



New South Wales

Child Protection Legislation Amendment Bill 2013

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Children and Young Persons (Care and Protection) Act 1998* (the *Principal Act*), the *Adoption Act 2000*, the *Child Protection (Working with Children) Act 2012* and other legislation to implement miscellaneous reforms relating to the protection of children and young persons that are intended to:

- (a) promote good parenting and increase parental responsibility for children and young persons, and
- (b) achieve greater permanency for children and young persons in out-of-home care, and
- (c) modernise and create a more responsive and child focused system, and
- (d) improve the transparency and accountability of child protection services.

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.

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

Promotion of good parenting and increase of parental responsibility for children and young persons

Parent responsibility contracts

Schedule 1 [13]–[28] make a number of amendments to the Principal Act to expand the use, and increase the effectiveness, of parent responsibility contracts. The amendments:

- (a) amend sections 38A, 38B and 38E of the Principal Act to enable the Director-General of the Department of Family and Community Services (the *Director-General*) to enter into a parent responsibility contract with an expectant parent whose unborn child has been the subject of a pre-natal report under section 25 of the Principal Act and that contains provisions aimed at improving the parenting skills of the prospective parent and reducing the likelihood that the child will be at risk of significant harm after birth, and
- (b) amend section 38A (2) (e) of the Principal Act to extend the period during which a parent responsibility contract may be in force from 6 to 12 months after it is registered with the Children's Court, and
- (c) omit section 38E (4) of the Principal Act to remove the automatic presumption that a child or young person is in need of care and protection if a contract breach notice is filed in the Children's Court.

Schedule 1 [9] and [38] are consequential amendments.

Parent capacity orders

Schedule 1 [65] inserts Part 3 (proposed sections 91A–91I) into Chapter 5 of the Principal Act to enable the Children's Court to make a new form of order requiring a parent or primary care-giver of a child or young person to attend or participate in a program, service or course or engage in therapy or treatment aimed at building or enhancing his or her parenting skills (a *parent capacity order*).

A parent capacity order will be able to be made on the application of the Director-General or on the Children's Court's own initiative if it finds that a prohibition order has been breached under proposed section 90A of the Principal Act. The Children's Court may require the Director-General and the parent or primary care-giver concerned to attend a dispute resolution conference conducted by a Children's Registrar so as to provide the parties with an opportunity to agree on action that should be taken to build or enhance the parenting skills of the parent or primary care-giver. The Children's Court may make a parent capacity order if it is satisfied there is an identified deficiency in the parenting capacity of the parent or primary care-giver that has the potential to place the child or young person at risk of significant harm, that it is reasonable and practicable to require compliance with the order and that the parent or primary care-giver is unlikely to engage in the required program, service, course, therapy or treatment unless the order is made. The parties are able to make a parent capacity order by consent (proposed section 91F) and may seek its variation or revocation. Parties may also appeal on a question of law against the making of the order (proposed section 91I).

Schedule 1 [90] inserts Chapter 15A (proposed sections 244A–244C) into the Principal Act. Proposed section 244A defines *alternative dispute resolution* so as to encompass the different processes (such as family group conferencing) that may be used where the Act provides for use of alternative dispute resolution. Proposed section 244B limits the admissibility in proceedings in any court, tribunal or other body of anything said or done or any admission made during alternative dispute resolution. Proposed section 244C limits the circumstances in which a person who conducts or participates in alternative dispute resolution may disclose anything said or done or any admission made during the alternative dispute resolution to another person.

Schedule 1 [2], [10]–[12], [30]–[36], [66], [68] and [70] make amendments that are consequential on those made by **Schedule 1 [65] and [90]**. **Schedule 1 [29]** makes it clear that a parent capacity order is not a care order for the purposes of the Principal Act.

Achievement of greater permanency for children and young persons in out-of-home care

Permanent placement principles

Schedule 1 [5] and [6] amend sections 8 and 9, respectively, of the Principal Act and **Schedule 1 [7]** inserts proposed section 10A into that Act to provide for recognition that the primary means of providing for the safety, welfare and well-being of children and young persons is by providing them with long-term, safe, nurturing, stable and secure environments through permanent placement in accordance with permanent placement principles. Proposed section 10A (3) sets out the preferred hierarchy for permanent placements. Under the principles, the first preference is for a child or young person to be restored to the care of his or her parents, the second is for guardianship of a relative, kin or other suitable person, the third is (except in the case of Aboriginal and Torres Strait Islander children and young persons) for the child or young person to be adopted and only after these options prove to be impracticable, or not in the best interests of the child or young person, for the child or young person to be placed as a last preference, under the parental responsibility of the Minister. In the case of an Aboriginal or Torres Strait Islander child or young person, adoption is the last preference. The principles are intended (subject to sections 8 and 9 of the Principal Act) to guide all actions and decisions made under the Act regarding permanent placements. **Schedule 1 [47] and [48]** amend section 78A of the Principal Act to require the permanent placement principles to be taken into account in the making of permanency plans. Proposed section 79 (3) (**Schedule 1 [49]**) requires the Children's Court to give particular consideration to the principles when making an order allocating parental responsibility.

