

First print



New South Wales

Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill 2001 (No 2)

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* to improve the case management of abused and neglected children and young persons who have been removed from their parents and placed in out-of-home care. The amendments made by the Bill will require the planning of suitable long term placements for children and young persons in these circumstances.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Children and Young Persons (Care and Protection) Act 1998* (**the Act**) set out in Schedule 1.

Schedule 1 Amendments

Principles to be applied in the administration of the Act

Schedule 1 [3] amends section 9 of the Act to reinforce the principle that, in the administration of the Act, the safety, welfare and well-being of the child or young person must be the paramount consideration. It provides that, in particular, the safety, welfare and well-being of a child or young person who has been removed from his or her parents are paramount over the rights of the parents.

Schedule 1 [10] makes a consequential amendment.

Schedule 1 [4] amends section 9 of the Act to include principles relating to the appropriate placement of a child or young person in a planned permanent arrangement, the entitlement of a child or young person who is placed in out-of-home care to a safe, nurturing, stable and secure environment, and the importance of making a placement, particularly in the case of a younger child, in a timely manner.

Care orders

Schedule 1 [6] adds to the grounds on which the Children's Court may make a care order under section 71 of the Act the ground that the parents do not have the capacity to meet the developmental needs of the child or young person.

Schedule 1 [7] provides that, in determining the incapacity of a parent for the purposes of section 71 of the Act, incapacity is not to be presumed only because the parent has a physical or intellectual disability, and an opioid or alcohol dependency should not be considered a physical or intellectual disability.

Schedule 1 [15] amends section 90 of the Act to add a further requirement that is to be satisfied before the Children’s Court may grant leave to an application for the rescission or variation of a care order. The additional ground is that the rescission or variation of the care order is likely to be in the best interests of the safety, welfare and well-being of the child or young person.

Care plans and monitoring by Children’s Court of orders concerning parental responsibility

Schedule 1 [8] amends section 78 of the Act to introduce a requirement that a care plan must assess the possibility and benefits of the permanent placement of the child or young person to whom it relates.

Permanent placement is dealt with in a definition of *permanency planning* which is inserted in the Act as proposed 78A by **Schedule 1 [9]**. *Permanency planning* means the making of a plan that aims to provide a child or young person with a stable and emotionally secure long term placement that meets the needs of the child or young person and that has the following characteristics:

- (a) an intent by significant people in the life of the child or young person to have the home last indefinitely,
- (b) a continuity of relationships, including a commitment by the carers of the child or young person:
 - (i) in relationships with the child or young person, and
 - (ii) to the best interests of the safety, welfare and well-being of the child or young person,
- (c) a legal status, provided by means which may include (but which are not limited to) orders for parental responsibility and orders for adoption, that connects the family members and promotes a long-term sense of belonging.

Long-term placement requires a particular appreciation of the appropriate long-term care option for a child or young person according to his or her particular needs by means, for example, of restoration to the birth parents or a birth parent, remaining with an authorised carer, a sole parental responsibility order, kinship care, out-of-home care or adoption.

Schedule 1 [11] amends section 82 of the Act to introduce the same requirement in relation to written reports ordered by the Children’s Court in monitoring arrangements for the care and protection of a child or young person after an order has been made that allocates or re-allocates parental responsibility for the child or young person.

Schedule 1 [1] makes a consequential amendment.

Permanency plans involving restoration

Schedule 1 [12] substitutes section 83 of the Act relating to the preparation of permanency plans involving restoration. Before a final care order is made in a case concerning a child or young person that is before the Children's Court, the Court must make a determination (in accordance with the principles set out in section 9 of the Act) whether there is a realistic possibility, having regard solely to the circumstances of the child or young person preceding the making of the order and such factors as may be specified by the regulations, of the child or young person being restored to his or her parents. If there is such a possibility, the Director-General is to prepare a permanency plan involving restoration and submit it to the Court for its consideration. If there is not such a possibility, the Director-General is to prepare a plan for another suitable long-term placement for the child or young person and submit it to the Court for its consideration. In preparing such a plan, the Director-General may consider whether adoption is the preferred option for the child or young person. An appeal cannot be made against a determination of the Children's Court under the proposed section.

Schedule 1 [14] inserts proposed section 85A into the Act. The proposed section requires the review of a permanency plan involving restoration in order to determine whether its provisions should be changed, particularly with respect to the length of time during which restoration should be actively pursued, whether arrangements should be made for the permanent placement of the child or young person to whom the plan relates, and whether any consequential application should be made for a care order or for the rescission or variation of a care order.

