

LEGISLATIVE ASSEMBLY

Children and Young Persons (Care and Protection) Amendment (Permanency Planning)
Bill 2001

First Print

Amendments to be moved in Committee of the Whole on pro forma committal of the Bill

No 1 Page 3, Schedule 1 [1], lines 7 and 8. Omit all words on those lines. Insert instead:
permanency plan involving restoration—see section 84.

No 2 Page 3, Schedule 1 [1]. Insert after line 9:

permanent placement means a long-term placement following the removal of a child or young person from the care of a parent or parents pursuant to this Act which provides a safe, nurturing and secure environment for the child or young person and which may be achieved by:

- (a) restoration to the care of a parent or parents, or
- (b) placement with a member or members of the same kinship group as the child or young person, or
- (c) long-term placement with an authorised carer, or
- (d) placement under an order for sole parental responsibility under section 149, or
- (e) placement under a parenting order under the *Family Law Act 1975* of the Commonwealth, or
- (f) adoption.

No 3 Page 3, Schedule 1 [4], lines 19–24. Omit all words on those lines. Insert instead:

- (f) 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 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.

No 4 Page 3, Schedule 1 [4], line 28. Insert “and taking into account the wishes of the child or young person,” after “interests,”.

No 5 Page 4, Schedule 1 [5], lines 7–13. Omit all words on those lines. Insert instead:

70A Consideration of necessity for interim care order

An interim care order should not be made unless the Children’s Court has satisfied itself that the making of the order is necessary, in the interests of the child or young person, and is preferable to the making of a final order or an order dismissing the proceedings.

Note. Sections 63 and 72 deal with the power of the Children’s Court to dismiss proceedings and section 94 deals with adjournments.

No 6 Page 4, Schedule 1 [6] and [7], lines 14–25. Omit all words on those lines.

No 7 Page 4, Schedule 1 [8], line 30. Omit all words on that line. Insert instead:

- (i) how it relates to permanency planning for the child or young person, and

No 8 Pages 5 and 6, Schedule 1 [9], line 7 on page 5 to line 3 on page 6. Omit all words on those lines. Insert instead:

78A Permanency planning

- (1) For the purposes of this Act, *permanency planning* means the making of a plan that aims to provide a child or young person with a stable placement that offers long-term security and that:
 - (a) has regard, in particular, to the principle set out in section 9 (f), and
 - (b) meets the needs of the child or young person, and
 - (c) avoids the instability and uncertainty arising through a succession of different placements or temporary care arrangements, and
 - (d) provides for continuity of relationships with family members and others significant to the child or young person as long as it is in the best interests of the child or young person.
- (2) Permanency planning recognises that long-term security will be assisted by a permanent placement.
- (3) For Aboriginal or Torres Strait Islander children and young persons where there is no possibility of restoration to their parent or parents or member or members of their kinship group, other forms of permanent placement are to be considered for the purposes of subsection (1) and section 85A only:
 - (a) as a last resort, and
 - (b) in consultation with the child or young person, where appropriate,

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- and
- (c) in consultation with a local, community-based and relevant Aboriginal or Torres Strait Islander organisation and the local Aboriginal or Torres Strait Islander community, and
 - (d) if the child or young person is able to be placed with a culturally appropriate family or in independent living, and
 - (e) after consideration has been given, and best endeavours have been made, by the Director-General or the designated agency responsible for the placement to adhere to the Aboriginal and Torres Strait Islander Placement Principles in section 13 to the finding of an Aboriginal or Torres Strait Islander placement for the child or young person, and
 - (f) if, in the case of a proposal for a sole parental responsibility order in favour of, or a recommendation for adoption by, a person who is not an Aboriginal or Torres Strait Islander, the approvals of the Minister for Community Services and the Minister for Aboriginal Affairs are given.

No 9 Page 6, Schedule 1 [11], lines 11 and 12. Omit all words on those lines. Insert instead:

- (1A) The report must include an assessment of progress in implementing the care plan, including progress towards the achievement of a permanent placement.

No 10 Pages 6 and 7, Schedule 1 [12], line 15 on page 6 to line 19 on page 7. Omit all words on those lines. Insert instead:

83 Preparation of permanency plan

- (1) If the Director-General applies to the Children's Court for a care order (not being an emergency care and protection order) for the removal of a child or young person, the Director-General must assess whether there is a realistic possibility of the child or young person being restored to his or her parents, having regard to:
 - (a) the circumstances of the child or young person, and
 - (b) the evidence, if any, that the child or young person's parents are likely to be able to satisfactorily address the issues that have led to the removal of the child or young person from their care.
- (2) If the Director-General assesses that there is a realistic possibility of restoration, the Director-General is to prepare a permanency plan involving restoration and submit it to the Children's Court for its consideration.
- (3) If the Director-General assesses that there is not a realistic possibility of restoration, the Director-General is to prepare a permanency plan for another suitable long-term placement for the child or young person and

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- submit it to the Children’s Court for its consideration.
- (4) In preparing a plan under subsection (3), the Director-General may consider whether adoption is the preferred option for the child or young person.
- (5) The Children’s Court is to decide whether to accept the assessment of the Director-General.
- (6) If the Children’s Court does not accept the Director-General’s assessment, it may direct the Director-General to prepare a different permanency plan.
- (7) The Children’s Court must not make a final care order unless it expressly finds:
- (a) that permanency planning for the child or young person has been appropriately and adequately addressed, and
 - (b) that, if a restoration order were to be made, there is a realistic possibility of the child or young person being restored to his or her parents, having regard to:
 - (i) the circumstances of the child or young person, and
 - (ii) the evidence, if any, that the child or young person’s parents are likely to be able to satisfactorily address the issues that have led to the removal of the child or young person from their care.
- (8) A permanency plan is only enforceable to the extent to which its provisions are embodied in, or approved by, an order or orders of the Children’s Court.

