



# Child Protection Legislative Amendments

Information for Permanency Support Program (PSP) funded service providers on the *Children and Young Persons (Care and Protection) Amendment Act 2018*.

Version 1.0, 6 May 2019

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# 1 Introduction

In October 2017 the NSW Government invited feedback through the *Shaping a Better Child Protection System* discussion paper on proposed amendments to the *Children and Young Persons (Care and Protection) Act 1998* (the Care Act) and the *Adoption Act 2000* (the Adoption Act). The discussion paper proposed amendments to the Care Act and Adoption Act to support broader Government reforms and initiative to improve safety, permanency and wellbeing outcomes for vulnerable children and families.

Stakeholder feedback has been critical in planning the way forward and the report [\*Shaping a Better Child Protection System – report on the outcomes of consultations\*](#) released in October 2018 provides a summary of overall feedback from stakeholders in relation to key areas.

The *Children and Young Persons (Care and Protection) Amendment Act 2018* was passed in Parliament in November 2018 and came into effect on 4 February 2019. It amends the Care Act and Adoption Act to support current child protection reforms, including the Permanency Support Program (PSP).

The amendments also support the [FACS NSW Practice Framework](#) and further align everyone around the goal of keeping children safe at home and if that isn't possible, working with urgency to find permanency.

This practice guidance has been developed to provide detailed information to funded service providers about the changes and implications for casework practice with children and their families.

## 2 Alternative Dispute Resolution

The Care Act requires FACS to consider the appropriateness of using alternative dispute resolution (ADR) processes when casework teams are responding to a report and to divert children away from the out-of-home care (OOHC) system. The amendments mean FACS offers alternative dispute resolution to all families subject to a child protection report where the risk of significant harm threshold has been met, before an application is filed in the Children's Court seeking care orders (unless there are exceptional circumstances).

Family Group Conferencing (FGC) is the preferred form of alternative dispute resolution. Engaging family members and other significant people in a child's life in alternative dispute resolution processes such as Family Group Conferencing has demonstrated families can reduce child protection risks, which has benefits of reducing further casework, court processes, reports of harm and entries into care.

FACS will not be required to make this offer to a family where 'exceptional circumstances' exist.

The obligation to offer alternative dispute resolution processes does not stop FACS from taking whatever action is necessary to safeguard or promote the immediate safety, welfare and well-being of the child<sup>1</sup>.

If FACS knows there are criminal proceedings or a police investigation underway, FACS seeks advice from NSW Police about whether engaging the family in alternative dispute resolution processes is appropriate. For example, NSW Police may advise alternative dispute resolution is likely to compromise a current police investigation. If this is the case, FACS is not obligated to offer alternative dispute resolution processes to the family.

## 2.1 Referral

Participation in alternative dispute resolution is voluntary and confidential. Therefore, consent is sought from a family prior to an alternative dispute resolution referral being completed. Families are informed that they can obtain independent legal advice before deciding whether to accept an offer of alternative dispute resolution. Families can be referred to LawAccess on 1800 888 529, Legal Aid NSW, their local Community Legal Centre or legal representative for advice.

## 2.2 Exceptional circumstances

FACS has authority to determine an alternative dispute resolution process as inappropriate due to exceptional circumstances or due to advice from the police where criminal proceedings have been identified (see below).

Exceptional circumstances may include significant risk factors making it unsafe for an alternative dispute resolution process to be convened. They could include:

- where there has been an emergency assumption or removal
- where domestic violence situations involve a serious physical threat to anyone that might be required to be involved in an alternative dispute resolution process or to children within a family
- where violent situations involve a serious physical threat to FACS employees.

In some cases, FACS reacts to serious incidents requiring immediate removal of children from their families. Alternative dispute resolution can require several weeks to prepare so it may not be possible to hold an alternative dispute resolution (such as Family Group Conferencing) prior to some care applications. In those cases, an alternative dispute resolution process is considered at a later date and an application can be made to the Children's Court for an early referral to a dispute resolution conference (DRC) or other form of alternative dispute resolution.

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<sup>1</sup> Throughout this document 'child and/or young person' is shortened to 'child'; 'children and/or young people' is shortened to 'children.'

## 2.3 Seeking advice from Police

Where FACS becomes aware of criminal proceedings or investigations that may be compromised if alternative dispute resolution processes are offered, FACS seeks advice from the NSW Police Force to determine if it is appropriate to offer alternative dispute resolution to the family.

In these circumstances, FACS is not required to offer a Family Group Conference or other forms of alternative dispute resolution prior to bringing a care application to the Children's Court if FACS determines it is not appropriate to do so after taking the police advice into account.

## 2.4 Evidence for the Children's Court

Alternative dispute resolution provides an important opportunity to empower and engage families to work together to address the issues affecting the safety of their children. The offer of alternative dispute resolution is not simply a step to complete before filing an application. It is a step to divert away from the need to file an application. It is important that families retain trust and confidence in the alternative dispute resolution process through a commitment to family driven plans that can be used to support a child to safely stay with their family or to explore alternate permanency options.

