

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

[2009-13]



New South Wales

## Status Information

### Currency of version

Historical version for 25 January 2010 to 31 March 2010 (accessed 6 December 2023 at 16:46)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### 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

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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The *Children (Care and Protection) Act 1987* is repealed.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

(Repealed)

### 1.2 Amendments relating to recommendations 11.1 and 11.3

[1]-[23] (Repealed)

#### [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]-[33] (Repealed)**

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

**[1]-[14] (Repealed)**

**[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, 1.5**

(Repealed)

**1.6 Other miscellaneous or consequential amendments**

**[1]-[4] (Repealed)**

**[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]-[4] (Repealed)

### **2.2 Amendment of *Children's Court Act 1987 No 53***

[1]-[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]-[3] (Repealed)**

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

Omit “Attorney General” wherever occurring.

Insert instead “Minister for Health”.

**[5] (Repealed)**

## **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 Human 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 Human 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 Human 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]-[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.