



New South Wales

# Children and Young Persons (Care and Protection) Amendment Bill 2018

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

The *National Disability Insurance Scheme (Worker Checks) Bill 2018* is cognate with this Bill.

## Overview of Bill

The object of this Bill is to implement improvements in the NSW child protection system resulting from certain proposals contained in the discussion paper entitled *Shaping a Better Child Protection System* released by the Department of Family and Community Services in October 2017 and to make provision for other matters:

- (a) by amending the *Children and Young Persons (Care and Protection) Act 1998* (the **principal Act**), as follows:
  - (i) to require the Secretary to offer alternative dispute resolution processes to the families of children and young persons at risk of significant harm, before seeking care orders from the Children's Court, subject to certain exceptions,
  - (ii) to extend the obligation of government agencies and government funded non-government agencies to co-operate in the delivery of services to children and young persons (where applicable), to the provision of prioritised access to services to children and young persons at risk of significant harm and their families,
  - (iii) to define **children's services** in relation to mandatory reporting by reference to relevant concepts in legislation governing children's education and care services,
  - (iv) to clarify that the Children's Court may make a guardianship order by consent to give effect to a care plan allocating parental responsibility, and the circumstances in which the order may be made,
  - (v) to enable the Children's Court to vary an interim order on an application by a party to proceedings before the Court if satisfied it is appropriate to do so,

- (vi) to limit the period for which an order of the Children's Court may allocate all aspects of parental responsibility for a child or young person solely to the Minister following its approval of a permanency plan involving restoration, guardianship or adoption,
  - (vii) to clarify the period within which the feasibility of restoration of a child or young person to his or her parents is to be considered, in connection with the preparation and approval of permanency plans,
  - (viii) to enable the Children's Court to conduct a review of progress in implementing the care plan for a child or young person if not satisfied, after considering a report under section 82 of the principal Act, that proper arrangements have been made for his or her care and protection,
  - (ix) to enable the Children's Court to make a contact order for the duration of a guardianship order if satisfied that it is in the best interests of the child or young person the subject of the guardianship order,
  - (x) to restate, as primary considerations and additional considerations, certain matters that the Children's Court must consider before granting leave to make an application to vary or rescind a care order,
  - (xi) to add to those primary considerations, matters concerning the views of the child or young person, the stability of present care arrangements and the least intrusive intervention into the life of the child or young person if those arrangements are stable and secure,
  - (xii) to enable the Children's Court to dismiss an application for leave to apply to vary or rescind a care order if satisfied that it is frivolous, vexatious, an abuse of process or one of a series made by the applicant with no reasonable prospect of success,
  - (xiii) to extend the period for which a child or young person who has been placed in statutory out-of-home care and is subject to a permanency plan involving restoration may live with his or her parents before the date of restoration,
  - (xiv) to allow supported out-of-home care (other than temporary care arrangements) only in respect of court ordered placements of children or young persons in out-of-home care with relatives or kin,
  - (xv) to prohibit the publishing or broadcasting of the names of children or young persons in any way that identifies them as being in out-of-home care or under the parental responsibility of the Minister,
  - (xvi) to create certain exceptions to the prohibition under the principal Act on publishing or broadcasting the name of a child or young person, in relation to the Coroner's Court,
  - (xvii) to vest the care responsibility for a child in the Secretary on the death of the child's sole or surviving guardian (or other person with full parental responsibility for the child) for up to 21 days,
  - (xviii) to provide for a penalty of up to 2 years imprisonment for offences relating to the abuse or neglect of children or young persons,
  - (xix) to make various other minor, ancillary or consequential amendments, and
- (b) by amending the *Adoption Act 2000* to enable the Supreme Court to make an order dispensing with a requirement for the consent of a person to a child's adoption if the application for adoption is made by the child's guardian.

## 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.

## **Schedule 1      Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157**

### **Prioritised access to services for children and young persons at risk of significant harm and their families**

**Schedule 1 [4]** provides that the Secretary, in deciding what action should be taken to promote and safeguard the safety, welfare and well-being of a child or young person at risk of significant harm, may request government agencies and government funded non-government agencies (*relevant agencies*) to provide prioritised access to services to the child or young person and his or her family.

**Schedule 1 [2]** makes a consequential amendment to clarify that the role of the Secretary in promoting the development of interagency procedures and protocols includes procedures and protocols for the provision of prioritised access to services as referred to above.

Section 18 of the principal Act requires relevant agencies to use their best endeavours to comply with the Secretary's request if it is consistent with their own responsibilities and does not unduly prejudice the discharge of their functions. **Schedule 1 [5]** makes it clear that these responsibilities and functions include, in the case of provision of health services, the relevant agency's responsibilities under the Medicare Principles and Commitments and its functions in clinical decision-making.

**Schedule 1 [7] and [9]** make consequential amendments to insert notes referring to the power of the Secretary the subject of **Schedule 1 [4]**.

**Schedule 1 [49]–[51]** make ancillary amendments to clarify that provisions authorising certain agencies to exchange information to facilitate the provision of services to children and young persons and require them to take reasonable steps to co-ordinate decision-making and service delivery, apply to their provision of prioritised access to services the subject of **Schedule 1 [4]** (should they be obliged under section 18 to use their best endeavours to provide that access).

### **Defining “children’s services” in relation to mandatory reporting**

**Schedule 1 [8]** defines *children’s services* for the purposes of the mandatory reporting provisions in the principal Act that require persons involved in the delivery of children’s services in their paid employment or who hold a management position in an organisation that involves the direct supervision of, or responsibility for, the provision of children’s services, to report children at risk of significant harm to the Secretary.

