



New South Wales

# Families, Communities and Disability Services Miscellaneous Amendment Bill 2021

## Explanatory note

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

## Overview of Bill

The objects of this Bill are to—

- (a) amend the *Adoption Act 2000* to clarify that rights to obtain information about a person's adoption are not lost due to the relevant information also being contained in a court record, and
- (b) amend the *Ageing and Disability Commissioner Act 2019* to—
  - (i) make it an offence for a person to take detrimental action against an employee or contractor who assists the Ageing and Disability Commissioner with a report about abuse, neglect or exploitation of an adult with disability or an older adult, and
  - (ii) authorise the Commissioner to disclose information about the outcome of a report to a person who made the report or another person concerned with the welfare of the person the subject of the report provided the disclosure is consistent with the objects and principles of the Act, and
- (c) amend the *Children and Young Persons (Care and Protection) Act 1998* to—
  - (i) clarify that the Children's Court has a discretion to appoint a guardian ad litem in care proceedings rather than an obligation to do so, and
  - (ii) allow the Children's Court to consider reports, including supervision reports, that are provided late where the Court is satisfied that it is both appropriate and in the best interests of the child or young person to do so, and
  - (iii) make provision for the preservation of records about authorised carers who cared for a child or young person in out-of-home care, and

- (iv) clarify regulation making powers, and
- (d) amend the *Children (Detention Centres) Act 1987* to ensure that persons who are 18 or over are not inadvertently detained in a detention centre under a warrant or order for the detention of the person on remand, and
- (e) make minor amendments to the *Children's Guardian Act 2019*, including to extend the operation of existing regulations by 12 months to 1 September 2022.

## 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 the date of assent to the proposed Act.

### Schedule 1 Amendment of Adoption Act 2000 No 75

**Schedule 1[1]** inserts proposed sections 133AA and 133AB to clarify that where a person is entitled to receive information under Chapter 8 of the *Adoption Act 2000* (the *Adoption Act*) that entitlement is not lost because of the information also being contained in a court record. The amendment also provides that a person who has been in out-of-home care under the *Children and Young Persons (Care and Protection) Act 1998* prior to being adopted may obtain information by a single application under the Adoption Act.

**Schedule 1[2]** clarifies that records made in connection with the administration or execution of the Adoption Act or previous adoption legislation may be produced to a Court or other authority in response to a subpoena or other compulsory process.

### Schedule 2 Amendment of Ageing and Disability Commissioner Act 2019 No 7

**Schedule 2[2]** inserts proposed section 15A into the *Ageing and Disability Commissioner Act 2019* (the *ADC Act*) to make it an offence for an employer to take detrimental action against an employee or a contractor who assists or proposes to assist the Ageing and Disability Commissioner (the *Commissioner*) with a report about abuse, neglect or exploitation of an adult with disability or an older adult. **Schedule 2[1] and [3]** are consequential amendments.

**Schedule 2[4]** inserts proposed section 31A into the ADC Act to provide that the Commissioner may disclose to the reporter, or other persons concerned with the welfare of the person the subject of the report, information about the outcome, for example the investigation, of the report.

**Schedule 2[5]** inserts a standard provision that enables transitional regulations to be made.

### Schedule 3 Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157

**Schedule 3[3]** proposes to amend section 76 of the *Children and Young Persons (Care and Protection) Act 1998* (the *Care and Protection Act*) to ensure the Children's Court may consider a supervision report that is presented out of time if the Court considers that it is appropriate and in the best interests of the child or young person concerned. Having considered a report presented out of time the Court may make a new supervision order provided the total period of supervision ends no later than 24 months after the commencement of the period of supervision to which the report relates. **Schedule 3[1], [2] and [4]** are consequential amendments.

**Schedule 3[5]** proposes to amend section 78(5) of the Care and Protection Act to provide the form of a care plan is to be determined by the Secretary after consultation with the Children's Court Advisory Committee rather than being prescribed by the regulations.

**Schedule 3[6]** proposes to amend section 79C of the Care and Protection Act to provide for the regulations to prescribe conditions that apply to a guardian provided with financial assistance under section 79C.

**Schedule 3[7]** proposes to amend section 82 of the Care and Protection Act to provide, consistently with previous amendments to section 79 of that Act, a report under the section is to be provided within 24 months rather than 12 months.

**Schedule 3[8]** proposes to amend section 82 of the Care and Protection Act to ensure the Children's Court may consider a report under section 82 presented out of time if the Court considers it is appropriate and in the best interests of the child or young person concerned.