No 11 Page 7, Schedule 1 [14], line 31. Omit “and”. Insert instead “or”.

No 12 Page 8, Schedule 1 [14], line 3. Omit “18 months”. Insert instead “12 months”.

No 13 Page 8, Schedule 1 [14], line 10. Insert “other” before “arrangements”.

No 14 Page 8, Schedule 1 [14], lines 12 and 13. Omit all words on those lines. Insert instead:

- (c) whether the designated agency should recommend to the Director-General that an application for a care order be made or whether the designated agency should make an application for the rescission or variation of a care order.

No 15 Page 8, Schedule 1 [14], line 14–25. Omit all words on those lines.

No 16 Page 8, Schedule 1 [14]. Insert after line 25:

- (5) Nothing in this section affects any obligation under section 150 to review the placement, and a review under section 150 may be taken to be a review for the purposes of this section also if the review under section 150 satisfies the

requirements of this section.

- (6) The regulations may make provision for or with respect to a review under this section, including:
- (a) the qualifications of the person carrying out the review on behalf of the designated agency, and
 - (b) the matters to be taken into consideration in carrying out the review, and
 - (c) the release of reports prepared in relation to the review.

No 17 Page 8, Schedule 1 [15], lines 28–34. Omit all words on those lines. Insert instead:

- (2) The Children’s Court may grant leave if it appears that there has been a significant change in any relevant circumstances since the care order was made or last varied.

Note. As it must do before making any order, the Children’s Court is to consider the principle in section 9 (a). For the purposes of section 90, this will include consideration of:

- (a) the nature of the application, and
- (b) the age of the child or young person, and
- (c) the length of time for which the child or young person has been in the care of the present carer, and
- (d) whether the applicant has an arguable case.

No 18 Page 8, Schedule 1. Insert after line 34:

[16] Section 90 (3A)

Insert after section 90 (3):

- (3A) If:
- (a) an application is made to the Children’s Court for the rescission or variation of a care order by a person or persons other than the Director-General, and
 - (b) the application seeks to change the parental responsibility for the child or young person, or those aspects of parental responsibility being residency and care responsibility for the child or young person, and
 - (c) the Director-General is not a party to the proceedings and the application is not brought by the Department as the designated agency,
- the applicant must notify the Director-General and the Children’s Guardian of the application, and the Director-General and the Children’s Guardian are entitled to appear in the hearing of the application.

No 19 Page 9, Schedule 1 [17], lines 6–13. Omit all words on those lines. Insert instead:

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- (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:
- (a) it is in the best interests of the child or young person to do so, or
 - (b) there is some other cogent or substantial reason to do so.

No 20 Pages 9 and 10, Schedule 1 [18], line 16 on page 9 to line 18 on page 10. Omit all words on those lines. Insert instead:

149 Order for sole parental responsibility

- (1) This section applies to a child or young person:
 - (a) for whom the Minister has sole parental responsibility (including the aspects of residence and care responsibility), and
 - (b) in relation to whom the Minister has shared parental responsibility (including the aspects of residence and care responsibility) with the authorised carer or carers of the child or young person only.
- (2) An authorised carer who, for a continuous period of not less than 2 years, has had the care of a child or young person to whom this section applies, may apply to the Children’s Court for an order awarding sole parental responsibility for the child or young person to the authorised carer, subject to this section.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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. A consent is to be given in such form and manner as may be prescribed by the regulations.
- (7) 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.
- (8) In making an order under this section for sole parental responsibility, the Children’s Court may make or vary a contact order under section 86.

149A Variation or rescission of order for sole parental responsibility

- (1) An application for the variation or rescission of a sole parental responsibility order under section 149 in respect of a child or young person cannot be brought except with:
 - (a) the leave of the Children’s Court, and
 - (b) the consent of the principal officer of the designated agency that had last supervised the placement of the child or young person.
- (2) If:
 - (a) the principal officer of the designated agency that had last supervised the placement of the child or young person gives consent under subsection (1) (b), and
 - (b) the designated agency has provided support for the placement, the principal officer must provide the Children’s Court with a report concerning the placement together with such other information as may be relevant to the application.
- (3) Section 90 (6) applies to the determination of an application to vary or rescind a sole parental responsibility order under section 149 in respect of a child or young person in the same way as it applies to the variation or rescission of a care order.
- (4) This section does not limit or affect the making of an application to the Children’s Court by the Director-General under section 45 or 61.
Note. Section 247 provides that nothing in this Act limits the jurisdiction of the Supreme Court. Consequently, nothing in this section will limit that jurisdiction.
- (5) The regulations may make provision for or with respect to:
 - (a) the form and manner in which a consent is to be given for the purposes of this section, and
 - (b) the form and contents of a report under subsection (2).

No 21 Page 11, Schedule 1 [21], line 9. Insert “and, in particular, the policy objectives and effects of those amendments in their application to Aboriginal and Torres Strait Islander children and young persons,” after “2001”.