The term is defined by reference to relevant concepts in the *Children (Education and Care Services) National Law (NSW)* and the *Children (Education and Care Services) Supplementary Provisions Act 2011*.

### **Alternative dispute resolution**

**Schedule 1 [12]** requires the Secretary to offer the family of a child or young person alternative dispute resolution processes before seeking care orders from the Children’s Court if the Secretary determines the child or young person is at risk of significant harm.

However, the Secretary is not required to offer alternative dispute resolution processes to a family if of the opinion that their participation in those processes would not be appropriate due to exceptional circumstances. The Secretary is also not required to do so if there are criminal proceedings or a police investigation and if of the opinion that it is not appropriate to do so after considering advice by the Commissioner of Police.

The requirement does not affect the Secretary’s overarching obligation under the principal Act to take whatever action is necessary to safeguard or promote the safety, welfare and well-being of the child or young person in need of care and protection, and is subject to the principles of intervention applying to the Secretary in deciding the appropriate response to a report that a child or young person is suspected of being at risk of significant harm.

**Schedule 1 [3]** makes a consequential amendment to include the co-ordination of the early provision of alternative dispute resolution processes in the circumstances described above as an object of interagency procedures and protocols (the development of which is to be promoted by the Secretary under the principal Act).

**Schedule 1 [10]** makes a consequential amendment to include offering alternative dispute resolution processes in the circumstances described above in a list of actions that the Secretary might take in response to a report that a child or young person is at risk of significant harm.

**Schedule 1 [3], [6], [10] and [17]** make consequential amendments to insert notes referring to the proposed requirement into relevant provisions.

**Schedule 1 [11]** makes a minor amendment for plainer expression.

### **Guardianship orders by consent**

**Schedule 1 [13]** restates the circumstances in which the Children's Court may make an order by consent to give effect to a care plan that allocates parental responsibility (other than to the parents), without the necessity of a care application or a finding that the child or young person is in need of care and protection. The proposed provisions clarify that the Court may make a guardianship order by consent for this purpose, and (additionally) without the necessity for a finding that there is no realistic possibility of restoration of the child or young person to his or her parents.

The matters of which the Children's Court must be satisfied before making the order by consent are that the proposed order will not contravene the principles of the principal Act and that the parties to the care plan understand its provisions and have freely entered into it (as currently), and that the parties have received independent legal advice about the nature and effect of the proposed order and the provisions of the care plan to which the proposed order will give effect (rather than independent advice about the latter, as currently).

**Schedule 1 [14]** applies certain requirements that apply to applications for guardianship orders to guardianship orders by consent, namely, that the Secretary must not seek a guardianship order to give effect to a care plan unless satisfied that the proposed guardian has satisfied the prescribed suitability assessments, that the Secretary must present to the Court a care plan prepared by the Secretary and a copy of any report on the well-being of the child or young person that is relevant to the care plan, and that the care plan must contain certain specified information, be in the prescribed form and meet any other requirements the regulations may prescribe.

**Schedule 1 [1] and [19]** make consequential amendments to clarify that certain references to or in relation to guardianship orders include a reference to or in relation to guardianship orders by consent.

### **Care responsibility on death of guardian or carer with full parental responsibility**

**Schedule 1 [15]** vests the care responsibility for a child or young person in the Secretary on the Secretary becoming aware of the death of the sole or surviving guardian of, or other person who held full parental responsibility for, the child or young person. The vesting expires after 21 days or on the making of a court order that allocates parental responsibility for the child or young person, whichever occurs first. During the period of vesting, the Secretary is to make any investigations and assessments the Secretary considers necessary to determine the most appropriate care arrangements for the child or young person.

**Schedule 1 [18]** makes a consequential amendment to account for the proposed vesting in relation to a finding that the Children's Court must make (that the child or young person is in need of care and protection) before it may make a care order in relation to the child or young person.

**Schedule 1 [46]** makes a consequential amendment to include the death of a child or young person during the period of vesting as a reportable death for the purposes of the principal Act.

### **Shorter term Court orders allocating full parental responsibility to Minister**

**Schedule 1 [20]** limits (to 24 months) the period for which an order of the Children's Court that follows its approval of a permanency plan involving restoration, guardianship or adoption, may allocate all aspects of parental responsibility for a child or young person solely to the Minister

(long-term placement with the Minister being the last preference under the permanent placement principles in section 10A of the principal Act).

The maximum periods do not apply if the Court is satisfied that special circumstances warrant the allocation being for a longer period.

### **Progress reviews of suitability of care arrangements**

**Schedule 1 [21]** enables the Children's Court, on its own motion, to conduct a review of progress in implementing the care plan for a child or young person in respect of whom the Court has made an order (other than a guardianship order) allocating parental responsibility to a person other than to a parent. The Court may conduct the review (a *progress review*) if, after considering a report under section 82 of the principal Act as to the suitability of the care and protection arrangements for the child or young person, it is not satisfied that proper arrangements have been made. The Court may re-list the matter for the purpose of conducting the review.

The Court is to give notice of the progress review to the parties and may invite them to give evidence and make submissions at the review, in relation to the progress in implementing the care plan.

The proposed provision for a progress review replaces a provision requiring the Court (if not satisfied that proper arrangements have been made following consideration of a report under section 82) to invite the parties to make an application under section 90 of the principal Act to vary or rescind the order. **Schedule 1 [22]** makes a consequential amendment to omit a related provision.

### **Realistic possibility of restoration in relation to permanency plans**

**Schedule 1 [23], [24], [26] and [27]** provide for the period (being a reasonable period, not exceeding 24 months) within which the feasibility of restoration of a child or young person to his or her parents is to be considered, in connection with the preparation and approval of permanency plans. The feasibility of restoration is required to be considered in that context:

- (a) by the Secretary, for the purposes of preparing an appropriate permanency plan for submission to the Children's Court, if the Secretary applies for a care order for removal of the child or young person, and
- (b) by the Court, before approving a permanency plan so submitted that involves restoration.