**Schedule 3[9]** proposes to amend section 98 of the Care and Protection Act to ensure the Children's Court retains discretion to appoint a guardian ad litem for a person who is incapable of giving proper instructions in proceedings rather than being obliged to do so.

**Schedule 3[10]** proposes to amend section 137(2) of the Care and Protection Act to provide regulations may be made in relation to a number of matters relating to authorised carers.

**Schedule 3[11]** proposes to amend section 170 of the Care and Protection Act to require a designated agency that ceases to be a designated agency to deliver to the Secretary its relevant corporate and administrative records about authorised carers who have provided care to children and young people in statutory out-of-home care.

**Schedule 3[12] and [13]** propose to amend the regulation making powers to clarify the regulations may prescribe a class of persons for the purposes of sections 245B and 248 of the Care and Protection Act.

**Schedule 3[14]** proposes to insert section 248C in the Care and Protection Act to provide the Minister may approve a code of conduct for authorised carers and to make it a condition of an authorised carer's authorisation that they comply with the code of conduct.

**Schedule 3[15]–[17]** propose to amend the regulation making powers to provide that regulations may be made to require authorised carers to provide information to a designated agency, to set out the circumstances in which an authorised carer or a person residing with an authorised carer may be required to undergo a medical examination and to provide for the Secretary to approve the form of documents and reports provided under the regulations.

## **Schedule 4      Amendment of Children (Detention Centres) Act 1987 No 57**

**Schedule 4[1] and [2]** propose to amend section 9A of the *Children (Detention Centres) Act 1987* to ensure a person who is 18 or over is not detained in a detention centre under a warrant or order for the detention of the person on remand.

## **Schedule 5      Amendment of Children's Guardian Act 2019 No 25**

**Schedule 5[1]** proposes to amend section 66 of the *Children's Guardian Act 2019* to make it mandatory for a relevant entity to nominate a person, or the holder of a position, as the head of the entity.

**Schedule 5[2]** proposes to amend transitional provisions in the *Children's Guardian Act 2019* to allow existing regulations to continue in operation for an additional 12 months until 1 September 2022.



New South Wales

# Families, Communities and Disability Services Miscellaneous Amendment Bill 2021

## Contents

---

		Page
	1 Name of Act	2
	2 Commencement	2
<b>Schedule 1</b>	<b>Amendment of Adoption Act 2000 No 75</b>	<b>3</b>
<b>Schedule 2</b>	<b>Amendment of Ageing and Disability Commissioner Act 2019 No 7</b>	<b>4</b>
<b>Schedule 3</b>	<b>Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157</b>	<b>6</b>
<b>Schedule 4</b>	<b>Amendment of Children (Detention Centres) Act 1987 No 57</b>	<b>9</b>
<b>Schedule 5</b>	<b>Amendment of Children's Guardian Act 2019 No 25</b>	<b>10</b>



New South Wales

# **Families, Communities and Disability Services Miscellaneous Amendment Bill 2021**

No           , 2021

---

## **A Bill for**

An Act to make miscellaneous amendments to various Acts that relate to families, communities and disability services; and for related purposes.

---

<b>The Legislature of New South Wales enacts—</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Families, Communities and Disability Services Miscellaneous Amendment Act 2021</i> .	3
	4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6

## Schedule 1 Amendment of Adoption Act 2000 No 75

### [1] Sections 133AA and 133AB

Insert after section 133A—

#### 133AA Information contained in court records

A person does not lose an entitlement to receive information under this Chapter, including by operation of section 143, due to the information also being contained in a record of court proceedings.

#### 133AB Single application for information under this Act and Children and Young Persons (Care and Protection) Act 1998

- (1) An application by a person for information the person is entitled to receive under this Chapter may include a request for information the person is entitled to access under the *Children and Young Persons (Care and Protection) Act 1998*, Chapter 8, Part 6.
- (2) The information under the *Children and Young Persons (Care and Protection) Act 1998* may be provided to the person despite no request having been made under that Act.

### [2] Section 194 Restriction on inspection of records

Insert after section 194(2)—

- (3) This section does not prevent a record from being produced to the following if required by a subpoena or other compulsory process—
  - (a) a court,
  - (b) a tribunal,
  - (c) an authority or person having power to require the production of documents or the answering of questions.
- (4) In this section—  
*produce* includes permit access to.

## Schedule 2      Amendment of Ageing and Disability Commissioner Act 2019 No 7

### [1]      Section 3 Definitions

Insert in alphabetical order in section 3(1)—

*detrimental action* means action causing, comprising or involving 1 or more of the following—

- (a) injury, damage or loss,
- (b) intimidation or harassment,
- (c) discrimination, disadvantage or adverse treatment in relation to employment,
- (d) dismissal from, or prejudice in, employment,
- (e) prejudice in the provision of a service,
- (f) disciplinary proceedings.

