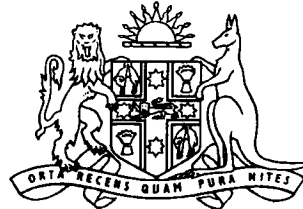


Second print



New South Wales

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

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157	2
Schedule 1 Amendments	3

*This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,*



New South Wales

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

Act No      , 2001

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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.

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***EXAMINED***

*Chairman of Committees*

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

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<b>Schedule 1 Amendments</b>	1
(Section 3)	2
<b>[1] Section 3 Definitions</b>	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> —see section 84.	6
<i>permanency planning</i> —see section 78A.	7
<i>permanent placement</i> 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:	8
(a) restoration to the care of a parent or parents, or	9
(b) placement with a member or members of the same kinship group as the child or young person, or	10
(c) long-term placement with an authorised carer, or	11
(d) placement under an order for sole parental responsibility under section 149, or	12
(e) placement under a parenting order under the <i>Family Law Act 1975</i> of the Commonwealth, or	13
(f) adoption.	14
<b>[2] Section 3</b>	15
Omit the definition of <i>restoration plan</i> .	16
<b>[3] Section 9 What principles are to be applied in the administration of this Act?</b>	17
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).	18
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Children and Young Persons (Care and Protection) Amendment  
(Permanency Planning) Bill 2001 (No 2)

Schedule 1 Amendments

---

<b>[4] Section 9 (f) and (g)</b>	1
Omit section 9 (f). Insert instead:	2
(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.	3 4 5 6 7 8 9
(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, and taking into account the wishes of the child or young person, this will include the retention 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.	10 11 12 13 14 15 16 17 18
<b>[5] Section 70A</b>	19
Insert after section 70:	20
<b>70A Consideration of necessity for interim care order</b>	21
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.	22 23 24 25 26
<b>Note.</b> Sections 63 and 72 deal with the power of the Children's Court to dismiss proceedings and section 94 deals with adjournments.	27 28
<b>[6] Section 78 Care plans</b>	29
Omit section 78 (2) (b). Insert instead:	30
(b) the kind of placement proposed to be sought for the child or young person, including:	31 32
(i) how it relates to permanency planning for the child or young person, and	33 34

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(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
<b>[7] Section 78A</b>		5
Insert after section 78:		6
<b>78A Permanency planning</b>		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 placement that offers long-term security and that:	8 9 10
(a)	has regard, in particular, to the principle set out in section 9 (f), and	11 12
(b)	meets the needs of the child or young person, and	13
(c)	avoids the instability and uncertainty arising through a succession of different placements or temporary care arrangements, and	14 15 16
(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.	17 18 19 20
(2)	Permanency planning recognises that long-term security will be assisted by a permanent placement.	21 22
(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:	23 24 25 26 27
(a)	as a last resort, and	28
(b)	in consultation with the child or young person, where appropriate, and	29 30

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

Schedule 1 Amendments

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(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	1 2 3 4
(d)	if the child or young person is able to be placed with a culturally appropriate family or in independent living, and	5 6 7
(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	8 9 10 11 12 13 14
(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.	15 16 17 18 19 20
<b>[8]</b>	<b>Section 81 Parental responsibility of the Minister</b>	21
	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).	22 23 24
<b>[9]</b>	<b>Section 82 Monitoring by Children’s Court of order concerning parental responsibility</b>	25 26
	Insert after section 82 (1):	27
	(1A) The report must include an assessment of progress in implementing the care plan, including progress towards the achievement of a permanent placement.	28 29 30

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<b>[10] Section 83</b>	1
Omit the section. Insert instead:	2
<b>83 Preparation of permanency plan</b>	3
(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:	4
(a) the circumstances of the child or young person, and	5
(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.	6
(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.	7
(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 submit it to the Children’s Court for its consideration.	8
(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.	9
(5) The Children’s Court is to decide whether to accept the assessment of the Director-General.	10
(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.	11
(7) The Children’s Court must not make a final care order unless it expressly finds:	12
(a) that permanency planning for the child or young person has been appropriately and adequately addressed, and	13



