

LEGISLATIVE COUNCIL

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

First print

Proposed amendments

- No. 1 **Guardianship orders by consent—consequential**
Page 3, Schedule 1 [1], lines 3–5. Omit all words on those lines.
- No. 2 **Alternative dispute resolution**
Page 4, Schedule 1 [12]. Insert after line 45:
(1E) The Secretary must ensure that, if the family of the child or young person accepts an offer under subsection (1A), the family is provided with assistance to access independent legal advice and representation in any alternative dispute resolution processes.
- No. 3 **Guardianship orders by consent**
Page 5, Schedule 1 [13] and [14], lines 1–28. Omit all words on those lines.
- No. 4 **Evidence of further prior alternative action**
Page 6, Schedule 1. Insert after line 31:
[18] Section 63 Evidence of prior alternative action
Omit section 63 (3). Insert instead:
(3) If the Children’s Court is of the opinion that appropriate support and assistance were not provided, the Children’s Court must, before determining whether the child or young person is in need of care and protection:
(a) adjourn the proceedings to enable appropriate support and assistance to be provided for the safety, welfare and well-being of the child or young person, and
(b) direct the Secretary to re-submit the care application with details of any additional efforts made to provide appropriate support and assistance, and the results of those efforts.
(4) Subsection (3) does not prevent the Children’s Court from making an interim order in relation to the child or young person after the initial care application is made and before the re-submitted application is finally determined.

[18] Section 63A

Insert after section 63:

63A Evidence of alternative dispute resolution

- (1) This section applies to a care application in relation to a child or young person the family of whom is required to be offered alternative dispute resolution processes under section 37.
- (2) When making a care application, the Secretary must furnish details to the Children's Court of the following:
 - (a) the alternative dispute resolution processes that were offered to the family of the child or young person before making the application or, if not offered, the reasons why they were not offered,
 - (b) if alternative dispute resolution processes were so offered and the offer was accepted by the family, any assistance that was provided to the family to access independent legal advice and representation in those processes.
- (3) The Children's Court must not:
 - (a) dismiss a care application in relation to a child or young person, or
 - (b) discharge a child or young person who is in the care responsibility of the Secretary from that care responsibility,by reason only that the Children's Court is of the opinion that alternative dispute resolution processes were not offered, or assistance to access independent legal advice and representation in those processes was not provided, to the family of the child or young person.
- (4) If the Children's Court is of the opinion that alternative dispute resolution processes were not offered to the family of the child or young person or, if an offer was accepted by the family, assistance to access independent legal advice and representation in those processes was not provided to the family, the Court may, before determining whether the child or young person is in need of care and protection:
 - (a) adjourn the proceedings to enable alternative dispute resolution processes to be offered and, if accepted by the family, assistance to access independent legal advice and representation in those processes to be provided, to the family in accordance with section 37, and to enable those processes to be conducted, and
 - (b) direct the Secretary to re-submit the care application and furnish revised details in accordance with subsection (1).
- (5) Subsection (3) does not prevent the Children's Court from making an interim order in relation to the child or young person after the initial care application is made and before the re-submitted application is finally determined.

Drafting note 1.1 Amendment No. 5 should only be moved if amendment No. 2 is successful.

[18] Section 63A

Insert after section 63:

63A Evidence of alternative dispute resolution

- (1) This section applies to a care application in relation to a child or young person the family of whom is required to be offered alternative dispute resolution processes under section 37.
- (2) When making a care application, the Secretary must furnish details to the Children's Court of the alternative dispute resolution processes that were offered to the family of the child or young person before making the application or, if not offered, the reasons why they were not offered.
- (3) The Children's Court must not:
 - (a) dismiss a care application in relation to a child or young person, or
 - (b) discharge a child or young person who is in the care responsibility of the Secretary from that care responsibility, by reason only that the Children's Court is of the opinion that alternative dispute resolution processes were not offered to the family of the child or young person.
- (4) If the Children's Court is of the opinion that alternative dispute resolution processes were not offered to the family of the child or young person, the Court may, before determining whether the child or young person is in need of care and protection:
 - (a) adjourn the proceedings to enable alternative dispute resolution processes to be offered to the family in accordance with section 37 and, if accepted by the family, to be conducted, and
 - (b) direct the Secretary to re-submit the care application and furnish revised details in accordance with subsection (1).
- (5) Subsection (3) does not prevent the Children's Court from making an interim order in relation to the child or young person after the initial care application is made and before the re-submitted application is finally determined.

Drafting note 1.2 Amendment No. 6 should only be moved if amendment No. 2 is unsuccessful.

No. 7 **Guardianship orders by consent—consequential**
Page 6, Schedule 1 [19], lines 35–37. Omit all words on those lines.

No. 8 **Realistic possibility of restoration—consequential**
Page 6, Schedule 1 [20], line 42. Omit “restoration.”

No. 9 **Section 82 reports**
Page 6, Schedule 1. Insert after line 45:

[21] Section 82 Report on suitability of arrangements concerning parental responsibility

Omit “other than a guardianship order” from section 82 (1).

No. 10 **Section 82 reports**
Page 6, Schedule 1. Insert after line 45:

[21] Section 82 (2) (a)

Omit "12 months". Insert instead "24 months".

No. 11 **Section 82 reports**

Page 7, Schedule 1. Insert after line 18:

[22] Section 82 (4A)

Insert after section 82 (4):

- (4A) The Children's Court may order more than one report under this section and, accordingly, this section applies to each report so ordered.

