

Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 No 13

[2009-13]



New South Wales

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

Authorisation

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New South Wales

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Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 No 13



New South Wales

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.

1 Name of Act

This Act is the *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Repeal of *Children (Care and Protection) Act 1987 No 54*

The *Children (Care and Protection) Act 1987* is repealed.

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

1.1 Amendments relating to recommendations 6.2 and 10.1

[1] Section 23 Child or young person at risk of significant harm

Omit “*at risk of harm*”. Insert instead “*at risk of significant harm*”.

[2] Section 23

Insert “, to a significant extent,” after “because of the presence”.

[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 *Education Act 1990*—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,

[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.

[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”.

[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”.

[7] Section 27 (2)

Omit the penalty at the end of the subsection.

[8] Section 27A

Insert after section 27:

27A Alternative reporting arrangements

(1) In this section:

assessment officer, in relation to a relevant agency, means a person appointed or designated by the head of the agency as an assessment officer of the agency for the purposes of an arrangement under this section.

head of a relevant agency means:

(a) (subject to paragraph (b)) the person who is the chief executive officer, or who exercises the functions of chief executive officer, of the agency, or

(b) the person prescribed by the regulations.

relevant agency means any of the following:

- (a) the NSW Health Service (including the Health Executive Service referred to in section 121B of the *Health Services Act 1997*),
 - (b) the NSW Police Force,
 - (c) the Teaching Service,
 - (d) the Department of Health,
 - (e) the Department of Education and Training,
 - (f) the TAFE Commission Division (including the TAFE Commission),
 - (g) the Department of Juvenile Justice,
 - (h) the Department of Ageing, Disability and Home Care,
 - (i) Housing NSW,
 - (j) any other agency or organisation prescribed by the regulations for the purposes of this section.
- (2) The Director-General and the head of a relevant agency may enter into an arrangement under which a person (***the staff member***) who:
- (a) is employed in or engaged by the relevant agency, and
 - (b) is a person to whom section 27 applies,
- may, in accordance with the terms of the arrangement, refer to an assessment officer of the agency any matter that the staff member would otherwise be required to report to the Director-General under that section.
- (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.
- (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.
- (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.

- (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.
- (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.
- (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.
- (9) The following provisions apply in relation to the appointment or designation of assessment officers for the purposes of this section:
 - (a) more than one person may be appointed or designated as an assessment officer in relation to a relevant agency,
 - (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,
 - (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.
- (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.
- (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.

1.2 Amendments relating to recommendations 11.1 and 11.3

[1] Section 3 Definitions

Omit the definition of *compulsory assistance*.

[2] Section 8 What are the objects of this Act?

Omit “taking into account the rights, powers and duties” from section 8 (a).

Insert instead “having regard to the capacity”.

[3] Section 9

Omit the section. Insert instead:

9 Principles for administration of Act

- (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.
- (2) Subject to subsection (1), the other principles to be applied in the administration of this Act are as follows:
 - (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.
 - (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.
 - (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.
 - (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.

- (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.
- (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.

[4] Section 18 Obligation to co-operate

Insert “, or the non-government agency,” after “agency”.

[5] Section 18 (2)

Insert at the end of section 18:

- (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.

[6] Section 21 Request for assistance by parent of child or young person or by funded non-government agency

Insert at the end of the section (before the note):

- (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.

[7] Section 22

Omit the section. Insert instead:

22 Director-General's response to requests for assistance

- (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:
 - (a) provide whatever advice or material assistance, or make such referral, as the Director-General considers necessary, or
 - (b) take whatever other action the Director-General considers necessary, to safeguard or promote the safety, welfare and well-being of the child or young person.
- (2) Subsection (1) does not, however, require the Director-General to take any action other than assessing the request for assistance.

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.

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.

[8] Section 28

Omit the section. Insert instead:

28 Record of reports and subsequent action

The Director-General must keep a record of:

- (a) any report made to the Director-General, and
- (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.