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

Schedule 1 Amendments

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(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:	1
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		3
(i)	the circumstances of the child or young person,	4
	and	5
(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.	6
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(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.	11
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<b>[11]</b>	<b>Section 84 Requirements of permanency plans involving restoration</b>	14
	Omit "restoration plan".	15
	Insert instead "permanency plan involving restoration".	16
<b>[12]</b>	<b>Section 85A</b>	17
	Insert after section 85:	18
<b>85A</b>	<b>Review of permanency plans involving restoration</b>	19
(1)	A permanency plan involving restoration is to be reviewed by the designated agency responsible for the placement of the child or young person:	20
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		22
(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, or	23
		24
		25
(b)	if a review is directed by the Children's Guardian.	26
(2)	A permanency plan involving restoration is to be reviewed by the designated agency if it has not been reviewed under subsection (1) within 12 months after the last occasion on which it was considered by the Children's Court.	27
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(3) A review is to determine:	1
(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	2 3 4 5
(b) whether other arrangements should be made for the permanent placement of the child or young person, and	6 7
(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.	8 9 10 11 12
(4) 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.	13 14 15 16 17
(5) The regulations may make provision for or with respect to a review under this section, including:	18 19
(a) the qualifications of the person carrying out the review on behalf of the designated agency, and	20 21
(b) the matters to be taken into consideration in carrying out the review, and	22 23
(c) the release of reports prepared in relation to the review.	24
<b>[13] Section 90 Rescission and variation of care orders</b>	25
Omit section 90 (2). Insert instead:	26
(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.	27 28 29
<b>Note.</b> 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:	30 31 32
(a) the nature of the application, and	33
(b) the age of the child or young person, and	34

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

Schedule 1 Amendments

---

(c)	the length of time for which the child or young person has been in the care of the present carer, and	1 2
(d)	whether the applicant has an arguable case.	3
<b>[14]</b>	<b>Section 90 (3A)</b>	4
	Insert after section 90 (3):	5
	(3A) If:	6
	(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	7 8 9
	(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	10 11 12 13
	(c) the Director-General is not a party to the proceedings and the application is not brought by the Department as the designated agency,	14 15 16
	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.	17 18 19 20
<b>[15]</b>	<b>Section 94 Expedition and adjournments</b>	21
	Insert “and to finalise decisions concerning the long-term placement of the child or young person” after “family” in section 94 (1).	22 23
<b>[16]</b>	<b>Section 94 (4)</b>	24
	Omit the subsection. Insert instead:	25
	(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:	26 27 28
	(a) it is in the best interests of the child or young person to do so, or	29 30
	(b) there is some other cogent or substantial reason to do so.	31

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<b>[17] Section 149</b>	1
Omit the section. Insert instead:	2
<b>149 Order for sole parental responsibility</b>	3
(1) This section applies to a child or young person:	4
(a) for whom the Minister has sole parental responsibility (including the aspects of residence and care responsibility), and	5 6 7
(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.	8 9 10 11
(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.	12 13 14 15 16
(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.	17 18 19
(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.	20 21 22
(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.	23 24 25 26
(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.	27 28 29 30 31
(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.	32 33 34

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

Schedule 1 Amendments

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- (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. 1  
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- 149A Variation or rescission of order for sole parental responsibility** 4
- (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: 5  
6  
7
- (a) the leave of the Children's Court, and 8
- (b) the consent of the principal officer of the designated agency that had last supervised the placement of the child or young person. 9  
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- (2) If: 12
- (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 13  
14  
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- (b) the designated agency has provided support for the placement, 16  
17
- 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. 18  
19  
20
- (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. 21  
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23  
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- (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. 25  
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- 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. 28  
29  
30
- (5) The regulations may make provision for or with respect to: 31
- (a) the form and manner in which a consent is to be given for the purposes of this section, and 32  
33
- (b) the form and contents of a report under subsection (2). 34

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<b>[18] Section 151 Making of temporary care arrangements</b>	1
Omit “restoration plan” from section 151 (4).	2
Insert instead “permanency plan involving restoration”.	3
<b>[19] Section 155 Monitoring of children and young persons in voluntary out-of-home care</b>	4
Omit “restoration plan” from section 155 (2) (a) (i).	6
Insert instead “permanency plan involving restoration”.	7
<b>[20] Section 266</b>	8
Insert after section 265:	9
<b>266 Review of amendments made by Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001</b>	10
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	12
(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> and, in particular, the policy objectives and effects of those amendments in their application to Aboriginal and Torres Strait Islander children and young persons, are reviewed not later than 5 years after the commencement of those amendments.	13
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(2) A report is to be made of the outcome of the review.	21
(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.	22
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(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.	25
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Children and Young Persons (Care and Protection) Amendment  
(Permanency Planning) Bill 2001 (No 2)

Schedule 1      Amendments

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<b>[21] Schedule 3 Savings, transitional and other provisions</b>	1
Insert at the end of clause 1 (1):	2
<i>Children and Young Persons (Care and Protection)</i>	3
<i>Amendment (Permanency Planning) Act 2001</i>	4