



New South Wales

# Children and Young Persons (Care and Protection) Amendment Bill 2010

## 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 principal Act***) as follows:

- (a) to make further provision in respect of voluntary out-of-home care,
- (b) to enable child protection reports to be admissible in certain proceedings,
- (c) to clarify that financial assistance is available to certain carers,
- (d) to extend the regulation-making power in respect of probity checks on persons involved in the provision of children's services,
- (e) to provide that certain decisions about permanency plans for children and young persons are not reviewable by the Administrative Decisions Tribunal,
- (f) to clarify the power to take photographs and other recordings during the removal of a child or young person from any premises or place,
- (g) to provide that the Director-General has 3 working days (and a maximum of 5 days) in which to file an application in the Children's Court following an emergency removal or assumption of care responsibility,
- (h) to make other minor and consequential amendments.

## 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 [1]** extends the types of proceedings in which a report made in relation to a child or young person to the Director-General or to a person who has the power or responsibility to protect the child or young person will be admissible.

**Schedule 1 [2]–[4]** make it clear that the disclosure of the identity of a person who makes a report in respect of a child or young person is not prevented if it is disclosed in connection with the investigation of a serious indictable offence or reportable conduct alleged to have been committed or done against a child or young person.

**Schedule 1 [5]** clarifies the circumstances in which the Children’s Court may make an order to give effect to a care plan without the need for a care application under the principal Act.

**Schedule 1 [6] and [7]** make it clear that the 3-day period within which the Director-General is to make a care application after the removal of a child or young person or assumption of responsibility for a child or young person is 3 working days (ie the 3-day period does not include a Saturday, Sunday or public holiday). However, the amendments also provide that, in any event, such an application must be made within 5 days or on the first working day after that 5 day-period.

**Schedule 1 [8]** updates a cross-reference in a note.

**Schedule 1 [9]** clarifies the definition of *voluntary out-of-home care* for the purposes of the principal Act so that such care does not include out-of-home care provided by an individual in a private capacity.

**Schedule 1 [10]** makes it clear that a relevant agency under the voluntary out-of-home care provisions may arrange, as well as provide, such care.

**Schedule 1 [11]** makes a consequential amendment to the regulation-making power in respect of voluntary out-of-home care.

**Schedule 1 [12]** substitutes section 156A and inserts proposed section 156B.

Proposed new section 156A provides that if a child or young person is placed in voluntary out-of-home care:

- (a) the child or young person must not remain in that care for more than a total of 90 days in any period of 12 months unless the care is provided by or supervised by a designated agency or supervised by the Children’s Guardian, and

- (b) the child or young person must not remain in out-of-home care for more than a total of 180 days in any period of 12 months unless the designated agency responsible for providing or supervising the care of the child or young person, or the Children's Guardian, has ensured that a plan has been prepared that meets the needs of the child or young person under the arrangement.

If those time periods are not met, the Children's Guardian may determine that the child or young person is taken to be at risk of significant harm, and the various mandatory reporting and other provisions of the principal Act will apply.

Proposed section 156B replicates, with some changes, clause 40D of the *Children and Young Persons (Care and Protection) Regulation 2000* to restrict who may provide or arrange voluntary out-of-home care. It will be an offence (maximum penalty \$22,000) for a person, other than a relevant agency or an individual who is authorised by a relevant agency or the Children's Guardian, to provide voluntary out-of-home care. It will also be an offence (maximum penalty \$22,000) for a person, other than a relevant agency or the Children's Guardian, to arrange with a parent of a child or young person for the child or young person to be placed in voluntary out-of-home care, or to hold out as being willing to make such an arrangement.

**Schedule 1 [13]–[16]** provide that a person who is providing voluntary out-of-home care in respect of a child or young person may restrain the child or young person in certain circumstances (this currently only applies to parents and authorised carers).

**Schedule 1 [17]** makes it clear that financial assistance under the principal Act is available to carers of children or young persons who have parental responsibility pursuant to an order of the Children's Court and are providing supported out-of-home care or care under an emergency care and protection order.

**Schedule 1 [18] and [19]** make it clear that an adult who has been in out-of-home care while he or she was a child or young person is entitled to free access to his or her personal information held by certain persons or bodies.

**Schedule 1 [20]** provides that one of the functions of the Children's Guardian under the principal Act is to register organisations that provide or arrange voluntary out-of-home care and to monitor their responsibilities.

**Schedule 1 [21]** includes a relevant agency as a body or organisation to whom the Children's Guardian may furnish certain information relating to the safety, welfare and well-being of children or young persons, or whom the Children's Guardian may direct to provide such information.