Schedule 1 [53] amends section 83 (4) so that the Director-General must consider whether adoption is the preferred option for a child or young person in preparing a permanency plan for the placement of a child or young person for whom there is no realistic possibility of restoration to his or her parents.

Schedule 1 [1], [3],[4], [8], [54], [56] and [73] make consequential amendments to the Principal Act.

Out-of-home care

Schedule 1 [55] substitutes section 83 (5) of, and inserts proposed section 83 (5A) into, the Principal Act to require the Children's Court to make a decision about the feasibility of restoration within specified time frames unless it decides to defer the decision in the best interests of the child or young person.

Schedule 1 [80] substitutes section 153 (3) and inserts proposed section 153 (4) into the Principal Act to provide that a child or young person cannot be placed in out-of-home care with a relative or kin otherwise than by a court order for more than 2 years. **Schedule 1 [79]** is a consequential amendment.

Schedule 1 [81] amends section 155 of the Principal Act so that a designated agency will not be required to conduct a review under that section in relation to the out-of-home care arrangements of a child or young person who is in supported out-of-home care of a relative or kin pursuant to a court order in certain circumstances.

Allocation of parental responsibility and guardianship orders

Schedule 1 [49], [51] and [76]–[78] amend the Principal Act to clarify and enhance provisions of the Act relating to the allocation of parental responsibility.

Sections 79 and 81 are merged to provide a clearer system for the allocation of parental responsibility and provision is made for the making of guardianship orders by the Children's

Court allocating all aspects of parental responsibility for a child or young person in statutory out-of-home care or supported out-of-home care or who it has found is in need of care and protection to one or more persons, jointly, until the child reaches 18 years of age (proposed sections 79A–79C).

The Children’s Court may make such an order only if satisfied that there is no realistic possibility of the child or young person being restored to his or her parents, that the child or young person will be provided with a safe, nurturing, stable and secure environment, that, in the case of an Aboriginal or Torres Strait Islander child or young person, the principles set out in section 13 of the Principal Act are applied and that, if the child or young person is 12 or more years of age and capable of giving consent, the child or young person has consented. Proposed section 79C makes provision for financial assistance with respect to children and young persons who are the subject of guardianship orders. **Schedule 1 [94]** includes savings and transitional provisions deeming orders under section 79 (1) (a) (iii) to be guardianship orders and preserving arrangements for financial assistance for such authorised carers. **Schedule 2.5** amends the *Guardianship Act 1987* to ensure there is no inconsistency between guardianship orders made under the Principal Act and guardianship orders made under that Act. **Schedule 1 [74]** amends section 135 to make it clear that a child or young person under a guardianship order is not in out-of-home care. **Schedule 1 [40]–[43], [50], [52], [59] and [91]** are consequential amendments.

Schedule 1 [76]–[78] repeal section 149 (which provides for the making of orders awarding sole parental responsibility for children and young persons for whom the Minister has parental responsibility to the authorised carers of the children or young persons in certain circumstances) and sections 149AA and 149A.

Adoption of children in out-of-home care

The Bill makes a number of amendments to the Principal Act and the *Adoption Act 2000* to simplify the processes for the adoption of children and young persons in out-of-home care and enable more expeditious permanent placement of children and young persons.

Schedule 1 [75] amends section 137 of the Principal Act to enable a regulatory framework to be established for dual authorisation of authorised carers and prospective adoptive parents.

Schedule 1 [88] and [89] amend section 181 to confer functions on the Children’s Guardian of accrediting adoption service providers under the *Adoption Act 2000* and monitoring the carrying out of their responsibilities and those of the Director-General with respect to the provision of adoption services under that Act.

Schedule 2.1 amends the *Adoption Act 2000* as follows:

- (a) to provide for the Children’s Guardian to accredit non-government organisations to provide adoption services and to monitor the carrying out of their responsibilities and those of the Director-General with respect to adoption services under that Act (proposed section 12, **Schedule 2.1 [5]**),
- (b) to establish a framework that will enable organisations providing services in relation to both out-of-home care and adoption to be accredited through a single process and to be subject to integrated standards in accordance with the regulations (proposed section 13, **Schedule 2.1 [5]**),
- (c) by establishing a framework for simplified procedures to enable the authorised carers of a child who is in out-of-home care to be invited to apply to adopt the child and to be assessed as suitable to adopt the child (**Schedule 2.1 [9]**),
- (d) to enable a birth parent who has not consented to the adoption of a child to be given the opportunity to participate in the development of, and agree to, the adoption plan for the child and to the review of such a plan (**Schedule 2.1 [10]**),
- (e) to ensure that prospective adoptive parents cannot be assessed to be suitable to adopt a child unless they (and adult persons residing with them) have a working with children check clearance under the *Child Protection (Working with Children) Act 2012* (**Schedule 2.1 [8]**).