[9] Section 29 Protection of persons who make reports or provide certain information

Insert after section 29 (4):

- (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 (**the reporter**), or information from which the identity of the reporter could be deduced, if:
 - (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

- (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).

(4B) However, subsection (4A) does not apply unless:

- (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
- (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.

(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:

- (a) it is not reasonably practicable in the circumstances to do so, or
- (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.

[10] Section 29 (6)

Insert in alphabetical order:

law enforcement agency means any of the following:

- (a) the NSW Police Force,
- (b) the Australian Federal Police,
- (c) the police force of another State or Territory,
- (d) a person or body prescribed by the regulations for the purposes of this definition.

senior officer means:

- (a) in relation to the NSW Police Force—a commissioned police officer within the meaning of the [Police Act 1990](#), or
- (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.

[11] Section 58 Provision of assessment reports and other information

Omit “or unwilling” wherever occurring.

[12] Section 58 (3)-(5)

Insert after section 58 (2):

- (3) The Children’s Court may, of its own motion, order:
 - (a) the Children’s Court Clinic, or
 - (b) a person appointed under subsection (2),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.
- (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.
- (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.

[13] Section 65A

Insert after section 65:

65A Referral of matters before the Court to ADR

- (1) The Children’s Court may make an order that the parties to a care application attend an alternative dispute resolution service in relation to the proceedings before the Court or any aspect of those proceedings.
- (2) The Children’s Court may make an order under this section:
 - (a) on its own initiative, or
 - (b) on the application of a party to the proceedings.

[14] Section 71 Grounds for care orders

Omit “any of the following reasons” from section 71 (1).

Insert instead “any reason including, without limitation, any of the following”.

[15] Section 71 (1A)

Insert after section 71 (1):

(1A) If the Children’s Court makes a care order in relation to a reason not listed in subsection (1), the Court may only do so if the Director-General pleads the reason in the care application.

[16] Section 71A Effect of conduct outside New South Wales

Omit “referred to in”. Insert instead “for the purposes of”.

[17] Section 78 Care plans

Insert “in general terms” after “relates” in section 78 (2) (b) (i).

[18] Section 78A Permanency planning

Omit “section 9 (f)” from section 78A (1) (a). Insert instead “section 9 (2) (e)”.

[19] Section 78A (2A)

Insert after section 78A (2):

(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.

[20] Section 79 Order allocating parental responsibility

Omit “section 9 (d)” from section 79 (3). Insert instead “section 9 (2) (c)”.

[21] Section 79 (5)

Insert after section 79 (4):

(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] Section 82

Omit the section. Insert instead:

82 Report on suitability of arrangements concerning parental responsibility

- (1) The Children's Court may, when making an order in any care proceedings (the **relevant proceedings**) allocating parental 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.
- (2) The report must:
 - (a) be provided to the Children's Court within 12 months or such earlier period as the Court may specify, and
 - (b) include an assessment of progress in implementing the care plan, including progress towards the achievement of a permanent placement, and
 - (c) unless the Court orders otherwise, be given to each of the other parties to the relevant proceedings.
- (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.
- (4) The Children's Court cannot, however, rescind or vary the order, or make a new order allocating parental responsibility, on its own motion.
- (5) Subsection (3) does not limit the circumstances in which a party to the relevant proceedings may make an application under section 90.

[23] Section 83 Preparation of permanency plan

Insert after section 83 (7):

- (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 provide the further and better particulars which are sufficiently identified and addressed so the Court, prior to final orders being made, can have a reasonably clear plan as to the child's or young person's needs and how those needs are going to be met.

[24] Section 86 Contact orders

Insert after section 86 (1):

- (1A) The Children’s Court may make an order of the kind referred to in subsection (1) (a) only if:
- (a) it is made as an interim order pending the conclusion of the proceedings, or
 - (b) the Court has, under section 83, approved a permanency plan involving restoration in relation to that child or young person.

[25] Section 86 (5) and (6)

Insert after section 86 (4):

- (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.
- (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.