**Schedule 1 [25]** clarifies that a particular decision that the Court may defer in the best interests of the child or young person is as to whether to accept the Secretary's assessment of the feasibility of restoration.

### **Longer term contact orders if child or young person is the subject of a guardianship order**

**Schedule 1 [28]** enables the Children's Court to make a contact order of more than 12 months duration (12 months being the maximum duration of contact orders, otherwise) if it concerns a child or young person the subject of a guardianship order and the Court is satisfied that a contact order of longer duration is in his or her best interests. Accordingly, the Court may make a contact order for the duration of a guardianship order if satisfied that it would be in the best interests of the child or young person the subject of the guardianship order.

### **Considerations in granting leave to apply to vary or rescind a care order**

**Schedule 1 [29]** restates (as primary considerations and additional considerations) the existing matters that the Children's Court is required to consider before granting leave to make an application to vary or rescind a care order. The existing matter of 'plans for the child' is extended to plans also for young persons. New matters that the Court is to consider (as primary considerations) concern the views of the child or young person, the stability of present care arrangements and, if the Court considers that present care arrangements are stable and secure, the course that would result in the least intrusive intervention into the life of the child or young person and whether that course would be in his or her best interests.

**Schedule 1 [30]** moves a provision that specifies who may make an application to vary or rescind a care order to a more appropriate location. **Schedule 1 [31]** amends a cross reference as a consequence.

**Schedule 1 [32]** makes amendments to ensure that certain matters that the Court is required to take into consideration before making an order to rescind or vary certain types of care order are expressed consistently with like matters the subject of **Schedule 1 [29]**.

### **Frivolous or vexatious applications for leave to apply to vary or rescind a care order**

**Schedule 1 [29]** also enables the Children's Court to dismiss an application for leave to apply to vary or rescind a care order if satisfied it is frivolous, vexatious or an abuse of process. Without limiting those grounds, specific provision is also made to enable the Court to dismiss an application if satisfied it has no reasonable prospect of success and the applicant has previously made a series of applications that the Court has dismissed.

### **Variation of interim orders**

**Schedule 1 [34]** enables a party to care proceedings before the Children's Court to make an application to vary an interim care order during the proceedings (instead of having to seek leave to make an application under section 90 of the principal Act). The Court may, by order, vary the interim order if satisfied on the application that it is appropriate to do so.

**Schedule 1 [33]** makes a consequential amendment to provide that section 90 does not apply to an application to vary an interim care order.

**Schedule 1 [16]** makes a consequential amendment to extend an exemption from the requirement for a written report to accompany a care application (that applies to applications to vary or rescind a care order under section 90 of the principal Act) to applications to vary an interim order under the proposed provision.

### **Prohibition on publishing names of children or young persons in a way that identifies them as being in care**

**Schedule 1 [35]** prohibits the publishing or broadcasting of the name of a child or young person who is or has been under the parental responsibility of the Minister or in out-of-home care in any way that identifies the child or young person as being or having been under the parental responsibility of the Minister or in out-of-home care. A consequential amendment made by **Schedule 1 [36]** will result in the prohibition applying to the publication or broadcast of the name of the child or young person concerned until he or she turns 25 years of age or dies, whichever occurs first.

**Schedule 1 [36]** also makes consequential amendments that will result in maximum penalties for the offence of contravening the prohibition of 200 penalty units (\$22,000) or imprisonment for 2 years, or both, for an individual or 2,000 penalty units (\$220,000) in the case of a corporation. The offence will be a strict liability offence and, if committed by a corporation, will be an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation.

**Schedule 1 [36] and [37]** make consequential amendments to apply to the proposed prohibition the exceptions that apply to the existing prohibitions against publishing or broadcasting the name of a child or young person under the principal Act.

### **Exception from prohibition on publishing names of children or young persons for Coroner's Court**

**Schedule 1 [38] and [39]** provide for 2 further exceptions to the prohibition against publishing or broadcasting the name of a child or young person under the principal Act (including as proposed to be extended by **Schedule 1 [35]**), as follows:

- (a) the publication by the Coroner's Court of the name of a child or young person the subject of an inquest concerning his or her suspected death in the Court's findings in the inquest

(the publication of the name of a child or young person who has died already being an exception),

- (b) the publication of the name of the child or young person the subject of such an inquest with the consent of the Coroner's Court if the Court considers the publication of the name would be in the public interest.

### **Flexibility in statutory out-of-home care to facilitate restoration**

**Schedule 1 [41]** extends (from 6 months before the date for restoration to 12 months before that date) the period for which a child or young person who has been placed in statutory out-of-home care and is the subject of a permanency plan involving restoration may live with his or her parents in accordance with arrangements under an approved care plan without their contravening certain restrictions under the principal Act on who may provide statutory out-of-home care.

### **Supported out-of-home care only for court ordered placements**

**Schedule 1 [43]** replaces current provisions that enable the Secretary to provide support in respect of the placement of a child or young person in out-of-home care regardless of whether the placement is court ordered, with a provision that enables the Secretary to provide support only in respect of the placement of a child or young person in out-of-home care with a relative or kin that is by virtue of an order of the Children's Court, or a parenting order in favour of the relative or kin under the *Family Law Act 1975* of the Commonwealth made in respect of proceedings to which the Secretary was a party. **Schedule 1 [40] and [42]** make consequential amendments to reflect the change in scope of the proposed provision.