Schedule 2.2 amends the *Child Protection (Working with Children) Act 2012* to require prospective adoptive parents and prospective guardians under proposed section 79A of the Principal Act, and adults residing with them, to obtain a working with children check clearance of the volunteer class in certain circumstances.

Modernise and provide a more child focused system

Supervision orders

Schedule 1 [44]–[46] amend section 76 of the Principal Act to enable the Children’s Court to make a supervision order under that section for a longer period than 12 months (but not exceeding 24 months) if it is satisfied of special circumstances warranting the making of an order of that length and it is appropriate to do so.

Contact orders

Schedule 1 [57] and [58] amend section 86 of the Principal Act to provide for more flexibility concerning the persons who may seek a contact order and for use of alternative dispute resolution regarding contact arrangements. **Schedule 1 [38]** is a consequential amendment.

Schedule 1 [60] inserts proposed section 86 (6) into the Principal Act to limit the duration of initial contact orders (where there is no realistic possibility of restoration of a child or young person to his or her parents) to a maximum period of 12 months.

Schedule 1 [61] inserts proposed section 86A into the Principal Act to enable a contact order to be varied in the light of a change in circumstances since the contact order was last made or varied by agreement of the parties to the proceedings in which the contact order was made who are affected by the variation.

Schedule 1 [62] amends section 90 of the Principal Act to require an applicant for rescission or variation of a care order to notify affected parties (subject to any order of the Children’s Court).

Prohibition orders

Schedule 1 [63] amends section 90A of the Principal Act to enable the Children’s Court to make prohibition orders during care proceedings prohibiting any persons, including persons who are not parties to the proceedings, from doing anything that could be done by a parent in carrying out his or her parental responsibility.

Schedule 1 [64] amends section 90A to enable parties to care proceedings in which a prohibition order is made to notify the Children’s Court of alleged breaches of the prohibition order and to confer on the Children’s Court powers to make orders if it determines a breach has occurred. The powers conferred include power to make a parent capacity order under proposed Part 3 of Chapter 5 (see **Schedule 1 [65]**).

Reporting requirements

Schedule 1 [71] and [72] amend section 122 of the Principal Act to clarify mandatory reporting requirements under that section so that they will not apply to friends or relatives who provide residential accommodation to a child living away from home without parental permission in specified circumstances.

Special medical treatment

Schedule 1 [84]–[86] amend section 175 of the Principal Act to provide that the prescription of drugs of addiction and treatment that does not comply with certain national health ethical guidelines is special medical treatment under the Principal Act and to enable the grant of exemptions in specified circumstances.

Schedule 1 [87] inserts proposed section 177A into the Principal Act to enable regulations to be made for or with respect to the procedures to be followed by the designated agency having supervisory responsibility for a child or young person in out-of-home care in authorising,

consenting to or monitoring the physical, psychological, psychiatric or other medical examinations, treatment and control of the behaviour of the child or young person under Chapter 9 of the Principal Act.

Exchange of information

Schedule 1 [92] enables bodies and classes of bodies and organisations in addition to those specified in section 248 (6) to be prescribed for the purpose of Chapter 16A of the Principal Act. Chapter 16A provides for the exchange of information and co-ordination of services to children and young persons by prescribed bodies, authorises them to exchange relevant information and protects the confidentiality of information exchanged.

Improving transparency and accountability

Schedule 1 [67] amends section 105 of the Principal Act to make it clear that the provisions of that section prohibiting the publication of names and identifying information concerning children and young persons extend to publication on the internet.

Schedule 1 [83] inserts section 172A into the Principal Act to require the Director-General to report to the Minister annually with respect to the deaths of children and young persons in specified circumstances. The Minister is required to table a copy of the report in Parliament as soon as practicable after it is made.

Miscellaneous

Schedule 1 [37] inserts section 67A to make it clear that the Children's Court may make consecutive care orders.

Schedule 1 [69] amends section 116 to better reflect current practice with respect to notification of applications for orders for alternative parenting plans.

Schedule 1 [82] amends section 161 to enable the regulations to prescribe additional circumstances in which financial assistance may be provided under that section.

Schedule 1 [93] amends Schedule 3 to the Principal Act to enable the making of savings and transitional regulations.

Schedule 2.3 repeals the uncommenced provisions of the *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009*. Those provisions are superseded by the proposed amendments described above relating to contact orders and alternative dispute resolution.