Schedule 1 [2], [13], [19] and [20] make consequential amendments.

Expedition of Children's Court proceedings and adjournments

Schedule 1 [16] and [17] amend section 94 of the Act to reinforce the principle that all matters before the Children's Court are to proceed as expeditiously as possible. It is provided that the Children's Court must seek to move expeditiously to the making of a final decision concerning the long-term placement of a child or young person. It is also provided that the Children's Court should avoid the granting of adjournments to the maximum extent possible and must not grant an adjournment unless it is of the opinion that the adjournment is necessary to ensure the safety, welfare and well-being of the child or young person who is the subject of the proceedings before it, or because of some other cogent or substantial reason.

Schedule 1 [5] makes a complementary amendment in relation to interim care orders by inserting proposed section 70A into the Act. The proposed section provides that the Children's Court should generally seek to avoid the making of interim orders.

Order for parental responsibility

Schedule 1 [18] substitutes section 149 of the Act. The proposed section enables an authorised carer who, for a continuous period of not less than 2 years, has had the care of a child or young person for whom the Minister has parental responsibility to apply for the parental responsibility of the child or young person. An application requires the consent of the persons who had parental responsibility immediately before it was allocated to the Minister. An application also requires the consent of the child, if the child is not less than 12 years of age, or the young person. A child who is less than 12 years of age is required to be notified of the application.

Review of amendments

Schedule 1 [21] inserts proposed section 266 into the Act. The proposed section requires a review to be made of the policy objectives and effect of the amendments made by the proposed Act. The review is to be made not later than 5 years after the commencement of the amendments. A report is to be made of the outcome of the review and the Minister is to table the report, or cause it to be tabled, in each House of Parliament within 3 months after it is received by the Minister.

Savings and transitional provisions

Schedule 1 [22] extends the power to make regulations of a savings or transitional nature to permit such regulations to be made as a consequence of the enactment of the proposed Act.

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Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill 2001 (No 2)

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No , 2001

A Bill for

An Act to amend the *Children and Young Persons (Care and Protection) Act 1998* with respect to the long term welfare of children and young persons who are placed in out-of-home care; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157	8 9
The <i>Children and Young Persons (Care and Protection) Act 1998</i> is amended as set out in Schedule 1.	10 11

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 3 Definitions	3
	Insert in alphabetical order:	4
	<i>permanency plan</i> means a plan that makes provision with respect to permanency planning.	5
	<i>permanency plan involving restoration</i> means a permanency plan prepared under section 83.	6
	<i>permanency planning</i> —see section 78A.	7
[2]	Section 3	8
	Omit the definition of <i>restoration plan</i> .	9
[3]	Section 9 What principles are to be applied in the administration of this Act?	10
	Insert “In particular, the safety, welfare and well-being of a child or young person who has been removed from his or her parents are paramount over the rights of the parents.” at the end of section 9 (a).	11
[4]	Section 9 (f) and (g)	12
	Omit section 9 (f). Insert instead:	13
	(f) While all children and young persons need a safe, nurturing, stable and secure environment, it is to be recognised that the younger a child is, the greater the importance for the child’s well-being that timely arrangements be made for the child to live in such an environment.	14
	(g) 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, this will include the retention	15
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by the child or young person of relationships with people significant to the child or young person, including parents, siblings, extended family, peers, family friends and community.	1 2 3 4
[5] Section 70A	5
Insert after section 70:	6
70A Consideration of necessity for interim order	7
The Children's Court should aim to make a final order at the earliest opportunity and should generally avoid the making of interim orders. An interim order should not be made unless the Children's Court has satisfied itself that the making of the order is necessary and that it is preferable to the making of an order dismissing the proceedings.	8 9 10 11 12 13
[6] Section 71 Grounds for care orders	14
Insert after section 71 (1) (e):	15
(e1) the parents do not have the capacity to meet the developmental needs of the child or young person,	16 17
[7] Section 71 (1A)	18
Insert after section 71 (1):	19
(1A) For the purposes of this section:	20
(a) the incapacity of a parent is not to be presumed only because the parent has a physical or intellectual disability, and	21 22 23
(b) an opioid or alcohol dependency should not be considered a physical or intellectual disability.	24 25
[8] Section 78 Care plans	26
Omit section 78 (2) (b). Insert instead:	27
(b) the kind of placement proposed to be sought for the child or young person, including:	28 29
(i) permanency planning, and	30