**Schedule 1 [44]** revises the scope of provisions requiring reports and reviews of supported out-of-home care as a consequence of the amendment made by **Schedule 1 [43]**. The amendment also clarifies that the provisions do not apply to temporary care arrangements (being a type of supported out-of-home care).

**Schedule 1 [45]** inserts a reference to kin for consistency with other references to relatives and kin in similar contexts elsewhere in the principal Act.

### **Penalties for offences**

**Schedule 1 [47]** inserts an additional penalty of up to 2 years imprisonment for abuse of a child or young person or causing damage to the development of a child or young person.

**Schedule 1 [48]** inserts an additional penalty of up to 2 years imprisonment for neglect of a child or young person.

### **Savings and transitional and other provisions**

**Schedule 1 [52]** inserts a standard regulation-making power in relation to savings, transitional and other provisions in Schedule 3 to the principal Act.

**Schedule 1 [53]** inserts provisions of a savings or transitional nature as a consequence of the enactment of the proposed Act.

## **Schedule 2      Amendment of Adoption Act 2000 No 75**

### **Dispensing with certain requirements for consent to adoption of child**

**Schedule 2 [1] and [2]** enable the Supreme Court to make an order dispensing with a requirement under the *Adoption Act 2000* for the consent of parents or persons with parental responsibility for a child to the child's adoption. The Court may do so if the application for adoption is made by the child's guardians and the Court is satisfied that:

- (a) the child has established a stable relationship with his or her guardians, and  
(b) the adoption of the child by his or her guardians will promote the child's welfare, and  
(c) to do so is in the best interests of the child.

**Schedule 2 [3]** makes a consequential amendment to define *guardian* as it is defined in the principal Act.

**Schedule 2 [4]** inserts a savings and transitional provision as a consequence of the enactment of the proposed Act.





New South Wales

# Children and Young Persons (Care and Protection) Amendment Bill 2018

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New South Wales

# Children and Young Persons (Care and Protection) Amendment Bill 2018

No. , 2018

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## **A Bill for**

An Act to amend the *Children and Young Persons (Care and Protection) Act 1998* and the *Adoption Act 2000* to make further provision in relation to the care and protection of, and the provision of services to, children and young persons; and for other purposes.

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See also the *National Disability Insurance Scheme (Worker Checks) Bill 2018*.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Children and Young Persons (Care and Protection) Amendment Act 2018*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

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<b>Schedule 1</b>	<b>Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157</b>	1
		2
<b>[1] Section 3 Definitions</b>		3
	Insert “(including as applied by section 38 (4))” after “section 79B (1A)” in the definition of <i>prospective guardian</i> in section 3 (1).	4 5
<b>[2] Section 16 General role of the Secretary</b>		6
	Insert “(including the provision of prioritised access to support services to children and young persons at risk of significant harm and to their families)” after “families” in section 16 (3) (a).	7 8 9
<b>[3] Section 16 (3) (c)</b>		10
	Insert at the end of section 16 (3) (b):	11
	, and	12
	(c) to co-ordinate the early provision of alternative dispute resolution processes for children and young persons at risk of significant harm and their families who wish to participate in those processes.	13 14 15
	<b>Note.</b> Section 37 (1A) requires the Secretary, on determining that a child or young person is at risk of significant harm, to offer these processes to the family of the child or young person (subject to certain exceptions) before seeking care orders.	16 17 18 19
<b>[4] Section 17 Secretary’s request for services from other agencies</b>		20
	Insert at the end of the section:	21
	(2) Without limiting the generality of subsection (1), the Secretary may request a government department or agency, or a non-government agency in receipt of government funding, to provide prioritised access to services to a child or young person who is at risk of significant harm and to his or her family.	22 23 24 25
<b>[5] Section 18 Obligation to co-operate</b>		26
	Insert after section 18 (2):	27
	(3) To avoid doubt, a reference in subsection (1) to the responsibilities and functions of a department or agency includes, in the case of its provision of health services:	28 29 30
	(a) its responsibilities under the Medicare Principles and Commitments (adopted under section 68 of the <i>Health Services Act 1997</i> ) in the provision of public hospital services, and	31 32 33
	(b) its functions in clinical decision-making.	34
<b>[6] Section 22 Secretary’s response to requests for assistance</b>		35
	Insert after the first paragraph of the note to the section:	36
	If the Secretary determines that a child or young person is at risk of significant harm, the Secretary must offer alternative dispute resolution processes to the family of the child or young person (subject to certain exceptions) before seeking care orders.	37 38 39
<b>[7] Section 22, note</b>		40
	Insert before the last paragraph:	41
	The Secretary may request government departments or agencies, or non-government agencies in receipt of government funding, to provide prioritised access to services to children or young persons who are at risk of significant harm and to their families.	42 43 44

