

First print



New South Wales

# Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill 2000

## 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 and for whom a return to their parents does not appear to be a viable option. The amendments made by the Bill will require the consideration of more permanent forms of care, including the possibility of adoption, for children and young persons in these circumstances.

Explanatory note

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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 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* set out in Schedule 1.

## Schedule 1 Amendments

### Principles to be applied in the administration of the Act

**Schedule 1 [2]** 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 [1]** and **[9]** make consequential amendments.

**Schedule 1 [3]** 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 and the entitlement of a child or young person who is placed in out-of-home care to a safe, nurturing, stable and secure environment.

**Schedule 1 [4]** amends the principles, contained in section 13 of the Act, relating to the placement of a child or young person who is an Aboriginal or Torres Strait Islander in the care of a person who is not an Aboriginal or Torres Strait Islander. The requirement that continuing contact must be ensured between the child or young person and his or her Aboriginal or Torres Strait Islander family, community and culture is replaced with a requirement that all reasonable efforts must be made to ensure such continuing contact.

### Care orders

**Schedule 1 [7]** 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 are incapable of providing a nurturing, stable and secure environment for the child or young person.

**Schedule 1 [13]** amends section 90 of the Act to add further requirements that are 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 grounds are that the application has substantial merit, and 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, including the earliest time at which a permanent placement could reasonably be made. The assessment is to have regard solely to the circumstances of the child or young person preceding the time the care plan is presented to the Children’s Court. A recommendation for permanent placement may address the possibility of an application being made for the adoption of the child or young person under the *Adoption of Children Act 1965*. If a permanent placement is not recommended, the care plan must include full reasons why it is not recommended.

**Schedule 1 [10]** amends section 82 of the Act to introduce the same requirements 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.

**Restoration plans**

**Schedule 1 [11]** substitutes section 83 of the Act relating to the preparation of restoration plans. 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 restoration plan 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 form of permanent placement for the child or young person and submit it to the Court for its consideration. In preparing such a plan, the Director-General is to consider

whether or not to support an application for the adoption of the child or young person.

**Schedule 1 [12]** inserts proposed section 85A into the Act. The proposed section requires the review of a restoration plan 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.

#### **Expedition of Children's Court proceedings and adjournments**

**Schedule 1 [14]** and **[15]** 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 avoid the making of interim orders if it is reasonably likely that a matter could be concluded with greater certainty or with greater expedition, or both, if such an order were not made. 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.

**Schedule 1 [5]** and **[6]** make complementary amendments in relation to interim care orders under section 69 of the Act and other interim orders under section 70 of the Act.

#### **Disclosure of information concerning authorised carers to parents**

**Schedule 1 [16]** substitutes section 148 of the Act. Under the section as substituted, the Children's Guardian is authorised to approve the withholding of information from the parents of the child or young person concerning his or her placement in out-of-home care in an additional circumstance, namely, that there are reasonable grounds for believing that the stability of the placement of the child or young person could be adversely affected by the behaviour of his or her parents. Furthermore, it is made an offence, punishable with a maximum penalty of 200 penalty units, for a person (including the designated agency responsible for the placement of a child or young person in out-of-home care with an authorised carer and the Children's Guardian) to provide to the parents of the child or young person, during the first 6 months of the placement, except with the consent of the authorised carer, any information concerning the authorised carer that will identify, or may lead to the identification of, the authorised carer or any person associated with the authorised carer, or the authorised carer's whereabouts.

### **Order for sole parental responsibility**

**Schedule 1 [17]–[19]** amend section 149 of the Act. The amendments will enable the authorised carer of a child or young person to apply for the sole parental responsibility of the child or young person at any time with the consent of the person (other than the Minister) who last had that responsibility, or to make such an application after 2 years without having to obtain that consent.

### **Review of amendments**

**Schedule 1 [20]** 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 [21]** 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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New South Wales

# Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill 2000

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New South Wales

# Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill 2000

No. , 2000

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## 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.