### [2]      Section 15A

Insert after section 15—

#### 15A      Protection of employees or contractors who assist Commissioner

- (1) An employer must not take or threaten to take detrimental action against an employee or contractor because the employee or contractor assists, or proposes to assist, the Commissioner with any function in relation to a report about the abuse, neglect or exploitation of an adult with disability or an older adult.

Maximum penalty—50 penalty units.

- (2) In this section—

*employer* includes—

- (a) a person who engages a person as a contractor for services, and
- (b) a person acting on behalf of an employer.

### [3]      Section 24 Protection against retribution

Omit the definition of *detrimental action* from section 24(3).

### [4]      Section 31A

Insert after section 31—

#### 31A      Disclosure of information about outcome of report under section 13

Despite section 31, if the Commissioner considers disclosure of information about the outcome of a report to the Commissioner under section 13 is consistent with the objects and principles of this Act, the Commissioner may disclose the information to the following persons—

- (a) a person who made the report,
- (b) another person concerned for the welfare of the adult with disability or the older adult who was alleged to have been subject to, or at risk of, abuse, neglect or exploitation.

### [5]      Schedule 1

Insert after section 36—



## Schedule 1 Savings, transitional and other provisions

### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
  - (a) a provision of this Act, or
  - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after that commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after that commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before that commencement but not before—
  - (a) for a provision of this Act, the date of assent to this Act, or
  - (b) for a provision amending this Act, the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—
  - (a) affect the rights of a person existing before that publication in a way prejudicial to the person, or
  - (b) impose liabilities on a person for anything done or omitted to be done before that publication.
- (6) In this clause—  
**person** does not include the State or an authority of the State.

<b>Schedule 3</b>	<b>Amendment of Children and Young Persons</b>	1
	<b>(Care and Protection) Act 1998 No 157</b>	2
<b>[1] Section 76 Order for supervision</b>		3
Omit “The” from section 76(3).		4
Insert instead “Unless otherwise provided by this section, the”.		5
<b>[2] Section 76(3A)</b>		6
Omit “Despite subsection (3), the”. Insert instead “The”.		7
<b>[3] Section 76(4)–(4B)</b>		8
Omit section 76(4). Insert instead—		9
(4) The Children’s Court may require the presentation of the following reports—		10
(a) a report before the end of the period of supervision stating the following—		11
(i) the outcomes of the supervision,		12
(ii) whether the purposes of the supervision have been achieved,		13
(iii) whether there is a need for further supervision to protect the child or young person,		14
(iv) whether other orders should be made to protect the child or young person,		15
(b) one or more reports during the period of supervision describing the progress of the supervision.		16
(4A) The Court may consider a report presented under subsection (4) after the period of supervision ends if the Court considers it both—		17
(a) reasonable in the circumstances, and		18
(b) in the best interests of the child or young person.		19
(4B) After considering a report under subsection (4A), the Court may make a new supervision order that ends no later than the day that is 24 months after the order made under subsection (3) or (3A) commenced.		20
<b>[4] Section 76(6)</b>		21
Omit “Despite subsection (3), the”. Insert instead “The”.		22
<b>[5] Section 78 Care plans</b>		23
Omit section 78(5). Insert instead—		24
(5) A care plan is to be in the form approved by the Secretary after consultation with the Children’s Court Advisory Committee established under the <i>Children’s Court Act 1987</i> .		25
(6) The regulations may prescribe other requirements for a care plan.		26
<b>[6] Section 79C Financial assistance for children and young persons in respect of whom guardianship orders are made</b>		27
Insert after section 79C(4)—		28
(5) The provision of financial assistance under this section is subject to conditions prescribed by the regulations.		29