<b>[8] Section 27 Mandatory reporting</b>	1
Insert after section 27 (3):	2
(4) In this section:	3
<i>children’s services</i> means either or both of the following (subject to the regulations):	4
(a) an education and care service within the meaning of the <i>Children (Education and Care Services) National Law (NSW)</i> ,	5
(b) a State regulated education and care service within the meaning of the <i>Children (Education and Care Services) Supplementary Provisions Act 2011</i> .	6
<b>[9] Section 30 Secretary’s investigations and assessment</b>	7
Insert after the first paragraph of the note to the section:	8
Under section 17 (2), the Secretary may request government departments or agencies, or non-government agencies in receipt of government funding, to provide prioritised access to services to children or young persons who are at risk of significant harm and to their families.	9
<b>[10] Section 34 Taking of action by Secretary</b>	10
Insert after section 34 (2) (a):	11
(a1) offering alternative dispute resolution processes to the family of the child or young person as referred to in section 37,	12
<b>Note.</b> Section 37 (1A) requires the Secretary, on determining that a child or young person is at risk of significant harm, to offer these processes to the family of the child or young person (subject to certain exceptions) before seeking care orders.	13
<b>[11] Section 37 Alternative dispute resolution by Secretary</b>	14
Omit “is to consider” from section 37 (1). Insert instead “must consider”.	15
<b>[12] Section 37 (1A)–(1D)</b>	16
Insert after section 37 (1):	17
(1A) If the Secretary determines that a child or young person is at risk of significant harm, the Secretary must offer alternative dispute resolution processes to the family of the child or young person before seeking care orders from the Children’s Court.	18
(1B) Subsection (1A) does not apply in relation to the family of a child or young person if the Secretary forms the opinion on reasonable grounds that their participation in alternative dispute resolution processes would not be appropriate due to exceptional circumstances.	19
(1C) If the Secretary becomes aware of criminal proceedings or a police investigation that may be compromised if alternative dispute resolution processes are offered under subsection (1A), the Secretary:	20
(a) must seek the advice of the Commissioner of Police as to the likely effect of the processes, and	21
(b) is not required to offer the processes if the Secretary determines that it is not appropriate to do so after taking the advice into account.	22
(1D) Subsection (1A) does not affect the Secretary’s obligation under section 34 (1) and is subject to sections 35 (1) and 36.	23

<b>[13] Section 38 Development and enforcement of care plans</b>	1
Omit section 38 (2A). Insert instead:	2
(2A) If the Children’s Court is satisfied of the matters set out in subsection (2B), the Court may make an order referred to in subsection (2):	3
(a) without the need for a care application under Part 2 of Chapter 5, and	4
(b) without the need to be satisfied of the existence of any of the grounds under section 71, and	5
(c) in the case of a proposed guardianship order, without the need to be satisfied of the existence of the ground under section 79A (3) (a).	6
(2B) The matters of which the Children’s Court must be satisfied for the purposes of subsection (2A) are as follows:	7
(a) the proposed order will not contravene the principles of this Act,	8
(b) the parties to the care plan understand its provisions and have freely entered into it,	9
(c) in the case of a party other than the Secretary, the party has received independent legal advice concerning the provisions to which the proposed order will give effect and the nature and effect of the proposed order.	10
<b>Note.</b> Section 98 provides that in proceedings with respect to a child or young person, the child or young person (among others) may appear in person or be legally represented.	11
<b>[14] Section 38 (4) and (5)</b>	12
Insert after section 38 (3):	13
(4) Section 79B (1A) and (8) (b) and (c) apply to the Secretary in seeking a guardianship order to give effect to a care plan pursuant to this section in the same way as they apply to the Secretary in making an application, and to an applicant, for a guardianship order.	14
(5) Section 79B (9) and (10) apply to a care plan referred to in subsection (4).	15
<b>[15] Section 39A</b>	16
Insert after the heading to Part 4 of Chapter 4:	17
<b>39A Care responsibility on death of guardian or carer with full parental responsibility</b>	18
(1) On the Secretary becoming aware of the death of a relevant guardian or carer of a child or young person, the care responsibility for the child or young person vests in the Secretary until:	19
(a) the expiry of 21 days after the day on which the Secretary first became aware of the death, or	20
(b) an order is made by a court of competent jurisdiction, that allocates parental responsibility for the child or young person,	21
whichever occurs first.	22
(2) Without limiting any other action the Secretary may take under this Act, the Secretary is, while having the care responsibility for the child or young person, to make any investigations and assessment that the Secretary considers necessary to determine the most appropriate care arrangements for the child or young person.	23

(3)	The Secretary may delegate the Secretary’s care responsibility for the child or young person to a relative or kin of the child or young person, an authorised carer or a person approved by the Children’s Guardian.	1 2 3
(4)	Despite subsection (3), the Secretary may delegate the Secretary’s care responsibility for the child or young person on an interim basis to a person other than a person specified in subsection (3) but must use his or her best endeavours to delegate that responsibility to a person so specified as soon as is reasonably practicable.	4 5 6 7 8
(5)	The exercise of the care responsibility by a person to whom it is delegated under this section is subject to any direction given to the person by the Secretary.	9 10 11
(6)	In this section: <i>relevant guardian or carer</i> of a child or young person means:	12 13
(a)	a person who was the sole guardian or (in the case of a guardianship order allocating parental responsibility jointly to more than one person) the surviving guardian, of the child or young person, immediately before the death of the person, or	14 15 16 17
(b)	a person who held, solely, all aspects of parental responsibility for the child or young person pursuant to an order under section 79 (1) (f) or (in the case of an order allocating parental responsibility jointly to more than one person) the surviving person who held that parental responsibility, immediately before the death of the person.	18 19 20 21 22
<b>[16]</b>	<b>Section 61 Applications for care orders</b>	23
	Insert before section 61 (2A) (a):	24
	(a1) the application is for a variation of an interim order under section 90AA, or	25 26
<b>[17]</b>	<b>Section 61, note</b>	27
	Insert after the first paragraph:	28
	Section 37 (1A) requires the Secretary, on determining that a child or young person is at risk of significant harm, to offer alternative dispute resolution processes to the family of the child or young person (subject to certain exceptions) before seeking care orders.	29 30 31
<b>[18]</b>	<b>Section 72 Determination as to care and protection</b>	32
	Insert “section 39A (Care responsibility on death of guardian or carer with full parental responsibility),” after “made under” in section 72 (1) (b).	33 34
<b>[19]</b>	<b>Sections 74 (1) and 75 (4)</b>	35
	Insert “, or a proposed guardianship order by consent pursuant to section 38” after “guardianship order” wherever occurring.	36 37
<b>[20]</b>	<b>Section 79 Order (other than guardianship order) allocating parental responsibility</b>	38
	Insert after section 79 (8):	39
(9)	The maximum period for which an order under subsection (1) (b) may allocate all aspects of parental responsibility to the Minister following the Court’s approval of a permanency plan involving restoration, guardianship or adoption, is 24 months.	40 41 42 43
(10)	Subsection (9) does not apply if the Children’s Court is satisfied that there are special circumstances that warrant the allocation being for a longer period.	44 45