(ii)	any interim arrangements that are proposed for the child or young person pending permanent placement and the timetable proposed for achieving a permanent placement,	1 2 3 4
[9] Section 78A		5
	Insert after section 78:	6
78A Permanency planning		7
(1)	For the purposes of this Act, <i>permanency planning</i> means the making of a plan that aims to provide a child or young person with a stable and emotionally secure long term placement that meets the needs of the child or young person and that has the following characteristics:	8 9 10 11 12
(a)	an intent by significant people in the life of the child or young person to have the home last indefinitely,	13 14
(b)	a continuity of relationships, including a commitment by the carers of the child or young person:	15 16
(i)	in relationships with the child or young person, and	17 18
(ii)	to the best interests of the safety, welfare and well-being of the child or young person,	19 20
(c)	a legal status, provided by means which may include (but which are not limited to) orders for parental responsibility and orders for adoption, that connects the family members and promotes a long-term sense of belonging.	21 22 23 24 25
(2)	Permanency planning requires a particular appreciation of:	26
(a)	the principle set out in section 9 (f), and	27
(b)	the importance, in the making of care arrangements, of avoiding instability and uncertainty arising, for example, through a succession of different placements or prolonged temporary care arrangements, and	28 29 30 31
(c)	the appropriate long-term care option for a child or young person according to his or her particular needs by means, for example, of restoration to the birth parents or	32 33 34

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	a birth parent, remaining with an authorised carer, a sole parental responsibility order, kinship care, out-of-home care or adoption.	1 2 3
[10]	Section 81 Parental responsibility of the Minister	4
	Insert “while still recognising that the safety, welfare and well-being of the child or young person remains the paramount consideration” after “made” in section 81 (2).	5 6 7
[11]	Section 82 Monitoring by Children’s Court of order concerning parental responsibility	8 9
	Insert after section 82 (1):	10
	(1A) The report must assess permanency planning in relation to the child or young person.	11 12
[12]	Section 83	13
	Omit the section. Insert instead:	14
	83 Preparation of permanency plan involving restoration	15
	(1) Before a final care order is made in a case concerning a child or young person that is before the Children’s Court, the Court must make a determination (in accordance with the principles set out in section 9) whether there is a realistic possibility of the child or young person being restored to his or her parents.	16 17 18 19 20
	(2) In making its determination, the Children’s Court is to have regard solely to:	21 22
	(a) the circumstances of the child or young person preceding the making of the order (including relevant past experiences and any demonstrated abilities of the child’s or young person’s parents to rectify problem behaviours or skill deficits, but not including assessments of the parents’ abilities in those respects that are not based on previously demonstrated evidence), and	23 24 25 26 27 28 29 30
	(b) such factors as may be specified by the regulations.	31

(3) If the Children’s Court determines that there is such a realistic possibility, the Director-General is to prepare a permanency plan involving restoration and submit it to the Court for its consideration.	1 2 3 4
(4) If the Children’s Court determines that there is not such a realistic possibility, the Director-General is to prepare a permanency plan for another suitable long-term placement for the child or young person and submit it to the Court for its consideration.	5 6 7 8 9
(5) In preparing a plan under subsection (4), the Director-General may consider whether adoption is the preferred option for the child or young person.	10 11 12
(6) A permanency plan involving restoration is only enforceable to the extent to which its provisions are embodied in or approved by orders of the Children’s Court.	13 14 15
(7) An appeal cannot be made against a determination of the Children’s Court under this section. However, this does not prevent an appeal from being made against any final order of the Children’s Court following such a determination.	16 17 18 19
[13] Section 84 Requirements of permanency plans involving restoration	20
Omit “restoration plan”.	21
Insert instead “permanency plan involving restoration”.	22
[14] Section 85A	23
Insert after section 85:	24
85A Review of permanency plans involving restoration	25
(1) A permanency plan involving restoration is to be reviewed by the designated agency responsible for the placement of the child or young person:	26 27 28
(a) at the end of the length of time included in the permanency plan as the length of time during which restoration should be actively pursued, and	29 30 31
(b) if a review is directed by the Children’s Guardian.	32