[26] Section 90 Rescission and variation of care orders

Insert before section 90 (3) (c):

- (b1) the child or young person, or

[27] Section 90 (2A) (f):

Insert at the end of section 90 (2A) (e):

, and

- (f) matters concerning the care and protection of the child or young person that are identified in:
 - (i) a report under section 82, or
 - (ii) a report that has been prepared in relation to a review directed by the Children’s Guardian under section 85A or in accordance with section 150.

[28] Chapter 7, Part 3 Compulsory assistance

Omit the Part.

[29] Sections 149B (2) and 231M (d)

Omit “section 9 (g)” wherever occurring. Insert instead “section 9 (2) (f)”.

[30] Section 231E Director-General to have regard to certain matters

Omit section 231E (a). Insert instead:

- (a) the principles in section 9, and

[31] Sections 231J (2) (a) and 231M (a)

Omit “matters referred to” wherever occurring. Insert instead “principles”.

[32] Section 248A

Insert after section 248:

248A Collection of information by Director-General and Children’s Court

- (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.
- (2) Without limiting subsection (1), the regulations may require the Director-General or the Children’s Court:
 - (a) to collect any such information, and
 - (b) to keep any such information that is collected by, or that is provided to, the Director-General or the Children’s Court, and
 - (c) to make any such information publicly available, and
 - (d) to provide any such information to the Minister.
- (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.

[33] Section 250 Delegation by Director-General

Omit section 250 (1) (b).

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

[1] Sections 13 (1) and 16 (3) (b)

Insert “statutory” before “out-of-home care” wherever occurring.

[2] Section 14 Records relating to Aboriginals and Torres Strait Islanders

Insert “statutory or supported” before “out-of-home care” wherever occurring in section 14 (1) and (2).

[3] Section 134 Objects of this Chapter

Omit section 134 (c) and the note at the end of the section. Insert instead:

- (c) to clarify the roles and responsibilities of those involved in the provision of out-of-home care.

[4] Sections 135-135C

Omit section 135. Insert instead:

135 Definition and types of “out-of-home care”

- (1) For the purposes of this Act, **out-of-home care** means residential care and control of a child or young person that is provided:
 - (a) by a person other than a parent of the child or young person, and
 - (b) at a place other than the usual home of the child or young person, whether or not for fee, gain or reward.
- (2) There are 3 types of out-of-home care for the purposes of this Act, as follows:
 - (a) **statutory out-of-home care**—see section 135A,
 - (b) **supported out-of-home care**—see section 135B,
 - (c) **voluntary out-of-home care**—see section 135C.
- (3) For the purposes of this Act, **out-of-home care** does not include:
 - (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
 - (b) any care provided by a relative of a child or young person unless:
 - (i) the Minister has parental responsibility for the child or young person by virtue of an order of the Children’s Court, or
 - (ii) the child or young person is in the care of the Director-General, or
 - (iii) it is provided pursuant to a supported out-of-home care arrangement as referred to in section 153, or

- (c) anything prescribed by the regulations not to be out-of-home care.
- (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).

135A Statutory out-of-home care

- (1) **Statutory out-of-home care** is out-of-home care that is provided in respect of a child or young person for a period of more than 14 days:
 - (a) pursuant to a care order of the Children's Court, or
 - (b) by virtue of the child or young person being a protected person.
- (2) Any statutory out-of-home care provided in respect of a child or young person is taken to commence:
 - (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
 - (b) in any other case—immediately the child or young person is placed with an authorised carer.
- (3) In this section, **protected person** means:
 - (a) a person who is a ward of the Supreme Court, or subject to an order of the Supreme Court in its parens patriae jurisdiction, and of whom the Minister or the Director-General has the custody or care pursuant to an order of the Supreme Court, or
 - (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 [Adoption Act 2000](#), or
 - (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 [Family Law Act 1975](#) of the Commonwealth, or
 - (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 [Children \(Care and Protection\) Act 1987](#) immediately before its repeal.

135B Supported out-of-home care

Supported out-of-home care 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.

135C Voluntary out-of-home care

Voluntary out-of-home care 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.