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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 2000</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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## Schedule 1 Amendments

	1
(Section 3)	2
<b>[1] Section 8 What are the objects of this Act?</b>	3
Insert “, in accordance with the principles set out in section 9,” after “account” in section 8 (a).	4 5
<b>[2] Section 9 What principles are to be applied in the administration of this Act?</b>	6 7
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).	8 9 10
<b>[3] Section 9 (f) and (g)</b>	11
Omit section 9 (f). Insert instead:	12
(f) All reasonable efforts are to be made to preserve and unify families, but where this is not appropriate, having regard to any matters relevant to the safety, welfare and well-being of the child or young person, including:	13 14 15 16
(i) the capabilities (to the extent to which they have been demonstrated) of those having parental responsibility for the child or young person to exercise parental responsibility, and	17 18 19 20
(ii) the length of time for which the child or young person has or has not lived in a stable home environment, and	21 22 23
(iii) the number of short term placements in out-of-home care the child or young person has had,	24 25
all reasonable efforts are to be made to place the child or young person, in a timely manner, in a planned permanent arrangement.	26 27 28
(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, in some cases	29 30 31 32

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	after allowing the passing of an interim period, the making of all reasonable efforts to ensure 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.	1 2 3 4 5 6
<b>[4]</b>	<b>Section 13 Aboriginal and Torres Strait Islander Child and Young Person Placement Principles</b>	7 8
	Omit “Continuing contact must be ensured” from section 13 (6) (b). Insert instead “All reasonable efforts must be made to ensure continuing contact”.	9 10 11
<b>[5]</b>	<b>Section 69 Interim care orders</b>	12
	Insert “, subject to section 94 (3A)” after “determined” in section 69 (1).	13
<b>[6]</b>	<b>Section 70 Other interim orders</b>	14
	Insert “, subject to section 94 (3A)” after “proceedings” where secondly occurring.	15 16
<b>[7]</b>	<b>Section 71 Grounds for care orders</b>	17
	Insert after section 71 (1) (e):	18
	(e1) the parents are incapable of providing a nurturing, stable and secure environment for the child or young person,	19 20
<b>[8]</b>	<b>Section 78 Care plans</b>	21
	Insert after section 78 (2):	22
	(2A) The care plan must assess the possibility and benefits of a permanent placement, including:	23 24
	(a) the earliest time at which a permanent placement could reasonably be made, and	25 26
	(b) whether one or more of the parties may apply for the adoption of the child or young person in accordance with the <i>Adoption of Children Act 1965</i> .	27 28 29

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(2B)	The assessment is to have regard solely to the circumstances of the child or young person preceding the time the care plan is presented to the Children’s Court.	1 2 3
(2C)	If a permanent placement is not recommended, the care plan must include full reasons why it is not recommended.	4 5
<b>[9]</b>	<b>Section 81 Parental responsibility of the Minister</b>	6
	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).	7 8 9
<b>[10]</b>	<b>Section 82 Monitoring by Children’s Court of order concerning parental responsibility</b>	10 11
	Insert after section 82 (1):	12
(1A)	The report must assess the possibility and benefits of a permanent placement, including:	13 14
(a)	the earliest time at which a permanent placement could reasonably be made, and	15 16
(b)	whether one or more of the parties may apply for the adoption of the child or young person in accordance with the <i>Adoption of Children Act 1965</i> .	17 18 19
(1B)	The assessment is to have regard solely to the circumstances of the child or young person preceding the time the report is made to the Children’s Court.	20 21 22
(1C)	If a permanent placement is not recommended, the report must include full reasons why it is not recommended.	23 24
<b>[11]</b>	<b>Section 83</b>	25
	Omit the section. Insert instead:	26
	<b>83 Preparation of restoration plan</b>	27
(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, having regard solely to the circumstances of the child or young	28 29 30 31 32

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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.	1 2 3
(2) If the Children’s Court determines that there is such a realistic possibility, the Director-General is to prepare a restoration plan and submit it to the Court for its consideration.	4 5 6
(3) If the Children’s Court determines that there is not such a realistic possibility, the Director-General is to prepare a plan for another form of permanent placement for the child or young person and submit it to the Court for its consideration.	7 8 9 10
(4) In preparing a plan under subsection (3), the Director-General is to consider whether or not the Director-General would support an application for the adoption of the child or young person.	11 12 13 14
(5) A restoration plan is only enforceable to the extent to which its provisions are embodied in or approved by orders of the Children’s Court.	15 16 17
<b>[12] Section 85A</b>	18
Insert after section 85:	19
<b>85A Review of restoration plans</b>	20
(1) A restoration plan is to be reviewed by the Director-General:	21
(a) at the end of the length of time included in the restoration plan as the length of time during which restoration should be actively pursued, and	22 23 24
(b) if a review is directed by the Children’s Guardian.	25
(2) A restoration plan is to be reviewed by the Director-General 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.	26 27 28 29
(3) A review is to determine:	30
(a) whether the provisions of the restoration plan should be changed, particularly with respect to the length of time during which restoration should be actively pursued, and	31 32 33 34