When making a care application to the Children's Court, FACS demonstrates an attempt or consideration to resolve the safety or risk issues by less intrusive prior alternative action. As a result of the legislative amendments, FACS needs to demonstrate to the Children's Court that alternative dispute resolution has been offered as an option to the family or that it was ruled out due to police advice or exceptional circumstances.

Evidence of the date of the alternative dispute resolution referral, the provider and any outcome of the process can be used as evidence in Children's Court proceedings. However evidence of anything said during alternative dispute resolution, the conduct of anyone involved or documents prepared specifically for the alternative dispute resolution process will be inadmissible in any proceedings before any court or tribunal, with some exceptions (see sections 244B and 244C of the Care Act).

# 3 Service provision

In deciding what action is taken to promote and safeguard the safety, welfare and well-being of a child, the Care Act provides that FACS may request a government department or funded service provider to provide services to a child or their family. The government department or funded service provider uses its 'best endeavours' to comply with a request made to it.

The amendments mean FACS may request a government department or funded service provider to provide prioritised access to services to a child who is at risk of significant harm. This amendment is intended to mitigate known risks for children, reduce re-reporting, and keep children out of the OOHC system.

Health services will continue to use their 'best endeavours' to comply with a request, consistent with their functions in clinical decision-making.

### 3.1 Referral

FACS, other government department or funded service provider have a responsibility to try and prevent children from entering OOHC. FACS funds a range of services for families caring for children who have been subject to risk of significant harm (ROSH) report made to the FACS Child Protection Helpline, are considered to be at high or very high risk and have been identified as in need of support. These services help families change, de-escalate risk and improve outcomes for vulnerable children.

#### **Intensive Family Based Services (IFBS)**

Intensive Family Based Services provide a high level of intervention specifically to Aboriginal families with children at risk of entering the OOHC system, where restoration back to family is being explored or breakdown of the foster / kinship placement is a concern. Five Aboriginal agencies and two internal FACS services deliver Intensive Family Based Services across NSW. Each funded service provider and FACS Intensive Family Based Services delivers services to between 22 and 28 families per annum.

All referrals to Intensive Family Based Services come through local Community Services Centres.

#### **Intensive Family Preservation**

Intensive Family Preservation is an intensive crisis intervention for families experiencing complex issues delivered by 34 agencies. Approximately 34% of IFP services are provided to Aboriginal families.

All referrals to Intensive Family Preservation come through local Community Services Centres or are court ordered.

#### **Brighter Futures**

Brighter Futures is a family preservation service for vulnerable families with children aged up to 9 years. Brighter Futures services are delivered by 29 funded service providers across NSW. Referrals to Brighter Futures comprise of 90% children assessed by FACS Child Protection helpline as at risk of significant harm (ROSH) and 10% community-based referrals made to prevent families from escalating and being reported at risk of significant harm.

#### **Youth Hope**

Youth Hope is a family preservation pilot which operates in six FACS districts. Youth Hope services are targeted to children/young people, aged 9-15 years, who are screened at risk of significant harm or at risk of escalation into the OOHC system; all are assessed to be in need of support to remain at home with their families.

#### **PSP Family Preservation Packages**

These packages prescribe the provision of evidence-based supports utilising models outlined in the PSP Family Preservation Package Program Framework. Systematic reviews and randomised controlled trials indicate these programs

are effective to safely keep a child in their home environment and avoid entry to OOHC. An initial 190 preservation packages were made available from 1 October 2018, including 37% targeted specifically for Aboriginal families. Seventeen funded service providers are delivering Family Preservation packages in 2018/19. Six of the organisations delivering the packages are Aboriginal organisations.

These packages are designed to embed a continuum of care within service providers as a first step in implementing an investment approach. As the number of children in care reduce, PSP funds will be reinvested into additional preservation activities. There will be an additional allocation of at least 190 packages each year over the life of the program forward estimates to 2021/22.

All referrals to PSP Family Preservation Packages come through local Community Services Centres.

### **Targeted Early Intervention**

Each FACS district coordinates and manages the commissioning of Targeted Early Intervention services that are flexible, locally responsive, evidence based and client centred.

Talk to your FACS district's Commissioning and Planning team or Permanency Coordinator about what Targeted Early Intervention services are available in your district.

### ***Their Futures Matter***

Under Their Futures Matter, Multisystemic Therapy for Child Abuse and Neglect and Functional Family Therapy through Child Welfare provide intensive therapeutic home-based treatments which have proven records of success in addressing the underlying causes of trauma.

The location of these services across NSW is detailed on the Their Futures Matter [website](#). Contact the service provider to discuss referral.

## **4 Mandatory reporting**

The amendments mean 'children's services' in the mandatory reporter provisions in the Care Act is consistent with the children's services regulated under the *Children (Education and Care Services) National Law* and *Children (Education and Care Services) Supplementary Provisions Act 2011*.