No. 12 **Realistic possibility of restoration**

Page 7, Schedule 1 [23]–[27], lines 21–34. Omit all words on those lines.

No. 13 **Realistic possibility of restoration**

Page 7, Schedule 1 [27]. Insert after line 34:

- (8B) Subsection (8A) does not apply if the Children's Court is satisfied that a longer period is reasonable due to the particular circumstances of the child or young person or his or her family.

Drafting note 1.3 Amendment No. 13 should only be moved if amendment No. 12 is unsuccessful.

No. 14 **Order for services to facilitate restoration**

Page 7, Schedule 1. Insert after line 34:

[28] Section 84A

Insert after section 84:

84A Order for services to facilitate restoration

- (1) The Children's Court may make an order directing the Secretary to provide or arrange for the provision of services to a child or young person or his or her family to facilitate restoration.
- (2) The Children's Court may make the order:
 - (a) on application made by any party to proceedings before the Children's Court with respect to a child or young person, or
 - (b) with leave of the Children's Court—on application made by any person who was a party to care proceedings with respect to a child or young person, or
 - (c) with leave of the Children's Court—on application made by any person who considers himself or herself to have a sufficient interest in the welfare of the child or young person.
- (3) The Children's Court may grant leave under subsection (2) if it appears that there has been a significant change in any relevant circumstances since a final order was made in the proceedings.

No. 15 **Rescission and variation of care orders**

Page 8, Schedule 1 [29]–[32], lines 1–44. Omit all words on those lines.

No. 16 **Rescission and variation of care orders**

Page 8, Schedule 1 [29], lines 3–26. Omit all words on those lines. Insert instead:

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- (2A) Before granting leave to make an application to vary or rescind the care order, the Children's Court must consider the following matters:
- (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,
 - (b) the length of time for which the child or young person has been in the care of the present carer,
 - (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,
 - (d) the age of the child or young person,
 - (e) the nature of the application,
 - (f) the plans for the child or young person,
 - (g) whether the applicant has an arguable case,
 - (h) matters concerning the care and protection of the child or young person that are identified in:
 - (i) a report under section 82, or
 - (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.

Drafting note 1.4 Amendment No. 16 should only be moved if amendment No. 15 is unsuccessful.

No. 17 **Rescission and variation of care orders**

Page 8, Schedule 1 [29], line 11. Omit "and the stability of present care arrangements".

Drafting note 1.5 Amendment No. 17 should only be moved if neither amendment No. 15 nor amendment No. 16 is successful.

No. 18 **Rescission and variation of care orders**

Page 8, Schedule 1 [32], line 44. Omit "and the stability of present care arrangements".

Drafting note 1.6 Amendment No. 18 should only be moved if neither amendment No. 15 nor amendment No. 16 is successful.

No. 19 **Rescission and variation of care orders**

Page 9, Schedule 1 [33], lines 1–4. Omit all words on those lines.

No. 20 **Rescission and variation of care orders**

Page 9, Schedule 1 [34]. Insert after line 14:

- (3) An interim care order may also be varied under section 90.

Drafting note 1.7 Amendment No. 20 should only be moved if amendment No. 19 is successful.

No. 21 **Guardianship orders by consent—consequential**

Page 12, Schedule 1 [53], lines 16–19. Omit all words on those lines.

No. 22 **Realistic possibility of restoration—consequential**
Page 12, Schedule 1 [53], lines 29–34. Omit all words on those lines.

No. 23 **Rescission and variation of care orders—consequential**
Page 13, Schedule 1 [53], lines 1–5. Omit all words on those lines.

No. 24 **Dispensing with consent to adoption**
Page 14, Schedule 2, lines 2–23. Omit all words on those lines.

No. 25 **Placement principles for Aboriginal children**
Page 14, Schedule 2. Insert after line 1:

[1] Section 35 Aboriginal child placement principles

Omit section 35 (4) and (5).

No. 26 **Prerequisites to making adoption orders**
Page 14, Schedule 2. Insert after line 1:

[1] Section 46 What is an adoption plan?

Insert after section 46 (2B):

(2C) An adoption plan for an Aboriginal child or Torres Strait Islander child must make provision for the ways in which the child’s cultural heritage will be fostered and appropriate contact will be maintained with the child’s extended family.

No. 27 **Placement principles for Aboriginal children—consequential**
Page 14, Schedule 2. Insert after line 1:

[1] Section 47 How is an adoption plan made?

Omit “sections 35 (5) and” from the note to section 47 (1).
Insert instead “section”.

No. 28 **Dispensing with consent to adoption**
Page 14, Schedule 2. Insert after line 5:

[3] Section 67 (1) (d) (ii)

Omit “and”.

[4] Section 67 (1) (d) (iii)

Omit the subparagraph.

[5] Section 67 (1A)

Insert after section 67 (1):

(1A) Subsection (1) (c) and (d) do not apply if the child is an Aboriginal child or Torres Strait Islander child.

Drafting note 1.8 Amendment No. 28 should only be moved if amendment No. 24 is unsuccessful.

No. 29 **Prerequisites to making adoption orders**
Page 14, Schedule 2. Insert after line 10:

[4] Section 90 Court to be satisfied as to certain matters

Insert after section 90 (1) (f):

- (f1) if the child is an Aboriginal child or Torres Strait Islander child—
that an adoption plan has been made in relation to the adoption
that provides for the ways in which the child's cultural heritage
will be fostered and appropriate contact maintained with the
child's extended family, and