



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.