



New South Wales

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

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 (the Act)* to provide for the reforms outlined in section one of the Government’s consultation findings report titled “Family is Culture—Legislative Recommendations”, prepared in response to particular recommendations in the Final Report of the Family is Culture: Independent Review into Aboriginal and Torres Strait Islander Children and Young People in Out-of-Home Care in New South Wales.

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 the Children and Young Persons (Care and Protection) Act 1998 No 157

Requirement to make active efforts

Schedule 1[2] inserts proposed section 9A to require the Secretary to act in accordance with the *principle of active efforts* in exercising functions under the Act. The principle of active efforts means—

- (a) in taking action to safeguard or promote the safety, welfare and well-being of a children or young person—making active efforts to prevent the child or young person from entering out-of-home care, and
- (b) for a child or young person who has been removed from the child’s or young person’s parents or families—
 - (i) making active efforts to restore the child or young person to the child’s or young person’s parents, or
 - (ii) for a child or young person for whom it is not practicable or in the child’s or young person’s best interests to be restored to their parents—to place the child or young person with family, kin or community.

Schedule 1[8] substitutes section 63 to require the Secretary to provide evidence to the Children’s Court of the following matters when making a care application in relation to a child or young person—

- (a) the active efforts made by the Secretary, in accordance with the principle of active efforts, before the application was made and the reasons the active efforts were unsuccessful,
- (b) the alternatives to a care order that were considered by the Secretary before the application was made and the reasons the alternatives were not considered appropriate.

Additional permanent placement principles

Schedule 1[3] amends section 10A(3) to clarify that the second preference for permanent placement of a child or young person is to be placed with a relative, kin or other suitable person, in accordance with a guardianship order made under section 79A(2).

Schedule 1[4] amends section 10A to provide an additional permanent placement principle that, if it is not practicable or in the best interests of the child or young person to be restored to the care of the child’s or young person’s parent or parents, or placed with a relative, kin or other suitable person in accordance with a guardianship order, the next preference is placement with a suitable person or persons jointly in accordance with an order made under the Act, section 79(1)(f), with the support of the Secretary under the Act, section 153(1) or the financial assistance of the Secretary under section 161(1).

Schedule 1[5] and [6] make consequential amendments.

Aboriginal and Torres Strait Islander Children and Young Persons Principle

Schedule 1[7] inserts proposed section 12A, which sets out the *Aboriginal and Torres Strait Islander Children and Young Persons Principle* and provides the elements decision makers must apply when making decisions in relation to a matter involving an Aboriginal or Torres Strait Islander child or young person. The principle reflects the substance of the Aboriginal and Torres Strait Islander Child Placement Principle as published by SNAICC – National Voice for our Children, and comprises the following 5 elements—

- (a) **prevention**—recognising that a child or young person has a right to be brought up within the child’s or young person’s own family, community and culture,
- (b) **partnership**—recognising that Aboriginal and Torres Strait Islander community representatives should participate in the design and delivery of services for children and young persons and in individual decisions about children and young persons,
- (c) **placement**—recognising that, if a child is to be placed in out-of-home care, the child’s placement is to be in accordance with the placement principles for Aboriginal and Torres Strait Islander children and young persons in the Act, section 13,
- (d) **participation**—recognising that a child or young person, and the child’s or young person’s parents and family members, should participate in decisions about the care and protection of the child or young person,
- (e) **connection**—recognising that a child or young person has a right to be supported to maintain connections to family, community, culture and country.

Care plans

Schedule 1[9] amends section 78 to insert additional requirements for a care plan made for an Aboriginal or Torres Strait Islander child or young person for the purposes of an application by the Secretary to the Children's Court for an order, other than an emergency protection order, for the removal of a child or young person from the care of the child's or young person's parents. The additional requirements relate to—

- (a) the preparation of a cultural plan for the child or young person, and
- (b) consultation with the child or young person, their parents, family and kin, and relevant Aboriginal and Torres Strait Islander organisations or entities for the child or young person when preparing the plan, and
- (c) addressing how the plan complies with the permanent placement principles, the Aboriginal and Torres Strait Islander Children and Young Persons Principle and the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles. **Schedule 1[10]** makes a consequential amendment.

Additional requirements for permanency planning

Schedule 1[11] inserts proposed section 79AA, which sets out the matters to which the Children's Court may have regard when deciding whether there are special circumstances that warrant the allocation of parental responsibility to the Minister for more than 24 months.

