

Children and Young Persons (Care and Protection) Amendment Act 2010 No 105

[2010-105]



New South Wales

Status Information

Currency of version

Repealed version for 2 January 2011 to 7 February 2011 (accessed 18 July 2024 at 2:25)

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

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**

The Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 8.2.2011.

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](#).

File last modified 8 February 2011

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Children and Young Persons (Care and Protection) Amendment Act 2010 No 105



New South Wales

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

1 Name of Act

This Act is the *Children and Young Persons (Care and Protection) Amendment Act 2010*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on a day or days to be appointed by proclamation.
- (2) Schedule 1 [22] commences on the date of assent to this Act.

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

[1]-[8] (Repealed)

[9] Section 135C

Omit the section. Insert instead:

135C Voluntary out-of-home care

- (1) **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, but does not include:
 - (a) out-of-home care that is provided by an individual in a private capacity, or
 - (b) out-of-home care that is provided outside New South Wales.
- (2) Out-of-home care is provided by an individual **in a private capacity** if it is provided by an individual who is not acting on behalf of, or pursuant to an

arrangement with, a body or organisation.

[10] Section 156 Preliminary

Insert “or arranges” after “provides” in paragraph (b) of the definition of **relevant agency** in section 156 (1).

[11] Section 156 (2) (a)

Omit the paragraph. Insert instead:

(a) arrangements for voluntary out-of-home care, and

[12] Sections 156A and 156B

Omit section 156A. Insert instead:

156A Provision of voluntary out-of-home care

- (1) A child or young person must not remain in voluntary out-of-home care for more than a total of 90 days in any period of 12 months unless the care is:
 - (a) provided by or supervised by a designated agency, or
 - (b) supervised by the Children’s Guardian.
- (2) A child or young person must not remain in voluntary out-of-home care for more than a total of 180 days in any period of 12 months unless the designated agency responsible for providing or supervising the care of the child or young person, or the Children’s Guardian, has ensured that a plan has been prepared that meets the needs of the child or young person under the arrangement.
- (3) A child or young person is, for the purposes of Parts 2 and 3 of Chapter 3, taken to be at risk of significant harm if:
 - (a) the child or young person remains in voluntary out-of-home care in contravention of subsection (1) or (2), and
 - (b) the Children’s Guardian has determined, in accordance with any guidelines issued by the Director-General for the purposes of this section, that the contravention is significant.
- (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 voluntary out-of-home care 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 voluntary out-of-home care.

156B Restrictions on who may provide or arrange voluntary out-of-home care

- (1) A person must not provide voluntary out-of-home care for a child or young person unless the person is:
 - (a) a relevant agency, or
 - (b) an individual who is authorised by a relevant agency or the Children’s Guardian to provide voluntary out-of-home care.
- (2) A person, other than a relevant agency or the Children’s Guardian, must not:
 - (a) arrange with a parent of a child or young person for the child or young person to be placed in voluntary out-of-home care, or
 - (b) advertise or hold himself, herself or itself out as being willing to arrange for a child or young person to be placed in voluntary out-of-home care.

Maximum penalty: 200 penalty units.

[13] Section 158 Physical restraint of child or young person

Omit section 158 (1). Insert instead:

- (1) This section applies if, in the opinion of the relevant carer of a child or young person, the child or young person is behaving in such a manner that, unless restrained, he or she might seriously injure himself or herself or another person.

[14] Section 158 (2)

Omit “the parent or the authorised carer”. Insert instead “the relevant carer”.

[15] Section 158 (5)

Omit “parent or an authorised carer”. Insert instead “relevant carer”.

[16] Section 158 (6)

Insert after section 158 (5):

- (6) In this section, the **relevant carer** of a child or young person means:
 - (a) a parent of the child or young person, or
 - (b) the authorised carer of the child or young person, or

- (c) a person who is providing voluntary out-of-home care in respect of a child or young person.

[17]-[26] (Repealed)

[27] Schedule 3

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provision consequent on enactment of [Children and Young Persons \(Care and Protection\) Amendment Act 2010](#)

Provision of voluntary out-of-home care

A child or young person who was, immediately before the substitution of section 156A by the [Children and Young Persons \(Care and Protection\) Amendment Act 2010](#), in voluntary out-of-home care is taken for the purposes of that section to have been placed in voluntary out-of-home care on the date of substitution of that section.

Schedule 2 Amendment of other Acts and Regulation

2.1

(Repealed)

2.2 [Children and Young Persons \(Care and Protection\) Regulation 2000](#)

Clause 40D Restriction on who may provide or arrange voluntary out-of-home care

Omit the clause.

2.3

(Repealed)