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(b)	whether arrangements should be made for the permanent placement of the child or young person, and	1 2
(c)	whether an application should be made for a care order or for the rescission or variation of a care order.	3 4
<b>[13]</b>	<b>Section 90 Rescission and variation of care orders</b>	5
	Omit section 90 (2). Insert instead:	6
(2)	The Children’s Court may grant leave if it appears that:	7
(a)	there has been a significant change in any relevant circumstances since the care order was made or was last varied, and	8 9 10
(b)	the application has substantial merit, and	11
(c)	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.	12 13 14
<b>[14]</b>	<b>Section 94 Expedition and adjournments</b>	15
	Insert after section 94 (3):	16
(3A)	The Children’s Court must not make an order under section 69 or 70 in a matter before it if it is reasonably likely that the matter could be concluded with greater certainty or with greater expedition, or both, if the order were not made.	17 18 19 20
<b>[15]</b>	<b>Section 94 (4)</b>	21
	Omit the subsection. Insert instead:	22
(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 to ensure the safety, welfare and well-being of the child or young person who is the subject of the proceedings before it.	23 24 25 26 27 28

<b>[16] Section 148</b>	1
Omit the section. Insert instead:	2
<b>148 Disclosure of information concerning authorised carers to parents</b>	3
	4
(1) The designated agency responsible for the placement of a child or young person in out-of-home care must inform the parents of the child or young person of such information concerning the placement as is determined by the Children’s Guardian, subject to this section.	5
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(2) The Children’s Guardian may approve of the withholding of information:	10
	11
(a) if there are reasonable grounds to fear for the safety of a child or young person, an authorised carer or any member of the authorised carer’s family if the information were to be disclosed, or	12
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	15
(b) if there are reasonable grounds for believing that:	16
(i) the stability of the placement of the child or young person, or	17
	18
(ii) the quality of life of the child or young person, or both, could be adversely affected by the behaviour of his or her parents.	19
	20
	21
(3) A person, including the designated agency responsible for the placement of a child or young person in out-of-home care with an authorised carer and the Children’s Guardian, must not, during the first 6 months of the placement, except with the consent of the authorised carer, provide the parents of the child or young person with any information concerning the authorised carer that will identify, or may lead to the identification of:	22
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(a) the authorised carer or any person associated with the authorised carer, or	30
	31
(b) the authorised carer’s whereabouts.	32
Maximum penalty (subsection (3)): 200 penalty units.	33

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<b>[17] Section 149 Order for sole parental responsibility</b>	1
Omit “, for not less than 5 years, has had”. Insert instead “has”.	2
<b>[18] Section 149</b>	3
Insert “sole” before “parental responsibility” where first occurring.	4
<b>[19] Section 149 (2) and (3)</b>	5
Insert at the end of section 149:	6
(2) An authorised carer who, for not less than 2 years, has had the care of a child or young person for whom the Minister has sole parental responsibility, may apply to the Children’s Court for an order awarding sole parental responsibility for the child or young person to the authorised carer without having to obtain the consent of a person referred to in subsection (1).	7 8 9 10 11 12
(3) An application under this section does not prevent the authorised carer from making an application for the adoption of the child or young person under the <i>Adoption of Children Act 1965</i> .	13 14 15 16
<b>[20] Section 266</b>	17
Insert after section 265:	18
<b>266 Review of amendments made by Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2000</b>	19 20 21
(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 2000</i> are reviewed not later than 5 years after the commencement of those amendments.	22 23 24 25 26
(2) A report is to be made of the outcome of the review.	27
(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.	28 29 30

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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.	1 2 3 4 5 6
<b>[21] Schedule 3 Savings, transitional and other provisions</b>	7
Insert at the end of clause 1 (1):	8
<i>Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2000</i>	9 10