

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**) as follows:

- (a) to make further provision in respect of voluntary out-of-home care,
- (b) to enable child protection reports to be admissible in certain proceedings,
- (c) to clarify that financial assistance is available to certain carers,
- (d) to extend the regulation-making power in respect of probity checks on persons involved in the provision of children's services,
- (e) to provide that certain decisions about permanency plans for children and young persons are not reviewable by the Administrative Decisions Tribunal,
- (f) to clarify the power to take photographs and other recordings during the removal of a child or young person from any premises or place,
- (g) to provide that the Director-General has 3 working days (and a maximum of 5 days) in which to file an application in the Children's Court following an emergency removal or assumption of care responsibility,
- (h) to make other minor and consequential amendments.

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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.

Schedule 1 Amendment of Children and Young Persons (Care and Protection) Act 1998

No 157

Schedule 1 [1] extends the types of proceedings in which a report made in relation to a child or young person to the Director-General or to a person who has the power or responsibility to protect the child or young person will be admissible.

Schedule 1 [2]–[4] make it clear that the disclosure of the identity of a person who makes a report in respect of a child or young person is not prevented if it is disclosed in connection with the investigation of a serious indictable offence or reportable conduct alleged to have been committed or done against a child or young person.

Schedule 1 [5] clarifies the circumstances in which the Children's Court may make an order to give effect to a care plan without the need for a care application under the principal Act.

Schedule 1 [6] and [7] make it clear that the 3-day period within which the Director-General is to make a care application after the removal of a child or young person or assumption of responsibility for a child or young person is 3 working days (ie the 3-day period does not include a Saturday, Sunday or public holiday).

However, the amendments also provide that, in any event, such an application must be made within 5 days or on the first working day after that 5 day-period.

Schedule 1 [8] updates a cross-reference in a note.

Schedule 1 [9] clarifies the definition of **voluntary out-of-home care** for the purposes of the principal Act so that such care does not include out-of-home care provided by an individual in a private capacity.

Schedule 1 [10] makes it clear that a relevant agency under the voluntary out-of-home care provisions may arrange, as well as provide, such care.

Schedule 1 [11] makes a consequential amendment to the regulation-making power in respect of voluntary out-of-home care.

Schedule 1 [12] substitutes section 156A and inserts proposed section 156B.

Proposed new section 156A provides that if a child or young person is placed in voluntary out-of-home care:

(a) the child or young person must not remain in that care for more than a total of 90 days in any period of 12 months unless the care is provided by or supervised by a designated agency or supervised by the Children's Guardian, and
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(b) the child or young person must not remain in 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.

If those time periods are not met, the Children's Guardian may determine that the child or young person is taken to be at risk of significant harm, and the various mandatory reporting and other provisions of the principal Act will apply.

Proposed section 156B replicates, with some changes, clause 40D of the *Children and Young Persons (Care and Protection) Regulation 2000* to restrict who may provide or arrange voluntary out-of-home care. It will be an offence (maximum penalty \$22,000) for a person, other than a relevant agency or an individual who is authorised by a relevant agency or the Children's Guardian, to provide voluntary out-of-home care. It will also be an offence (maximum penalty \$22,000) for a person, other than a relevant agency or the Children's Guardian, to 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 to hold out as being willing to make such an arrangement.

Schedule 1 [13]–[16] provide that a person who is providing voluntary out-of-home care in respect of a child or young person may restrain the child or young person in certain circumstances (this currently only applies to parents and authorised carers).

Schedule 1 [17] makes it clear that financial assistance under the principal Act is available to carers of children or young persons who have parental responsibility pursuant to an order of the Children's Court and are providing supported out-of-home care or care under an emergency care and protection order.

Schedule 1 [18] and [19] make it clear that an adult who has been in out-of-home care while he or she was a child or young person is entitled to free access to his or her personal information held by certain persons or bodies.

Schedule 1 [20] provides that one of the functions of the Children's Guardian under the principal Act is to register organisations that provide or arrange voluntary out-of-home care and to monitor their responsibilities.

Schedule 1 [21] includes a relevant agency as a body or organisation to whom the Children's Guardian may furnish certain information relating to the safety, welfare and well-being of children or young persons, or whom the Children's Guardian may direct to provide such information.

Schedule 1 [22] expands the current regulation-making power in relation to probity checks so that such checks may be made on the following:

(a) a person who is involved in the control and management of a licensee or proposed licensee,

(b) a person who is involved in the control and management of the majority shareholder corporation of a licensee or proposed licensee,

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(c) a person who is, or who is proposed to be, an authorised supervisor for a children's service.

Schedule 1 [23] provides that a person who is authorised under the principal Act or the regulations made under that Act, or under a search warrant issued under that Act, to search for, apprehend or remove a person in or from any premises or place may

take such photographs and films, and audio, video and other recordings, as the person considers necessary.

Schedule 1 [24] provides that decisions relating to the making and implementation of permanency plans for children and young persons under the parental responsibility of the Minister are not decisions reviewable by the Administrative Decisions Tribunal.

Schedule 1 [25] includes the Family Court of Australia as a Commonwealth agency for the purposes of the exchange of information and co-ordination of services provisions under the principal Act.

Schedule 1 [26] enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [27] inserts a savings and transitional provision into the principal Act in respect of the provision of voluntary out-of-home care.

Schedule 2 Amendment of other Acts and Regulation

Schedule 2.1 amends the *Children and Young Persons (Care and Protection) Amendment (Children's Services) Act 2010* as a consequence of the proposed amendment to be made by Schedule 1 [22].

Schedule 2.2 amends the *Children and Young Persons (Care and Protection) Regulation 2000* as a consequence of the insertion of proposed section 156B by Schedule 1 [12].

Schedule 2.3 repeals an uncommenced amendment contained in the *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009* that would have made it an offence for a parent to place a child or young person in out-of-home care that is provided by an organisation unless the organisation is a relevant agency.