**Schedule 1 [22]** expands the current regulation-making power in relation to probity checks so that such checks may be made on the following:

- (a) a person who is involved in the control and management of a licensee or proposed licensee,
- (b) a person who is involved in the control and management of the majority shareholder corporation of a licensee or proposed licensee,

- (c) a person who is, or who is proposed to be, an authorised supervisor for a children's service.

**Schedule 1 [23]** provides that a person who is authorised under the principal Act or the regulations made under that Act, or under a search warrant issued under that Act, to search for, apprehend or remove a person in or from any premises or place may take such photographs and films, and audio, video and other recordings, as the person considers necessary.

**Schedule 1 [24]** provides that decisions relating to the making and implementation of permanency plans for children and young persons under the parental responsibility of the Minister are not decisions reviewable by the Administrative Decisions Tribunal.

**Schedule 1 [25]** includes the Family Court of Australia as a Commonwealth agency for the purposes of the exchange of information and co-ordination of services provisions under the principal Act.

**Schedule 1 [26]** enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

**Schedule 1 [27]** inserts a savings and transitional provision into the principal Act in respect of the provision of voluntary out-of-home care.

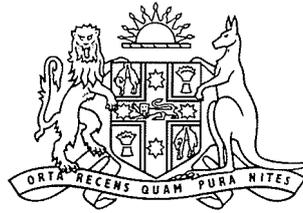
## **Schedule 2      Amendment of other Acts and Regulation**

**Schedule 2.1** amends the *Children and Young Persons (Care and Protection) Amendment (Children's Services) Act 2010* as a consequence of the proposed amendment to be made by Schedule 1 [22].

**Schedule 2.2** amends the *Children and Young Persons (Care and Protection) Regulation 2000* as a consequence of the insertion of proposed section 156B by Schedule 1 [12].

**Schedule 2.3** repeals an uncommenced amendment contained in the *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009* that would have made it an offence for a parent to place a child or young person in out-of-home care that is provided by an organisation unless the organisation is a relevant agency.

First print



New South Wales

# Children and Young Persons (Care and Protection) Amendment Bill 2010

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New South Wales

# Children and Young Persons (Care and Protection) Amendment Bill 2010

No. , 2010

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## A Bill for

An Act to amend the *Children and Young Persons (Care and Protection) Act 1998* to make further provision in respect of the care and protection of, and the provision of services to, children and young persons; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Children and Young Persons (Care and Protection) Amendment Act 2010</i> .	3 4
<b>2 Commencement</b>	5
(1) Subject to subsection (2), this Act commences on a day or days to be appointed by proclamation.	6 7
(2) Schedule 1 [22] commences on the date of assent to this Act.	8

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<b>Schedule 1</b>	<b>Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157</b>	1 2 3
<b>[1] Section 29 Protection of persons who make reports or provide certain information</b>		4 5
Omit section 29 (1) (d). Insert instead:		6
(d) the report, or evidence of its contents, is not admissible in any proceedings (including any appeal arising from those proceedings), other than the following:		7 8 9
(i) care proceedings in the Children’s Court,		10
(ii) proceedings in relation to a child or young person under the <i>Family Law Act 1975</i> of the Commonwealth,		11 12 13
(iii) proceedings in relation to a child or young person before the Supreme Court or the Administrative Decisions Tribunal,		14 15 16
(iv) proceedings before the Victims Compensation Tribunal or the Guardianship Tribunal,		17 18
(v) proceedings under the <i>Coroners Act 2009</i> , and		19
<b>[2] Section 29 (4A) (a)</b>		20
Omit “serious offence alleged to have been committed against”.		21
Insert instead “serious offence or reportable conduct alleged to have been committed or done against”.		22 23
<b>[3] Section 29 (4B) (a) and (4C) (b)</b>		24
Insert “or reportable conduct” after “serious offence” wherever occurring.		25
<b>[4] Section 29 (6)</b>		26
Insert in alphabetical order:		27
<b><i>reportable conduct</i></b> means:		28
(a) reportable conduct within the meaning of section 33 (1) of the <i>Commission for Children and Young People Act 1998</i> , or		29 30 31
(b) conduct occurring elsewhere than in New South Wales that, if occurring in New South Wales, would be reportable conduct under paragraph (a).		32 33 34

*serious offence* means:

- (a) a serious indictable offence within the meaning of the *Crimes Act 1900*, or
- (b) an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be an offence under paragraph (a).

**[5] Section 38 Development and enforcement of care plans**

Insert after section 38 (2):

- (2A) Any such order may be made by the Children’s Court without the need for a care application under Part 2 of Chapter 5 and without the need to be satisfied of the existence of any of the grounds under section 71 if the Court is satisfied that:
  - (a) the proposed order will not contravene the principles of this Act, and
  - (b) the parties to the care plan understand its provisions and have freely entered into it, and
  - (c) in the case of a party other than the Director-General, the party has received independent advice concerning the provisions to which the proposed order will give effect.