Schedule 1[12] inserts proposed section 83(3A) to provide that the Secretary assesses that there is not a realistic possibility of restoring the child or young person to the child or young person's parents within a reasonable period, the Secretary must include the following in the permanency plan prepared for the child or young person—

- (a) the reasons for the Secretary's assessment,
- (b) details of the active efforts the Secretary has made to restore the child or young person to the child's or young person's parents, or to place the child or young person with family, kin or community.

Schedule 1[13] amends section 83 to provide that, for the purposes of section 83(5A), before deciding whether to accept the Secretary's assessment of whether or not there is a realistic possibility of restoring the child or young person to the child or young person's parents within a reasonable period, the Children's Court may direct the Secretary to provide the Court with—

- (a) the reasons for the Secretary's assessment, and
- (b) evidence of the active efforts the Secretary has made to restore the child or young person to the child's or young person's parents, or to place the child or young person with family or community.

Schedule 1[15] substitutes section 83(8A) to enable the Secretary to make an assessment that there is a realistic possibility of restoring a child or young person to the child or young person's parents within a period that is longer than 24 months if the Secretary is satisfied that, having regard to any matters prescribed by the regulations, there are exceptional circumstances that warrant the longer period.

Schedule 1[16] inserts proposed section 83A, which sets out, in addition to the requirements in section 83, requirements for the preparation of a permanency plan for an Aboriginal or Torres Strait Islander child or young person. **Schedule 1[14]** makes a consequential amendment.

Making of orders that have a significant impact on persons

Schedule 1[17] amends section 87 to provide that, for the purposes of hearing from a group significantly impacted by a proposed order, if the affected group is an Aboriginal or Torres Strait Islander family or community, the representative or representatives of the group may be a member or members of a relevant Aboriginal or Torres Strait Islander organisation or entity for the child or young person.

General nature of proceedings

Schedule 1[18] amends section 93(3) to require the Children's Court to consider the requirements set out in section 93(1) and (2) before determining whether the rules of evidence, or certain rules of evidence specified by the Children's Court, are to apply to proceedings or parts of proceedings before the Children's Court.

Schedule 1[19] inserts proposed section 93(3A) to enable the Children's Court, on application by a party to the proceedings, to apply the rules of evidence, or certain rules of evidence, in relation to the proof of a fact if, in the Court's opinion, proof of the fact is, or will be, significant to the determination of the proceedings.

Miscellaneous

Schedule 1[1] inserts definitions of *Aboriginal and Torres Strait Islander Children and Young Persons Principle, entity, exercise, function* and *principle of active efforts* for the Act.

Schedules 1[20] and [21] amend section 106A to remove a rebuttable presumption that a child or young person is in need of care and protection if another child or young person has previously been removed from the care and protection of the parent. Evidence of the fact will remain admissible in the proceedings.

Schedule 1[22] amends section 245 to provide for additional decisions that are administratively reviewable by the Civil and Administrative Tribunal.

Schedule 1[23] enables the regulations to make provision for or with respect to processes to be used when identifying children and young persons as Aboriginal or Torres Strait Islander persons for the purposes of administering the Act.

Schedule 1[24] requires the Minister to review the Act to determine whether the policy objectives of the amendments made by the proposed Act remain valid and the amended provisions of the Act remain appropriate for achieving those objectives.

Schedule 1[25] provides for transitional matters.

Schedule 2 Amendment of other legislation

Advocate for Children and Young People Act 2014 No 29

Schedule 2.1 amends section 37(1) of the *Advocate for Children and Young People Act 2014* to add an additional function for the Committee on Children and Young People to monitor and review the exercise by the Children's Guardian of functions under the *Children's Guardian Act 2019* in relation to out-of-home care.

Children (Protection and Parental Responsibility) Act 1997 No 78

Schedule 2.2 substitutes the *Children (Protection and Parental Responsibility) Act 1997*, section 7 to set out that a court exercising criminal jurisdiction in relation to a child may require the attendance of certain persons at the place at which the proceedings are being or are to be conducted.

Ombudsman Act 1974 No 68

Schedule 2.3 inserts proposed section 13(6) into the *Ombudsman Act 1974* to provide that the Ombudsman may investigate or continue to investigate the conduct of a public authority even if the conduct is, or is likely to become, the subject of court or other proceedings, unless the Ombudsman considers the investigation is likely to adversely affect the proceedings or potential proceedings.