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(2) A permanency plan involving restoration is to be reviewed by the designated agency if it has not been reviewed under subsection (1) within 18 months after the last occasion on which it was considered by the Children’s Court.	1 2 3 4
(3) A review is to determine:	5
(a) whether the provisions of the permanency plan should be changed, particularly with respect to the length of time during which restoration should be actively pursued, and	6 7 8 9
(b) whether arrangements should be made for the permanent placement of the child or young person, and	10 11
(c) whether an application should be made for a care order or for the rescission or variation of a care order.	12 13
(4) If, because of a review by a designated agency, it is determined that a change should be made to the parental responsibility for a child or young person:	14 15 16
(a) the designated agency must:	17
(i) notify the Director-General of any application made to the Children’s Court for that purpose, and	18 19 20
(ii) give the Director-General a copy of the application and of the proposed permanency plan involving restoration, and	21 22 23
(b) the Director-General is entitled to appear in the hearing of the application.	24 25
[15] Section 90 Rescission and variation of care orders	26
Omit section 90 (2). Insert instead:	27
(2) The Children’s Court may grant leave if it appears that:	28
(a) there has been a significant change in any relevant circumstances since the care order was made or was last varied, and	29 30 31
(b) the rescission or variation of the care order is likely to be in the best interests of the safety, welfare and well-being of the child or young person.	32 33 34

[16] Section 94 Expedition and adjournments	1
Insert “and to finalise decisions concerning the long-term placement of the child or young person” after “family” in section 94 (1).	2 3
[17] Section 94 (4)	4
Omit the subsection. Insert instead:	5
(4) The Children’s Court should avoid the granting of adjournments to the maximum extent possible and must not grant an adjournment unless it is of the opinion that the adjournment is necessary:	6 7 8 9
(a) to ensure the safety, welfare and well-being of the child or young person who is the subject of the proceedings before it, or	10 11 12
(b) because of some other cogent or substantial reason.	13
[18] Section 149	14
Omit the section. Insert instead:	15
149 Order for parental responsibility	16
(1) An authorised carer who, for a continuous period of not less than 2 years, has had the care of a child or young person for whom the Minister has parental responsibility, may apply to the Children’s Court for an order awarding parental responsibility for the child or young person to the authorised carer, subject to this section.	17 18 19 20 21 22
(2) The application may be made by the authorised carer and the authorised carer’s partner, if the partner so consents, and an order may be made accordingly.	23 24 25
(3) An application cannot be made by a person who has the responsibility of an authorised carer solely in his or her capacity as the principal officer of a designated agency.	26 27 28
(4) An application cannot be made without the consent of the person or persons who had parental responsibility for the child or young person immediately before parental responsibility was allocated to the Minister.	29 30 31 32

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(5) An application that relates to a child who is not less than 12 years of age, or a young person, and who is capable of giving consent cannot be made without the consent of the child or young person. Such a consent is to be given in the manner prescribed by the regulations.	1 2 3 4 5
(6) If an application relates to a child who is less than 12 years of age, the principal officer of the relevant designated agency is to give the child notice of the application.	6 7 8
(7) Section 90 (6) applies to the determination of an application under this section in the same way as it applies to the rescission or variation of a care order.	9 10 11
(8) An application for the variation or rescission of a sole parental responsibility order in respect of a child or young person cannot be brought, except with:	12 13 14
(a) the leave of the Children’s Court, and	15
(b) the consent of the principal officer of the designated agency that had last supervised the placement of the child or young person.	16 17 18
[19] Section 151 Making of temporary care arrangements	19
Omit “restoration plan” from section 151 (4).	20
Insert instead “permanency plan involving restoration”.	21
[20] Section 155 Monitoring of children and young persons in voluntary out-of-home care	22 23
Omit “restoration plan” from section 155 (2) (a) (i).	24
Insert instead “permanency plan involving restoration”.	25

[21] Section 266	1
Insert after section 265:	2
266 Review of amendments made by Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001	3 4 5
(1) The Minister is to ensure the policy objectives and effect of the amendments made to this Act by the <i>Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001</i> are reviewed not later than 5 years after the commencement of those amendments.	6 7 8 9 10
(2) A report is to be made of the outcome of the review.	11
(3) The Minister is to table the report, or cause it to be tabled, in each House of Parliament within 3 months after it is received by the Minister.	12 13 14
(4) If a House of Parliament is not sitting when the Minister seeks to comply with subsection (3), the report is to be presented in the same manner as an annual report under section 13 of the <i>Annual Reports (Departments) Act 1985</i> and section 13 (3) of that Act applies to the report in the same way as it applies to an annual report.	15 16 17 18 19 20
[22] Schedule 3 Savings, transitional and other provisions	21
Insert at the end of clause 1 (1):	22
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