**[6] Section 45 Application to Children’s Court for care order**

Omit “the Director-General must, no later than 72 hours after the removal or assumption of care responsibility, make a care application” from section 45 (1).

Insert instead “the Director-General must make a care application”.

**[7] Section 45 (1A)**

Insert after section 45 (1):

- (1A) The care application must be made within 3 working days after the day (the *relevant day*) on which the removal or assumption of care responsibility occurs. If this would permit the care application to be made more than 5 days after the relevant day, the application must instead be made no later than on the fifth day after the relevant day or (if the fifth day is not a working day) no later than the first working day after that fifth day. A *working day* is any day that is not a Saturday, Sunday or public holiday.

<b>[8] Section 105 Publication of names and identifying information</b>	1
Omit “section 11” from the Note to the section.	2
Insert instead “section 15A”.	3
<b>[9] Section 135C</b>	4
Omit the section. Insert instead:	5
<b>135C Voluntary out-of-home care</b>	6
(1) <i>Voluntary out-of-home care</i> is out-of-home care in respect of a child or young person that is arranged by a parent of the child or young person, but does not include:	7
(a) out-of-home care that is provided by an individual in a private capacity, or	8
(b) out-of-home care that is provided outside New South Wales.	9
(2) Out-of-home care is provided by an individual <i>in a private capacity</i> if it is provided by an individual who is not acting on behalf of, or pursuant to an arrangement with, a body or organisation.	10
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<b>[10] Section 156 Preliminary</b>	18
Insert “or arranges” after “provides” in paragraph (b) of the definition of <i>relevant agency</i> in section 156 (1).	19
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<b>[11] Section 156 (2) (a)</b>	21
Omit the paragraph. Insert instead:	22
(a) arrangements for voluntary out-of-home care, and	23
<b>[12] Sections 156A and 156B</b>	24
Omit section 156A. Insert instead:	25
<b>156A Provision of voluntary out-of-home care</b>	26
(1) A child or young person must not remain in voluntary out-of-home care for more than a total of 90 days in any period of 12 months unless the care is:	27
(a) provided by or supervised by a designated agency, or	28
(b) supervised by the Children’s Guardian.	29
(2) A child or young person must not remain in voluntary out-of-home care for more than a total of 180 days in any period of 12 months unless the designated agency responsible for	30
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	providing or supervising the care of the child or young person, or the Children’s Guardian, has ensured that a plan has been prepared that meets the needs of the child or young person under the arrangement.	1 2 3 4
(3)	A child or young person is, for the purposes of Parts 2 and 3 of Chapter 3, taken to be at risk of significant harm if:	5 6
	(a) the child or young person remains in voluntary out-of-home care in contravention of subsection (1) or (2), and	7 8 9
	(b) the Children’s Guardian has determined, in accordance with any guidelines issued by the Director-General for the purposes of this section, that the contravention is significant.	10 11 12 13
(4)	The Children’s Guardian is to formulate intake procedures and procedures relating to assessments and inter-agency co-ordination in order to ensure:	14 15 16
	(a) that children and young persons are not placed in voluntary out-of-home care if adequate services can be provided to enable them to remain with their families, and	17 18 19
	(b) that proper case planning occurs for all children and young persons placed in voluntary out-of-home care.	20 21
<b>156B</b>	<b>Restrictions on who may provide or arrange voluntary out-of-home care</b>	22 23
(1)	A person must not provide voluntary out-of-home care for a child or young person unless the person is:	24 25
	(a) a relevant agency, or	26
	(b) an individual who is authorised by a relevant agency or the Children’s Guardian to provide voluntary out-of-home care.	27 28 29
(2)	A person, other than a relevant agency or the Children’s Guardian, must not:	30 31
	(a) arrange with a parent of a child or young person for the child or young person to be placed in voluntary out-of-home care, or	32 33 34
	(b) advertise or hold himself, herself or itself out as being willing to arrange for a child or young person to be placed in voluntary out-of-home care.	35 36 37
	Maximum penalty: 200 penalty units.	38