[5] Section 136

Omit the section. Insert instead:

136 Restriction on who may provide statutory out-of-home care

- (1) Statutory out-of-home care may be provided in respect of a child or young person only by an authorised carer.
- (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.

- (3) This section does not prevent a child or young person who:
 - (a) has been placed in statutory out-of-home care, and
 - (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.

[6] Section 137 Authorised carers

Insert after section 137 (1):

- (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:
 - (a) be given care responsibility for the child or young person, or
 - (b) be authorised by a designated agency as an authorised carer in respect of the child or young person,

unless the decision of the Court that there is no possibility of restoration is rescinded under section 90.

[7] Section 138 Persons who may arrange for provision of statutory or supported out-of-home care

Insert “statutory or supported” before “out-of-home care” wherever occurring.

[8] Chapter 8, Parts 3 and 3A

Omit Part 3. Insert instead:

Part 3 Supported out-of-home care

Division 1 Temporary care arrangements

151 Making of temporary care arrangements

- (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.
- (2) The Director-General:
 - (a) has the care responsibility of a child or young person who is the subject of a temporary care arrangement, and
 - (b) may delegate that care responsibility only to an authorised carer.
- (3) The Director-General must not, in the case of a child, make a temporary care arrangement in respect of the child unless:
 - (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
 - (b) the parents of the child are, in the opinion of the Director-General, incapable of consenting to the arrangement.
- (4) The regulations may make provision for or with respect to temporary care arrangements under this Division.

152 Duration, renewal and review of temporary care arrangements

- (1) A temporary care arrangement ceases to be in force:
 - (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

- (b) on the child or young person the subject of the arrangement attaining the age of 18 years, or
 - (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:
- (a) 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, or
 - (b) renewed in respect of a child or young person if the temporary care arrangement was made in the circumstances described in section 151 (3) (b).
- (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.

Division 2 Other supported out-of-home care arrangements

153 Operation of other arrangements

- (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.
- (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.
- (3) Within 7 days after the expiration of the 21-day period, the designated agency must:
 - (a) develop and implement a permanency plan involving restoration, or
 - (b) develop a care plan,in respect of the child or young person.

Division 3 General provisions

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

- (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.
- (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:
 - (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
 - (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.

- (3) A person who fails to comply with a notice given to the person under subsection (2) (b) is guilty of an offence.

Maximum penalty: 200 penalty units.

155 Review of supported out-of-home care arrangements

- (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.
- (2) Any such annual review, in considering the needs of the child or young person, is to have regard to the following:
- (a) the number of periods and the total time the child or young person has spent in supported out-of-home care,
 - (b) the number and outcome of previous reviews of the supported out-of-home care arrangements,
 - (c) the legal status of the child or young person,
 - (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,
 - (e) the responsibilities of all parties concerning care,
 - (f) any special requirements of the child or young person relating to culture, language, religion or disability,
 - (g) the appropriateness of making a care application.
- (3) At the conclusion of the annual review, the designated agency is to determine:
- (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
 - (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.
- (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:
- (a) within 21 days after the death of the authorised carer, and

- (b) before a planned change of placement, and
- (c) within 21 days after an unplanned change of placement.

Part 3A Voluntary out-of-home care

156 Preliminary

- (1) In this Part:

relevant agency means:

- (a) a designated agency, or
 - (b) any other organisation that provides out-of-home care in respect of children or young persons and that is registered for the time being by the Children's Guardian for the purposes of this Part.
- (2) The regulations may make provision for or with respect to:
- (a) voluntary arrangements under this Part for out-of-home care, and
 - (b) the registration of organisations for the purposes of this Part.

156A Voluntary arrangements for out-of-home care

- (1) A parent of a child or young person may make an arrangement with a relevant agency for the child or young person to be placed in out-of-home care that is provided or arranged by the agency. Any such arrangement is referred to in this section as a **voluntary arrangement**.

Note—

Section 172A prohibits parents from placing children or young persons in out-of-home care that is provided or arranged by organisations that are not relevant agencies.