<b>[21] Section 82 Report on suitability of arrangements concerning parental responsibility</b>	1
Omit section 82 (3). Insert instead:	2
(3) If, after considering the report, the Children’s Court is not satisfied that proper arrangements have been made for the care and protection of the child or young person concerned, the Court may, on its own motion, conduct a review of progress in implementing the care plan (a <i>progress review</i> ) and re-list the matter for that purpose.	3 4 5 6 7
(3A) Before conducting a progress review, and within 30 days of receiving the report, the Children’s Court:	8 9
(a) is to give notice of the progress review to each party to the relevant proceedings, and	10 11
(b) may invite the party to give evidence and make submissions at the progress review, in relation to the progress in implementing the care plan, including progress towards the achievement of a permanent placement.	12 13 14 15
<b>Note.</b> Section 98 provides that in proceedings with respect to a child or young person, the child or young person (among others) may appear in person or be legally represented.	16 17 18
<b>[22] Section 82 (5)</b>	19
Omit the subsection.	20
<b>[23] Section 83 Preparation of permanency plan</b>	21
Insert “within a reasonable period” after “his or her parents” in section 83 (1).	22
<b>[24] Section 83 (2), (3) and (5)</b>	23
Insert “within a reasonable period” after “of restoration”.	24
<b>[25] Section 83 (5A)</b>	25
Omit “or not there is a realistic possibility of restoration”.	26
Insert instead “to accept the Secretary’s assessment of whether or not there is a realistic possibility of restoration within a reasonable period”.	27 28
<b>[26] Section 83 (7) (b)</b>	29
Insert “within a reasonable period,” after “of restoration”.	30
<b>[27] Section 83 (8A)</b>	31
Insert after section 83 (8):	32
(8A) A <i>reasonable period</i> for the purposes of this section must not exceed 24 months.	33 34
<b>[28] Section 86 Contact orders</b>	35
Insert after section 86 (7):	36
(8) Subsection (6) does not apply to a contact order concerning a child or young person who is the subject of a guardianship order if the Children’s Court is satisfied that a contact order of more than 12 months duration (for example, a contact order for the duration of the guardianship order) is in the best interests of the child or young person.	37 38 39 40 41



<b>[29] Section 90 Rescission and variation of care orders</b>	1
Omit section 90 (2A). Insert instead:	2
(2A) Before granting leave to make an application to vary or rescind the care order, the Children’s Court must consider the matters set out in subsections (2B) and (2C).	3 4 5
(2B) The primary considerations are as follows:	6
(a) the views of the child or young person and the weight to be given to those views, having regard to the maturity of the child or young person and his or her capacity to express his or her views,	7 8 9
(b) the length of time for which the child or young person has been in the care of the present carer and the stability of present care arrangements,	10 11
(c) if the Children’s Court considers that the present care arrangements are stable and secure, the course that would result in the least intrusive intervention into the life of the child or young person and whether that course would be in the best interests of the child or young person.	12 13 14 15
(2C) Additional considerations are as follows:	16
(a) the age of the child or young person,	17
(b) the nature of the application,	18
(c) the plans for the child or young person,	19
(d) whether the applicant has an arguable case,	20
(e) matters concerning the care and protection of the child or young person that are identified in:	21 22
(i) a report under section 82, or	23
(ii) a report that has been prepared in relation to a review directed by the Children’s Guardian under section 85A or in accordance with section 150.	24 25 26
(2D) The Children’s Court may dismiss an application for leave under this section if it is satisfied that the application is frivolous, vexatious or an abuse of process.	27 28 29
(2E) Without limiting subsection (2D), the Children’s Court may dismiss an application for leave under this section if it is satisfied that:	30 31
(a) the application has no reasonable prospect of success, and	32
(b) the applicant has previously made a series of applications for leave under this section that the Court has dismissed.	33 34
<b>[30] Section 90 (3)</b>	35
Renumber the subsection as subsection (1AA) and insert after section 90 (1).	36
<b>[31] Section 90 (4)</b>	37
Omit “(3) (e)”. Insert instead “(1AA) (e)”.	38
<b>[32] Section 90 (6) (b) and (c)</b>	39
Omit the paragraphs. Insert instead:	40
(b) the views of the child or young person and the weight to be given to those views,	41 42
(c) the length of time the child or young person has been in the care of the present caregivers and the stability of present care arrangements,	43 44