<b>[13] Section 158 Physical restraint of child or young person</b>	1
Omit section 158 (1). Insert instead:	2
(1) This section applies if, in the opinion of the relevant carer of a child or young person, the child or young person is behaving in such a manner that, unless restrained, he or she might seriously injure himself or herself or another person.	3 4 5 6
<b>[14] Section 158 (2)</b>	7
Omit “the parent or the authorised carer”. Insert instead “the relevant carer”.	8
<b>[15] Section 158 (5)</b>	9
Omit “parent or an authorised carer”. Insert instead “relevant carer”.	10
<b>[16] Section 158 (6)</b>	11
Insert after section 158 (5):	12
(6) In this section, the <i>relevant carer</i> of a child or young person means:	13
(a) a parent of the child or young person, or	14
(b) the authorised carer of the child or young person, or	15
(c) a person who is providing voluntary out-of-home care in respect of a child or young person.	16 17 18
<b>[17] Section 161 Financial assistance for children and young persons in out-of-home care</b>	19 20
Insert after section 161 (3):	21
(4) For the purposes of this section, <i>out-of-home care</i> is taken to include residential care and control of a child or young person that is provided:	22 23 24
(a) by a relative of the child or young person who has, pursuant to an order of the Children’s Court, parental responsibility for the child or young person at a place other than the usual home of the child or young person, or	25 26 27 28
(b) by a person in accordance with an emergency care and protection order made under section 46.	29 30
<b>[18] Section 168 Access to personal information</b>	31
Omit “child or young” from section 168 (1) and (3), wherever occurring.	32

<b>[19] Section 168 (2)</b>	1
Omit “child or young person”.	2
Insert instead “person seeking access to information”.	3
<b>[20] Section 181 Functions relating to out-of-home care</b>	4
Insert after section 181 (1) (e):	5
(f) to register organisations that provide or arrange voluntary out-of-home care and to monitor their responsibilities under this Act and the regulations.	6 7 8
<b>[21] Section 185 Provision and exchange of information</b>	9
Insert at the end of paragraph (c) of the definition of <i>prescribed person</i> in section 185 (6):	10 11
, or	12
(d) a relevant agency within the meaning of section 156.	13
<b>[22] Section 220 Regulations</b>	14
Omit section 220 (a). Insert instead:	15
(a) the probity checks that may be made on the following:	16
(i) a person who is involved in the control and management of a licensee or proposed licensee,	17 18
(ii) a person who is involved in the control and management of the majority shareholder corporation of a licensee or proposed licensee,	19 20 21
(iii) a person who is, or who is proposed to be, an authorised supervisor for a children’s service,	22 23
<b>[23] Section 241 Powers exercisable on entry and inspection</b>	24
Insert after section 241 (1):	25
(1A) A person who is authorised under this Act or the regulations, or under a search warrant issued under this Act, to search for, apprehend or remove a person in or from any premises or place may take such photographs and films, and audio, video and other recordings, as the person considers necessary.	26 27 28 29 30

<b>[24] Section 245 Decisions that are reviewable by Administrative Decisions Tribunal</b>	1
Insert after section 245 (1A):	2
(1B) For the avoidance of doubt, subsection (1) (c) does not extend to any decision in relation to:	3
(a) the preparation of a permanency plan, or	4
(b) the enforcement of a permanency plan that has been embodied in, or approved by, an order or orders of the Children’s Court.	5
<b>[25] Section 245I Commonwealth agencies</b>	6
Insert after section 245I (a):	7
(a1) the Family Court of Australia,	8
<b>[26] Schedule 3 Savings, transitional and other provisions</b>	9
Insert in appropriate order in clause 1 (1):	10
<i>Children and Young Persons (Care and Protection) Amendment Act 2010</i>	11
<b>[27] Schedule 3</b>	12
Insert at the end of the Schedule with appropriate Part and clause numbering:	13
<b>Part Provision consequent on enactment of Children and Young Persons (Care and Protection) Amendment Act 2010</b>	14
<b>Provision of voluntary out-of-home care</b>	15
A child or young person who was, immediately before the substitution of section 156A by the <i>Children and Young Persons (Care and Protection) Amendment Act 2010</i> , in voluntary out-of-home care is taken for the purposes of that section to have been placed in voluntary out-of-home care on the date of substitution of that section.	16
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<b>Schedule 2</b>	<b>Amendment of other Acts and Regulation</b>	1
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<b>2.1</b>	<b>Children and Young Persons (Care and Protection) Amendment (Children’s Services) Act 2010 No 67</b>	3
		4
	<b>Schedule 1 [5], proposed section 220</b>	5
	Omit section 220 (11). Insert instead:	6
	(11) The probity checks that may be made on the following:	7
	(a) a person who is involved in the control and management of a licensee or proposed licensee,	8
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	(b) a person who is involved in the control and management of the majority shareholder corporation of a licensee or proposed licensee,	10
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		12
	(c) a person who is, or who is proposed to be, an authorised supervisor for a children’s service.	13
		14
<b>2.2</b>	<b>Children and Young Persons (Care and Protection) Regulation 2000</b>	15
		16
	<b>Clause 40D Restriction on who may provide or arrange voluntary out-of-home care</b>	17
		18
	Omit the clause.	19
<b>2.3</b>	<b>Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 No 13</b>	20
		21
	<b>Schedule 1.3 [15], proposed section 172A</b>	22
	Omit the item.	23