- (2) If a child or young person is placed in out-of-home care under a voluntary arrangement:
- (a) the child or young person must not remain in out-of-home care for more than 3 months in any period of 12 months unless the care is provided by, or is under the supervision of, a designated agency, and
 - (b) the child or young person must not remain in out-of-home care for more than 180 days in any period of 12 months unless the designated agency responsible for the child or young person has, in accordance with the guidelines issued by the Children's Guardian for the purposes of this section, prepared a plan that meets the needs of the child or young person under the arrangement.
- (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.

- (4) The Children’s Guardian is to formulate intake procedures and procedures relating to assessments and inter-agency co-ordination in order to ensure:
- (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
 - (b) that proper case planning occurs for all children and young persons placed in any such out-of-home care.

[9] Chapter 8, Part 5, heading

Insert “**statutory or supported**” before “**out-of-home care**”.

[10] Section 159A

Insert before section 159:

159A Part applies to statutory and supported out-of-home care only

A reference in this Part to out-of-home care is a reference only to statutory or supported out-of-home care.

[11] Section 161 Financial assistance for children and young persons in statutory or supported out-of-home care

Omit section 161 (2).

[12] Chapter 8, Part 6, heading

Insert “**statutory**” before “**out-of-home care**”.

[13] Section 165A

Insert before section 165:

165A Part applies to statutory out-of-home care only

A reference in this Part to out-of-home care is a reference only to statutory out-of-home care.

[14] Sections 171 and 172

Insert “statutory or supported” before “out-of-home care” wherever occurring.

[15] Section 172A

Insert after section 172:

172A Prohibition on parents placing children or young persons in out-of-home care provided by unauthorised organisations

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.

Maximum penalty: 200 penalty units.

1.4 Amendments relating to recommendation 16.16 (ii)-(vii)

[1] Section 90 Rescission and variation of care orders

Omit section 90 (3) (b).

[2] Section 90 (3A)

Omit “and the Children’s Guardian of the application, and the Director-General and the Children’s Guardian are entitled to be parties”.

Insert instead “of the application, and the Director-General is entitled to be a party”.

[3] Section 105 Publication of names and identifying information

Omit “Children’s Guardian” from section 105 (3) (b) (iii) wherever occurring.

Insert instead “Director-General”.

[4] Section 181 Functions relating to parental responsibility

Omit section 181 (1) (a) and (d).

[5] Section 183 Power of Children’s Guardian to resolve disputes

Omit the section.

[6] Section 186 Delegation of functions

Omit section 186 (1). Insert instead:

- (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.

1.5

(Repealed)

1.6 Other miscellaneous or consequential amendments

[1] Section 3 Definitions

Insert in alphabetical order:

Children's Court Clinic means the Children's Court Clinic referred to in section 15B of the *Children's Court Act 1987*.

[2] (Repealed)

[3] Chapter 3 Request for assistance and reports

Omit the diagrams at the beginning of the Chapter.

[4] Sections 39, 40 and 41

Omit the sections.

[5] Section 220 Regulations

Omit section 220 (a) and (a1). Insert instead:

- (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 *Commission for Children and Young People Act 1998*,

[6] (Repealed)

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

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

[1] Section 45 Application to Children's Court for care order

Omit "the Director-General must apply to the Children's Court at the first available opportunity, but no later than the next sitting day of the Children's Court after the removal or assumption of care responsibility by the Director-General," from section 45 (1).

Insert instead "the Director-General must, no later than 72 hours after the removal or

assumption of care responsibility, make a care application in the Children’s Court”.

[2] Section 61 Applications for care orders

Omit section 61 (2). Insert instead:

(2) A care application must:

- (a) specify the particular care order sought and the grounds on which it is sought, and
- (b) without limiting paragraph (a), be accompanied by a written report specifying such information as may be prescribed for the purposes of this section by the rules made under the *Children’s Court Act 1987*.

[3] Section 107 Examination and cross-examination of witnesses

Omit “an authorised Magistrate within the meaning of the *Children’s Court Act 1987*” from section 107 (4).

