



New South Wales

Children and Young Persons (Care and Protection) Amendment (Family is Culture Review) Bill 2021

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Children and Young Persons (Care and Protection) Act 1998* and the *Adoption Act 2000* concerning out-of-home care for Aboriginal or Torres Strait Islander children and young people and the adoption of Aboriginal or Torres Strait Islander children, and for related purposes.

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.

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

Schedule 1[2] inserts proposed section 9(2)(h) into the *Children and Young Persons (Care and Protection) Act 1998* (**the Act**) to include the principle that it is to be presumed that removing an Aboriginal or Torres Strait Islander child or young person from his or her family causes harm.

Schedule 1[3]–[5], [10] and [12] make amendments to the Act consequential on the amendments to the *Adoption Act 2000*, including inserting proposed section 12B which provides for the cultural adoption of Torres Strait Islander children and young people.

Schedule 1[6] inserts proposed section 13(1A) into the Act to include in the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles additional elements that are to be

considered when making placement decisions for Aboriginal or Torres Strait Islander children and young people.

Schedule 1[7] inserts proposed sections 13A, 13B and 13C into the Act. Proposed section 13A will require the Secretary to reduce the need for Aboriginal or Torres Strait Islander children and young people to be removed from their families and placed in out-of-home care by providing support to Aboriginal and Torres Strait Islander families. Proposed section 13B provides for the Children's Court to make a declaration that the Secretary has failed to take steps under section 13A. Proposed section 13C will require the Minister to report to Parliament about the actions taken under proposed section 13A and any declarations by the Children's Court under proposed section 13B.

Schedule 1[8] inserts proposed section 61AA into the Act to require that when the Children's Court is considering an application for a care order for an Aboriginal or Torres Strait Islander child or young person a report is to be given to the Court setting out the action that has been taken to justify the proposed removal of the child or young person from his or her family and the support that has been provided to the family.

Schedule 1[9] amends section 63 to provide that if the Secretary fails to give the Children's Court evidence of the action that has been taken to support a child or young person's family and of the alternatives to a care order that were considered before making an application to the Court for a care order, the Court may dismiss the order or discharge the child or young person from the care of the Secretary or the Minister as appropriate.

Schedule 1[11] inserts proposed section 79AA into the Act to provide that before the Children's Court makes an order allocating parental responsibility, other than a guardianship order, for an Aboriginal or Torres Strait Islander child or young person it must be satisfied the Secretary has provided support to the child or young person's family.

Schedule 1[13] and [14] make amendments to the Act, section 83 and inserts proposed section 83A to extend the period of time in which restoration of an Aboriginal or Torres Strait Islander child or young person to his or her family may be effected before a final care order may be made by the Children's Court.

Schedule 1[15] makes an amendment to the Act, section 87 to provide that before making a care order for an Aboriginal or Torres Strait Islander child or young person the Children's Court must provide an opportunity for a representative of the relevant Aboriginal or Torres Strait Islander community to be heard before the Court.

Schedule 1[16] makes an amendment to the Act, section 93 to provide that the Children's Court may direct that the rules of evidence apply to proceedings.

Schedule 1[17] inserts proposed section 93AA into the Act to provide that in proceedings involving an Aboriginal or Torres Strait Islander child or young person the Children's Court is to presume that the removal of the child or young person from their family or community causes harm and that when giving reasons for a decision the Court is required to explain how it has considered that presumption and the other principles in the Act applying to Aboriginal or Torres Strait Islander children and young people.

Schedule 1[18] makes an amendment to the Act, section 105 to provide a defence to the offence of publishing the name or identifying information about a child or young person involved in Children's Court proceedings.

Schedule 1[19] makes an amendment to the Act, section 106A to remove the requirement for the Children's Court to admit evidence that the parent or primary care-giver of a child or young person has previously had a child or young person removed from their care and not restored.

Schedule 1[20] makes an amendment to the Act, section 248A to ensure that information published by the Secretary or Children's Court is de-identified.

Schedule 1[21] inserts transitional provisions.

Schedule 1[1] make consequential amendments to the definitions section.

Schedule 2 Amendment of Children and Young Persons (Care and Protection) Regulation 2012

Schedule 2[1] makes an amendment to the *Children and Young Persons (Care and Protection) Regulation 2012*, clause 49 to provide that only an Aboriginal community controlled organisation can be accredited as a designated agency based on substantial satisfaction of the accreditation criteria.

Schedule 2[2] makes an amendment to the *Children and Young Persons (Care and Protection) Regulation 2012*, clause 54 to extend, from 12 months to 24 months, the period in which a designated agency granted accreditation based on substantial compliance with the accreditation standards must become wholly compliant.

Schedule 2[3] and [4] are consequential amendments.

Schedule 3 Amendment of Adoption Act 2000 No 75

Schedule 3[3] amends the *Adoption Act 2000* to provide that Aboriginal children may not be adopted.

Schedule 3[4] amends the *Adoption Act 2000* to provide that Torres Strait Islander children may not be adopted, other than by cultural adoption under the *Children and Young Persons (Care and Protection) Act 1998*.

Schedule 3[1], [2] and [5]–[16] make consequential amendments including to the Dictionary.

Schedule 4 Amendment of Adoption Regulation 2015

Schedule 4[1] and [2] make amendments to the *Adoption Regulation 2015* that are consequential to the amendments to the *Adoption Act 2000*.

Schedule 5 Amendment of Advocate for Children and Young People Act 2014 No 29

Schedule 5 makes an amendment to the *Advocate for Children and Young People Act 2014* to provide that the Parliamentary Joint Committee on Children and Young People has the function of monitoring the Children's Guardian's functions in the accreditation and oversight of agencies arranging for or providing out-of-home care.

Schedule 6 Amendment of Children (Protection and Parental Responsibility) Act 1997 No 78

Schedule 6 inserts proposed section 7A into the *Children (Protection and Parental Responsibility) Act 1997* to provide that a Court exercising criminal jurisdiction over a child who is under the parental responsibility of the Minister or the Secretary may require a representative of the Secretary to attend the proceedings.

Schedule 7 Amendment of Children's Guardian Act 2019 No 25

Schedule 7 makes an amendment to the *Children's Guardian Act 2019*, section 72 to provide that a for profit organisation can not be accredited as a designated agency.

Schedule 8 Amendment of Ombudsman Act 1974 No 68

Schedule 8 makes an amendment to the *Ombudsman Act 1974*, section 13 to clarify that the Ombudsman may investigate a complaint despite there being related court proceedings, if the Ombudsman is of the opinion that the investigation is unlikely to adversely affect the court proceedings.