

LEGISLATIVE COUNCIL

Children and Young Persons (Care and Protection) Amendment (Family is Culture) Bill 2022

First print

Proposed amendments

No. 1 **Principles for administration of Act**

Page 3, Schedule 1. Insert after line 15—

[1A] Section 9 Principles for administration of Act

Insert after section 9(2)(g)—

- (h) In deciding what action it is necessary to take in order to protect an Aboriginal or Torres Strait Islander child or young person from harm, it is to be presumed that removing an Aboriginal or Torres Strait Islander child or young person from the child or young person's family causes harm.

No. 2 **Aboriginal or Torres Strait Islander children or young people not to be adopted**

Page 5, Schedule 1. Insert after line 28—

[7A] Sections 12B and 12C

Insert before section 13—

12B Aboriginal children and young people cannot be adopted

Adoption must not be considered as an option for an Aboriginal child or young person.

Note— See the *Adoption Act 2000*, section 33.

12C Torres Strait Islander children and young people cannot be adopted other than cultural adoption

- (1) Adoption must not be considered as an option for a Torres Strait Islander child or young person.

Note— See the *Adoption Act 2000*, section 37.

- (2) Despite subsection (1), the parental rights and responsibilities for a Torres Strait Islander child or young person may be permanently transferred to a cultural parent of the child or young person in accordance with a scheme prescribed by the regulations for the purposes of this section.

- (4) In this section—

cultural parent, of a Torres Strait Islander child or young person, is a person who, in accordance with customary child rearing practices in the Torres Strait, agrees with the child or young person's birth parents to accept the permanent transfer of the parental rights and responsibility for the child or young person from the birth parents.

No. 3 **Aboriginal and Torres Strait Islander family support**

Page 5, Schedule 1. Insert after line 28—

[7B] Sections 13A–13C

Insert after section 13—

13A Aboriginal and Torres Strait Islander family support

- (1) It is acknowledged that the placement of Aboriginal or Torres Strait Islander children or young persons in out-of-home care can have serious negative consequences for the children or young persons concerned, their families and the indigenous community as a whole.
- (2) Consequently, it is a principle to be applied in the administration of this Act that the Secretary is to take active efforts 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.
- (3) Without limiting the general application of the principle in subsection (2), the Secretary must take active efforts 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, when exercising functions and powers under this Act including, but not limited to functions and powers under section 17, 37, 63 or 85.
- (4) Active efforts, for the purposes of this section, must be tailored to the circumstances of the individual child or young person and their family and include, but are not limited to—
 - (a) the provision of family support services that are—
 - (i) accessible, and
 - (ii) adequately resourced, and
 - (iii) culturally appropriate, and
 - (iv) so far as is practicable, designed and delivered by Aboriginal or Torres Strait Islander community controlled organisations, and
 - (b) considering the use of—
 - (i) parent responsibility contracts as provided for in Chapter 4, Part 3, Division 2, and
 - (ii) parent capacity orders as provided for in Chapter 5, Part 3, and
 - (iii) temporary care arrangements as provided for in Chapter 8, Part 3, Division 1, and
 - (c) other steps prescribed by the regulations.

13B Declaration by Children's Court

- (1) A relative of an Aboriginal or Torres Strait Islander child or young person may apply to the Children's Court for a declaration that the Secretary has failed to take active efforts under section 13A to reduce the need for the child or young person to be removed from the child or young person's family and placed in out-of-home care.

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- (2) If the Children's Court is satisfied that the Secretary has failed to take active efforts under section 13A to reduce the need for the child or young person to be removed from the child or young person's family and placed in out-of-home care, the Children's Court may make a declaration to that effect.
 - (3) A declaration by the Children's Court under this section may include the following—
 - (a) the ways in which the Secretary has failed to take active efforts in relation to the particular child or young person,
 - (b) other things the Secretary could have done to fulfil their duty to take active efforts in relation to the particular child or young person.
 - (4) An application may be made under this section—
 - (a) in connection with proceedings for—
 - (i) a care order under Chapter 5, Part 2, or
 - (ii) a parent capacity order under Chapter 5, Part 3, or
 - (b) at another time.

13C Reporting responsibilities of Minister

- (1) Within 12 months after the commencement of section 13A, the Minister is to table in both houses of Parliament a plan that sets out the following—
 - (a) the active efforts that will be taken under section 13A to provide family support services to Aboriginal and Torres Strait Islander families and communities,
 - (b) how the active efforts to be taken under section 13A will be delivered,
 - (c) how the active efforts to be taken under section 13A will be funded.
- (2) On or before 1 April and 1 October each year, the Minister is to table a report in both houses of Parliament setting out the following for the preceding reporting period—
 - (a) the Government's achievements in relation to the plan required by subsection (1),
 - (b) the Aboriginal community controlled organisations that have been funded to deliver services under the plan required by subsection (1) and the amount of funding each organisation has received,
 - (c) the actions the Minister has taken to engage with Aboriginal and Torres Strait Islander people to negotiate and agree on the implementation of programs and strategies that promote self-determination as provided for in section 11,
 - (d) the means approved by the Minister under section 12 for Aboriginal and Torres Strait Islander families, kinship groups, representative organisations and communities to participate in—
 - (i) decisions made concerning the placement of Aboriginal and Torres Strait Islander children and young persons in out-of-home care, and
 - (ii) other significant decisions made under this Act that concern Aboriginal or Torres Strait Islander children and young persons,
 - (e) the Minister's assessment of the effectiveness of the actions and means reported under paragraphs (c) and (d),

(f) each declaration given by the Children’s Court under section 13B.