<b>[33] Section 90 (9)</b>	1
Insert after section 90 (8):	2
(9) This section does not apply to an application to vary an interim care order.	3
<b>Note.</b> Section 90AA provides for applications to vary interim care orders.	4
<b>[34] Section 90AA</b>	5
Insert after section 90:	6
<b>90AA Variation of interim care orders</b>	7
(1) A party to care proceedings before the Children’s Court may make an application to vary an interim care order.	8
<b>Note.</b> Section 98 provides that in proceedings with respect to a child or young person, the child or young person (among others) may appear in person or be legally represented.	9
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(2) The Children’s Court may, by order, vary an interim care order if satisfied on an application made pursuant to subsection (1) that it is appropriate to do so.	13
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<b>[35] Section 105 Publication of names and identifying information</b>	15
Insert after section 105 (1):	16
(1AA) The name of a child or young person who is or has been under the parental responsibility of the Minister or in out-of-home care must not be published or broadcast in any form that may be accessible by a person in New South Wales, in any way that identifies the child or young person as being or having been under the parental responsibility of the Minister or in out-of-home care (however expressed).	17
<b>Note.</b> Identifying the child or young person as being or having been a foster child or a ward of the State, or as being or having been in foster care or under the parental responsibility of the Minister, or in the care of an authorised carer, are all examples of identifying the child or young person as being or having been in out-of-home care.	18
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<b>[36] Section 105 (1A), (2) and (3) (a)</b>	27
Insert “or (1AA)” after “subsection (1)” wherever occurring.	28
<b>[37] Section 105 (3)</b>	29
Insert “or (1AA)” after “Subsection (1)”.	30
<b>[38] Section 105 (3) (a1)</b>	31
Insert after section 105 (3) (a):	32
(a1) the publication by the Coroner’s Court of its findings in an inquest concerning the suspected death of a child or young person that include the name of a child or young person, or	33
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<b>[39] Section 105 (3) (b) (iiia)</b>	36
Insert after section 105 (3) (b) (iii):	37
(iiia) in the case of a child or young person whose suspected death is the subject of an inquest by the Coroner’s Court—with the consent of the Coroner’s Court if that Court considers that the publication or broadcasting would be in the public interest, or	38
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<b>[40]</b>	<b>Section 135 Definition and types of “out-of-home care”</b>	1
	Omit section 135 (3) (b) (iii). Insert instead:	2
	(iii) it is care in respect of which the Secretary is providing support under section 153, or	3 4
<b>[41]</b>	<b>Section 136 Restriction on who may provide statutory out-of-home care</b>	5
	Omit “6 months” from section 136 (3). Insert instead “12 months”.	6
<b>[42]</b>	<b>Chapter 8, Part 3, Division 2, heading</b>	7
	Omit “arrangements”.	8
<b>[43]</b>	<b>Section 153</b>	9
	Omit the section. Insert instead:	10
<b>153</b>	<b>Operation of other supported out-of-home care</b>	11
(1)	The Secretary may provide support in respect of the residential care and control of a child or young person that is provided:	12 13
(a)	by a relative or kin who has, by virtue of a relevant court order, parental responsibility for the child or young person, and	14 15
(b)	at a place other than the usual home of the child or young person.	16
(2)	In this section:	17
	<i>relevant court order</i> means:	18
(a)	an order of the Children’s Court, or	19
(b)	a parenting order in favour of the relative or kin under the <i>Family Law Act 1975</i> of the Commonwealth made in respect of proceedings to which the Secretary was a party.	20 21 22
<b>[44]</b>	<b>Section 155</b>	23
	Omit the section. Insert instead:	24
<b>155</b>	<b>Reports and reviews of supported out-of-home care</b>	25
(1)	This section applies in relation to a child or young person in respect of whom supported out-of-home care is provided under section 153.	26 27
(2)	The authorised carer of the child or young person must submit a self-assessment report to the designated agency having supervisory responsibility for the child or young person, at least once in every period of 12 months that the child or young person is placed in the supported out-of-home care with the authorised carer.	28 29 30 31 32
(3)	The self-assessment report is to address any matters that may be required by the designated agency (including verification that the child or young person resides with the authorised carer and of the need for on-going provision of support).	33 34 35 36
(4)	The designated agency must conduct a review concerning the child or young person:	37 38
(a)	if the authorised carer dies, within 21 days after the death, and	39
(b)	before a planned change of placement, and	40
(c)	within 21 days after an unplanned change of placement.	41

(5)	A review, in considering the needs of the child or young person, is to have regard to the following:	1
		2
(a)	the legal status of the child or young person,	3
(b)	the issues that need to be addressed while the child or young person is in supported out-of-home care, what is to be done and who is to undertake responsibility,	4
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		6
(c)	the responsibilities of all parties concerning care,	7
(d)	any special requirements of the child or young person relating to culture, language, religion or disability,	8
		9
(e)	the appropriateness of making a care application.	10
(6)	At the conclusion of a review, the designated agency is to determine:	11
(a)	whether restoration of the child or young person to family care is possible and, if not, how the parenting needs of the child or young person are to be met, and	12
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(b)	whether a care application should be made to provide for the reallocation of parental responsibility in relation to the child or young person.	15
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<b>[45]</b>	<b>Section 161 Financial assistance for children and young persons in out-of-home care</b>	18
	Insert “or kin” after “relative” in section 161 (4) (a).	19
<b>[46]</b>	<b>Section 172A Secretary to report annually on deaths of children and young persons</b>	20
	Insert “the Secretary has care responsibility under section 39A or” after “for whom” in paragraph (e) of the definition of <i>reportable death</i> in section 172A (2).	21
		22
<b>[47]</b>	<b>Section 227 Child and young person abuse</b>	23
	Insert “, or imprisonment for 2 years, or both” after “200 penalty units”.	24
<b>[48]</b>	<b>Section 228 Neglect of children and young persons</b>	25
	Insert “, or imprisonment for 2 years, or both” after “200 penalty units”.	26
<b>[49]</b>	<b>Section 245A Object and principles of Chapter</b>	27
	Insert “(including, where applicable, prioritised access to services to children and young persons at risk of significant harm and to their families)” after “families” in section 245A (2) (c).	28
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		30
<b>[50]</b>	<b>Sections 245C (1) (a) and 245D (2) (a)</b>	31
	Insert “(including, where applicable, to provide prioritised access to any service to a child or young person or class of children or young persons at risk of significant harm)” after “young persons” wherever occurring.	32
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		34
<b>[51]</b>	<b>Section 245E Co-ordination of services</b>	35
	Insert “(including, where applicable, in relation to provision of prioritised access to appropriate services to children or young persons at risk of significant harm)” after “young persons” where secondly occurring.	36
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<b>[52]</b>	<b>Schedule 3 Savings, transitional and other provisions</b>	39
	Insert after clause 1 (3):	40
(4)	Without limiting subclauses (1) and (2), regulations made for the purposes of this clause may amend this Schedule to provide for additional or different	41
		42

