a regular basis and has been doing so for a period of at least 3 months.	13 14 15 16 17 18
	Note. See section 45 of the <i>Commission for Children and Young People Act 1998</i> which provides for background checking under Division 3 of Part 7 of that Act of adult household members of authorised carers.	19 20 21
(4)	Without limiting subsection (3), any such requirement to notify the designated agency applies even though the adult person who is residing at the carer’s home was at any time residing at that home as a minor.	22 23 24 25
[2] Section 209 Conditions of licences		26
	Insert at the end of the section:	27
(2)	It is a condition of a licence for a family day care children’s service or a home based children’s service that the licensee must notify the Director-General if any person (other than the licensee) who is of or above the age of 18 years is residing at the licensee’s home on a regular basis and has been doing so for a period of at least 3 months.	28 29 30 31 32 33
	Note. See section 45 of the <i>Commission for Children and Young People Act 1998</i> which provides for background checks (under Division 3 of Part 7 of that Act) to be carried out in relation to adult household members of children’s service providers.	34 35 36 37

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- (3) Without limiting subsection (2), any such requirement to notify the Director-General applies even though the adult person who is residing at the licensee's home was at any time residing at that home as a minor.

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3.4 Amendment of Children's Services Regulation 2004

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Clauses 117, 119–121 and 122F

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Omit the clauses.

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