Insert instead “the President of the Children’s Court”.

[4] (Repealed)

2.2 Amendment of *Children’s Court Act 1987* No 53

[1]-[6] (Repealed)

[7] Section 10A Children’s Registrars

Insert after section 10A (1):

- (1A) A person cannot be employed as a Children’s Registrar unless the person is an Australian lawyer.

[8], [9] (Repealed)

[10] Section 15B Children’s Court Clinic

Omit “Attorney General” from section 15B (1).

Insert instead “Minister for Health”.

[11]-[15] (Repealed)

[16] Schedule 2, Part 3

Insert after Part 2:

Part 3 Provisions consequent on enactment of [Children Legislation Amendment \(Wood Inquiry Recommendations\) Act 2009](#)

6 Definition

In this Part:

amending Act means the *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009*.

7 Provisions relating to abolished office of Senior Children’s Magistrate

- (1) In accordance with section 56 (2) of the *Constitution Act 1902*, 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.
- (2) A reference to the Senior Children’s Magistrate in any other Act (other than the *Constitution Act 1902*) or statutory instrument is to be construed as a reference to the President.

8 Provisions relating to Children’s Court Clinic

The regulations made under clause 1 (1) may make provision for or with respect to:

- (a) transferring the staff of the Children’s Court Clinic, and
- (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,

to such public sector agency (or part of a public sector agency) as may be prescribed by the regulations.

2.3-2.5

(Repealed)

2.6 Amendment of [Children’s Court Rule 2000](#)

[1], [2] (Repealed)

[3] Clause 21

Omit the clause. Insert instead:

21 Report to accompany care applications

For the purposes of section 61 (2) of the *Children and Young Persons (Care and Protection) Act 1998*, the report that is required to accompany a care application must:

- (a) provide a summary of the facts, matters and circumstances on which the applicant intends to rely, and
- (b) state whether or not the child or young person to whom the application relates is currently the subject of an order made by:
 - (i) the Court in the exercise of its jurisdiction under the *Children and Young Persons (Care and Protection) Act 1998*, or
 - (ii) any other Court in the exercise of its jurisdiction with respect to the custody or guardianship of children or parental responsibility for children.

[4] Clause 33 Composition of Children’s Court Clinic

Omit “Attorney General” wherever occurring.

Insert instead “Minister for Health”.

[5] Clause 40 Deputies

Omit “, or the deputy of the Director of the Children’s Court Clinic” from clause 40 (1).

Schedule 3 Amendments relating to recommendations 23.3, 23.4 and 23.8

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

[1] Section 11 Principal functions of Commission

Omit “for child-related employment” from section 11 (i).

Insert instead “under and”.

[2] Section 11 (k)

Omit the paragraph.

[3] Sections 15 (1) and 15A (1)

Omit “(other than its functions under section 11 (k))” wherever occurring.

[4] Section 31 Object of Part

Omit “for child-related employment” from section 31 (b).

[5] Section 33 Definitions

Insert after paragraph (a) of the definition of ***child-related employment*** in section 33 (1):

(a1) means (without limiting paragraph (a)) any employment of the following kind:

- (i) employment comprising the provision of a prescribed children’s service,
- (ii) employment as a person involved in the control or management of a prescribed children’s service,
- (iii) employment as an authorised supervisor (within the meaning of section 199 of the *Children and Young Persons (Care and Protection) Act 1998* in relation to a prescribed children’s service,
- (iv) employment as an assessment officer within the meaning of section 27A of the *Children and Young Persons (Care and Protection) Act 1998*,
- (v) employment as the principal officer of a designated agency within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*,
- (vi) employment as the principal officer of an accredited adoption service provider within the meaning of the *Adoption Act 2000*,
- (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 self-employed person or subcontractor in the course of his or her work, and

[6] Section 33 (1), definition of “employer”

Insert at the end of paragraph (b):

, or

- (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.

[7] Section 33 (1), definition of “employment”

Insert at the end of paragraph (f):

, or

- (g) providing a prescribed children’s service, or
- (h) performance of work as a person involved in the control or management of a prescribed children’s service.