<b>[7] Section 82 Report on suitability of arrangements concerning parental responsibility</b>	1
Omit “12 months” from section 82(2)(a). Insert instead “24 months”.	2
<b>[8] Section 82(2A)</b>	3
Insert after section 82(2)—	4
(2A) A report may be provided to the Children’s Court after the time required by subsection (2)(a) if the Court considers it both—	5
(a) reasonable in the circumstances, and	6
(b) in the best interests of the child or young person.	7
<b>[9] Section 98 Right of appearance</b>	9
Omit “the Children’s Court is to” from section 98(2A).	10
Insert instead “the Children’s Court may”.	11
<b>[10] Section 137 Authorised carers</b>	12
Omit section 137(2). Insert instead—	13
(2) The regulations may provide for the following—	14
(a) the authorisation of persons as authorised carers, including on a provisional basis,	15
(b) the making and determination of an application for authorisations,	16
(c) the imposition or variation of conditions on an authorisation, including, but not limited to the following—	17
(i) the maximum number of children and young persons who may be placed in the care of an authorised carer, including the maximum number in specified age groups,	18
(ii) the identification or description of children and young persons who may be placed in the care of an authorised carer,	19
(d) the period for which an authorisation remains in force,	20
(e) the cancellation or suspension of an authorisation, including events, the occurrence of which—	21
(i) result in automatic cancellation of an authorisation, or	22
(ii) raise a presumption an authorisation will be cancelled,	23
(f) the notification, by a designated agency, to the Children’s Guardian of the placement of a child or young person in the out-of-home care of an authorised carer,	24
(g) the approval or prohibition of behaviour management practices that may be used by an authorised carer in managing the behaviour of a child or young person in out-of-home care.	25
<b>[11] Section 170 Retention of records</b>	26
Insert after section 170(2A)—	27
(2B) An agency that ceases to be a designated agency must deliver to the Secretary all records held by the agency about each authorised carer who cared for a child or young person the agency was responsible for supervising, including the following—	28
(a) probity checks,	29
(b) authorisations,	30
	31
	32
	33
	34
	35
	36
	37
	38
	39
	40
	41
	42
	43

	(c) assessments and internal reviews,	1
	(d) training histories,	2
	(e) records concerning reportable conduct allegations and the investigation of reportable conduct allegations,	3
	(f) other records prescribed by the regulations.	4
<b>[12]</b>	<b>Section 245B Interpretation</b>	5
	Omit section 245B(1), definition of <i>prescribed body</i> , paragraph (b). Insert instead—	6
	(b) a person or class of persons prescribed by the regulations for the purposes of this section, or	7
	(c) a body or class of bodies prescribed by the regulations for the purposes of this section.	8
<b>[13]</b>	<b>Section 248 Provision and exchange of information</b>	9
	Omit section 248(6), definition of <i>prescribed body</i> , paragraph (f). Insert instead—	10
	(f) a person or class of persons prescribed by the regulations for the purposes of this section, or	11
	(g) a body or class of bodies prescribed by the regulations for the purposes of this section,	12
<b>[14]</b>	<b>Section 248C</b>	13
	Insert after section 248B—	14
	<b>248C Code of conduct</b>	15
	(1) The Minister may approve a code of conduct for authorised carers.	16
	(2) It is a condition of the authorisation of a person as an authorised carer that the authorised carer complies with the code of conduct.	17
	(3) The code of conduct must be published on the website of the Department.	18
<b>[15]</b>	<b>Section 264 Regulations</b>	19
	Omit section 264(1A)(g). Insert instead—	20
	(g) prescribing information that authorised carers must give to a designated agency,	21
<b>[16]</b>	<b>Section 264(1A)(i)</b>	22
	Insert after section 264(1A)(h)—	23
	(i) the circumstances in which an authorised carer or person residing with an authorised carer may be required to undergo a medical examination,	24
<b>[17]</b>	<b>Section 264(1A)(k)</b>	25
	Insert after section 264(1A)(j)—	26
	(k) the approval by the Secretary of the form of documents and reports required to be provided under the regulations,	27

<b>Schedule 4</b>	<b>Amendment of Children (Detention Centres) Act</b>	1
	<b>1987 No 57</b>	2
<b>[1]</b>	<b>Section 9A Certain persons not to be detained in detention centres</b>	3
	Omit “is the subject of an arrest warrant of any kind.” from section 9A(1).	4
	Insert instead—	5
	is the subject of—	6
	(a) an arrest warrant of any kind, or	7
	(b) a warrant or order for the detention of the person on remand.	8
<b>[2]</b>	<b>Section 9A(2A)</b>	9
	Insert after section 9A(2)—	10
	(2A) A person who is brought before a court on a warrant or order referred to in subsection (2) is not to be detained on remand in a detention centre until the proceedings to which the warrant or order relates are determined.	11
		12
		13

<b>Schedule 5</b>	<b>Amendment of Children’s Guardian Act 2019 No 25</b>	1
		2
<b>[1]</b>	<b>Section 66 Children’s Guardian approval of head of relevant entity in certain circumstances</b>	3
		4
	Omit “may nominate” from section 66(2). Insert instead “must nominate”.	5
<b>[2]</b>	<b>Schedule 4 Savings, transitional and other provisions</b>	6
	Omit “1 September 2021” from Schedule 4, clause 2(3).	7
	Insert instead “1 September 2022”.	8