(3) In this section—

preceding reporting period means the period of 6 months ending on 30 June or 31 December immediately before the report is to be tabled in Parliament.

No. 4 **Evidence of active efforts to take alternative action**

Page 6, Schedule 1[8], lines 13–19. Omit all words on the lines.

No. 5 **Aboriginal or Torres Strait Islander children and young people—special considerations**

Page 7, Schedule 1. Insert after line 17—

[11A] Section 79AB

Insert after section 79AA as inserted by Schedule 1[11]—

79AB Aboriginal or Torres Strait Islander children and young people—special considerations

- (1) Before making an order under section 79(1)(b), (e) or (f) for an Aboriginal or Torres Strait Islander child or young person, the Children’s Court must be satisfied that the Secretary has taken active efforts under section 13A to provide support services to the family of the child or young person.
- (2) If the Children’s Court is considering making an order under section 79(1)(b) for an Aboriginal or Torres Strait Islander child or young person, the Children’s Court must, for the purpose of determining if there are special circumstances under section 79(10), take the following matters into account—
 - (a) the steps the Secretary has taken under section 13A to provide support services to the family of the child or young person,
 - (b) the availability of other support services that are reasonably required to support the restoration of the child or young person to the child or young person’s parents.

No. 6 **Permanency planning for Aboriginal or Torres Strait Islander children and young people**

Pages 7 and 8, Schedule 1, line 18 on page 7 to line 9 on page 8. Omit all words on the lines. Insert instead—

[12] Section 83 Preparation of permanency plan

Omit section 83(5)–(9). Insert instead—

(5) In this section—

parent, in relation to a child, means—

- (a) the birth parent of the child or young person, or
- (b) if the child or young person has been adopted—the adoptive parent of the child or young person.

No. 7 **Permanency planning for Aboriginal or Torres Strait Islander children and young people**

Page 9, Schedule 1[17], lines 15–18. Omit all words on the lines. Insert instead—

- (2A) If a child or young person the subject of application is an Aboriginal or a Torres Strait Islander, the Children’s Court must—
 - (a) consider the effect of the order on the relevant Aboriginal or Torres Strait Islander community, and

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- (b) provide an opportunity to be heard to—
 - (i) a representative of the relevant community, or
 - (ii) a member of a recognised Aboriginal community controlled organisation with a relevant connection to the relevant community, and
 - (c) be satisfied that the Secretary has complied with the principle of active effort in relation to the child or young person.
- (2B) Regulations may be made, for the purposes of subsection (2A)(b), for—
- (a) the remuneration of individuals who are heard by the Children’s Court, and
 - (b) the payment of the reasonable expenses incurred by an individual who is heard by the Children’s Court.

No. 8 General principles for proceedings

Page 9, Schedule 1. Insert after line 30—

[19A] Section 93AA

Insert after section 93—

93AA General principle for proceedings concerning Aboriginal or Torres Strait Islander children or young people

- (1) In any proceedings before the Children’s Court concerning Aboriginal or Torres Strait Islander children or young people, the Children’s Court must—
 - (a) presume that the removal of a child or young person from their family or community causes harm including the serious harm arising from disrupting the child or young person’s connection to the child or young person’s culture, and
 - (b) actively consider the Aboriginal and Torres Strait Islander Children and Young Persons Principle.
- (2) The presumption in subsection (1)(a) is rebuttable.
- (3) When giving its reasons for a decision under Chapter 5 that involves an Aboriginal or Torres Strait Islander child or young person, the Children’s Court must set out the following—
 - (a) how the presumption in subsection (1)(a) has been considered,
 - (b) if the presumption in subsection (1)(a) has been rebutted—the grounds for the rebuttal,
 - (c) how the following have been applied—
 - (i) the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles, and
 - (ii) the principle of self-determination as provided for in section 11,
 - (iii) the principle of participation as set out in section 12.

No. 9 Publication of names and identifying information

Page 9, Schedule 1. Insert after line 30—

[19B] Section 105 Publication of names and identifying information

Insert after section 105(5)—

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- (5A) Despite subsection (5), it is a defence to prosecution for an offence under subsection (2) if it is proved that the person who published or broadcast the name of a child or young person acted in good faith and—
- (a) to promote the safety, welfare or well-being of the child or young person, or
 - (b) in the public interest.

No. 10 **Collection of information by Secretary and Children’s Court**

Page 10, Schedule 1. Insert after line 18—

[22A] Section 248A Collection of information by Secretary and Children’s Court

Insert after section 248A(3)—

- (4) If information is made publicly available in accordance with regulations made under subsection (2)(c), the information must be made available in a way that ensures the identity of a person to whom the information relates must not be readily ascertainable.

No. 11 **No adoption of Aboriginal or Torres Strait Island children**

Page 12, Schedule 2. Insert after line 1—

2.1A Adoption Act 2000 No 75

[1] Section 24 Who can be adopted?

Insert at the end of section 24(1)—

Note— Sections 33 and 37 provide that an adoption order must not be made in relation to an Aboriginal or a Torres Strait Islander child.

[2] Section 33

Omit sections 33–36. Insert instead—

33 No adoption of Aboriginal children

An adoption order must not be made in relation to an Aboriginal child.

[3] Section 37

Omit sections 37–39. Insert instead—

37 No adoption of Torres Strait Islander children

- (1) An adoption order must not be made in relation to a Torres Strait Islander child.
- (2) Despite subsection (1), a Torres Strait Islander child or young person may undergo cultural adoption, as provided for in the *Children and Young Persons (Care and Protection) Act 1998*.

No. 12 **Long title**

Insert “the *Adoption Act 2000*,” after “and to amend”.