[8] Section 33 (1)

Insert in alphabetical order:

prescribed children’s service has the same meaning as in section 199 of the *Children and Young Persons (Care and Protection) Act 1998*.

relevant agency means any of the following:

- (a) the Department of Community Services,
- (b) the Department of Education and Training,
- (c) the TAFE Commission Division (including the TAFE Commission),
- (d) any other agency or organisation prescribed by the regulations for the purposes of this definition.

Note—

This definition is relevant for the purposes of paragraph (a1) (vii) of the definition of **child-related employment**.

[9] Section 37 Background checking mandatory for preferred applicants for certain child-related employment

Insert after paragraph (c) of the definition of **primary child-related employment** in section 37 (6):

- (c1) child-related employment of a student that involves working in the Department of Community Services, or
- (c2) child-related employment of a volunteer that involves the mentoring of disadvantaged children, or
- (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

[10] Section 45

Insert after section 44:

45 Application of background checking provisions to adult persons residing with authorised carers or children’s service providers

(1) In this section:

applied provisions 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.

authorised carer and **designated agency** have the same meanings as in the [Children and Young Persons \(Care and Protection\) Act 1998](#).

background checking provisions 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.

children’s service provider means:

- (a) in the case of a family day care children’s service licensed under the [Children and Young Persons \(Care and Protection\) Act 1998](#)—the person who is the family day care carer under that Act for the service, or
- (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.

relevant person means a person (other than an authorised carer or children’s service provider) who is of or above the age of 18 years.

(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:

- (a) subject to paragraph (b), such adaptations as may be necessary, and
- (b) such exclusions and modifications as may be prescribed by the regulations.

(3) For the purposes of this section, a relevant person is taken to **reside** at the home of an authorised carer or children’s service provider if:

- (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

(b) the person has been living at that home on a regular basis for a period of not less than 3 months.

(4) Without limiting subsection (2), the following provisions have effect in relation to the operation of the applied provisions:

(a) a reference to an employer is taken to be a reference to:

(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

(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,

(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),

(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.

[11] Section 45B

Omit the section. Insert instead:

45B Establishment of the Team

The Child Death Review Team is established by this Act.

[12] Section 45C Composition of the Team

Omit section 45C (1). Insert instead:

(1) The Team is to consist of the following members:

(a) the Ombudsman, who is to be the Convenor of the Team,

(b) the Commissioner,

(c) such other persons as may be appointed by the Minister.

(1A) The Team is to be supported and assisted in the exercise of its functions by

members of staff of the Ombudsman's Office.

[13] Sections 45C (6)

Insert "and the Commissioner" after "the Convenor" wherever occurring.

[14] Sections 45E, 45G and 45H

Insert "or the Commissioner" after "the Convenor" wherever occurring.

[15] Section 45F Remuneration

Insert ", the Commissioner" after "the Convenor".

[16] Section 45N Functions of the Team

Omit section 45N (3).

[17] Section 45S Preparation and presentation of reports

Omit "or as part of a report of the Commission under Part 5" from section 45S (3).

[18] Section 45U Confidentiality of information

Omit section 45U (1) (c) (iv).

[19] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009, to the extent that it amends this Act

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

[1] Section 8A

Insert after section 8:

8A Provision of information to Children's Guardian

- (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 *Children and Young Persons (Care and Protection) Act 1998*.

- (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.

[2]-[5] (Repealed)

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

[1] Section 137 Authorised carers

Insert after section 137 (2):

- (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.

Note—

See section 45 of the *Commission for Children and Young People Act 1998* which provides for background checking under Division 3 of Part 7 of that Act of adult household members of authorised carers.

- (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.

[2] Section 209 Conditions of licences

Insert at the end of the section:

- (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.

Note—

See section 45 of the *Commission for Children and Young People Act 1998* 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.

- (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.

3.4 Amendment of Children's Services Regulation 2004

Clauses 117, 119-121 and 122F

Omit the clauses.