savings and transitional provisions instead of including the provisions in the regulations.	1 2
<b>[53] Schedule 3</b>	3
Insert at the end of the Schedule, with appropriate Part and clause numbering:	4
<b>Part Provisions consequent on enactment of Children and Young Persons (Care and Protection) Amendment Act 2018</b>	5 6 7
<b>Definition</b>	8
In this Part:	9
<i>amending Act</i> means the <i>Children and Young Persons (Care and Protection) Amendment Act 2018</i> .	10 11
<b>Alternative dispute resolution processes</b>	12
To avoid doubt, section 37 (1A), as inserted by the amending Act, applies only in relation to determinations made by the Secretary on or after the commencement of that provision.	13 14 15
<b>Guardianship orders by consent</b>	16
To avoid doubt, section 38, as amended by the amending Act, does not apply in relation to a care plan entered into before the commencement of the amendments.	17 18 19
<b>Short term orders allocating parental responsibility to Minister</b>	20
Section 79 (9) and (10), as inserted by the amending Act, extend to apply in relation to an application for an order under section 79 (1) (b) that was pending (but not finally determined) immediately before the commencement of those provisions.	21 22 23 24
<b>Court review of progress in implementing care plan</b>	25
Section 82 (3) and (3A), as inserted by the amending Act, apply only in relation to a report ordered by the Children's Court under section 82 (1) after the commencement of the provisions.	26 27 28
<b>Preparation of permanency plans</b>	29
Section 83, as amended by the amending Act, applies to assessments or findings under that section occurring on or after the commencement of those amendments irrespective of whether the proceedings before the Children's Court to which they relate were pending (but not finally determined) immediately before that commencement.	30 31 32 33 34
<b>Contact orders for duration of guardianship order</b>	35
Section 86 (8), as inserted by the amending Act:	36
(a) applies irrespective of whether a guardianship order was made before or after the commencement of that subsection, and	37 38
(b) extends to a contact order made on an application that was pending (but not finally determined) immediately before that commencement.	39 40

<b>Pending applications for leave to apply to vary or rescind a care order</b>	1
An application for leave under section 90 (1) that was pending before the commencement of the amendments made to section 90 by the amending Act is to continue to be dealt with under section 90 as in force immediately before that commencement.	2 3 4 5
<b>Applications for variation of interim care orders</b>	6
Section 90AA, as inserted by the amending Act, extends to proceedings before the Children's Court that were pending (but not finally determined) immediately before the commencement of the section.	7 8 9
<b>Publication of names and identifying material</b>	10
(1) Section 105 (1AA), as inserted by the amending Act, applies to publishing or broadcasting the name of the child or young person, irrespective of whether the child or young person was placed under the parental responsibility of the Minister or entered the out-of-home care before or after the commencement of the provision.	11 12 13 14 15
(2) Section 105 (3) (a1) and (b) (iiia), as inserted by the amending Act, apply to publishing or broadcasting the name of a child or young person, irrespective of whether the inquest concerning his or her suspected death was held before or after the commencement of those provisions.	16 17 18 19
<b>Extended period for living with parents before restoration date</b>	20
Section 136, as amended by the amending Act, extends to a child or young person who was placed in statutory out-of-home care, or for whom a relevant care plan or permanency plan was approved by the Children's Court, before the commencement of the amendment.	21 22 23 24
<b>Supported out-of-home care arrangements not supported by a court order</b>	25
(1) The Secretary may continue to support an arrangement referred to in section 153 (3), as in force immediately before the substitution of section 153 by the amending Act, as if section 153 had not been substituted. While so supported, the arrangement continues to be a supported out-of-home care arrangement for the purposes of the Act.	26 27 28 29 30
(2) Section 155, as in force immediately before its substitution by the amending Act, continues to apply to the arrangement as if the section had not been substituted.	31 32 33

<b>Schedule 2</b>	<b>Amendment of Adoption Act 2000 No 75</b>	1
[1]	<b>Section 67 When can Court dispense with consent of person other than the child?</b>	2
	Insert “or the guardians” after “carers” where firstly occurring in section 67 (1) (d).	3
[2]	<b>Section 67 (1) (d) (i) and (ii)</b>	4
	Insert “or guardians” after “carers” wherever occurring.	5
[3]	<b>Section 67 (3)</b>	6
	Insert after section 67 (2):	7
	(3) In this section:	8
	<i>guardian</i> has the same meaning as in section 79A (1) of the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	9
		10
[4]	<b>Schedule 3 Savings, transitional and other provisions</b>	11
	Insert at the end of the Schedule, with appropriate Part and clause numbering:	12
<b>Part</b>	<b>Provisions consequent on enactment of Children and Young Persons (Care and Protection) Amendment Act 2018</b>	13
		14
		15
	<b>Definition</b>	16
	In this Part:	17
	<i>amending Act</i> means the <i>Children and Young Persons (Care and Protection) Amendment Act 2018</i> .	18
		19
	<b>When can Court dispense with consent of person other than the child?</b>	20
	Section 67, as amended by the amending Act, extends to proceedings on an application for an adoption order, that was made but not finally determined before the commencement of the amendments.	21
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		23