This will provide better consistency and remove any uncertainty in the sector around what is a 'children's service' for mandatory reporting purposes.

'Children's services' include services such as long day care centres, out-of-school hours services, family day care services, pre-schools, home based education and care services, mobile education and care services and occasional education and care services.

Services that are not 'children's services' include services like:

- a babysitting, playgroup or child-minding service organised informally by the parents of the children concerned

- a service concerned primarily with the provision of lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity
- private tutoring services.

Persons working in these services are still able to make a report to the Child Protection Helpline where they have reasonable grounds to suspect that a child, or class of children or young persons are at risk of significant harm (section 24 of the Care Act).

## 5 Guardianship orders by consent

Section 38 of the Care Act provides a means of giving effect to agreements to a care plan, reached between everyone involved in making the agreement, including parents. The purpose is to minimise or eliminate the need for litigation and assist in ensuring a child's needs are responded to quickly.

An agreed care plan under section 38 can be used to enable the Children's Court to make orders to reallocate parental responsibility with the consent of the parents and a child aged 12 and over.

The amendments mean the Children's Court may make a guardianship order with the consent of everyone involved in making the section 38 agreement. Guardianship orders by consent would be made following agreement being reached, for example in an alternative dispute resolution process or through negotiation, where parents agree their children be placed in the care of a guardian.

Some key points to note:

- A guardianship order by consent can be made without a finding of the Children's Court that the child is in need of care and protection or that there is no realistic possibility of restoration to the parents.
- Everyone consenting to an order that allocates parental responsibility away from a parent for a child, receives independent legal advice.
- The Children's Court can appoint an independent legal representative for a child so that the child can obtain their own legal advice and be legally represented in the process.
- It is a requirement the Children's Court is satisfied everyone involved (in consenting to the order) has received independent legal advice and that they understand the nature and effect of the proposed order and their consent has been freely given.
- It is a requirement the Children's Court is satisfied the proposed guardianship order will not contravene the principles of the Care Act including the principle that the safety, welfare and well-being of the child is paramount.



- Prospective guardians will still be required to undergo suitability assessments and a suitability statement will need to be filed in the Children’s Court with the agreed care plan.

## 5.1 Completing the Care Plan

When completing a care plan for a guardianship order by consent, the section addressing ‘no realistic possibility of restoration’ is not required.

# 6 Varying interim care orders

The amendments mean that the Children’s Court may vary an interim care order if it is satisfied it is appropriate to do so. A person involved (as a ‘party’) in the proceedings before the court will not have to file a section 90 application to vary an existing interim care order (section 90(9)).

This amendment will remove the confusion in practice about how everyone involved in care proceedings (as a ‘party’) can apply to vary an interim care order.

The confusion arose because of two different court decisions: a Supreme Court decision<sup>2</sup> that found the proper avenue for a person (other than FACS) to apply to vary an interim care order is through an application under section 90; and a Children’s Court decision<sup>3</sup> that held it is not essential that an application under section 90 be made to vary an existing interim care order.

## 6.1 Applying to vary or rescind an interim court order

An application to vary or rescind an interim care order may be made during the proceedings. It can be an oral or written application, with evidence supporting the application.

# 7 Shorter term court orders (STCOs)

PSP reforms aim to provide each child in the child protection and OOH system with a safe and permanent home for life, through restoration or where this is assessed as not possible, through guardianship or adoption orders. Long term orders that place children in the parental responsibility of the Minister (in most cases until they attain the age of 18 years) are the least preferred option. For Aboriginal children, adoption is the least preferred option.

The amendments mean when the Children’s Court has approved a permanency plan with a goal of restoration, guardianship or adoption, the maximum period for which an order may be made allocating all aspects of parental responsibility to the Minister is 24 months, unless the Children’s Court is satisfied there are special circumstances. Working towards permanency within two years is in the best interests of children.

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<sup>2</sup> *Re Timothy* [2010] NSWSC 254

<sup>3</sup> *Re Mary* [2014] NSWChC 7

If the goal of the permanency plan is not restoration, guardianship or adoption, there is no time limit on orders that allocate parental responsibility to the Minister or another suitable person (other than it may not exceed the child attaining the age of 18 years).

Once a shorter term court order expires, parental responsibility generally reverts back to the birth parents or person/s previously with allocated parental responsibility through a (final) court order or previous legal guardian/s. If FACS needs more time to work towards the case plan goal, then FACS will need to file a section 90 application to vary the shorter term court order and obtain an interim care order before the shorter term court order expires.

The legislation does not set out what constitutes 'special circumstances.' It is likely that judicial officers considering care applications will develop case law to guide what constitutes 'special circumstances.' The care and protection jurisdiction is very complex and being too prescriptive in the legislation might unintentionally limit what could possibly be captured.

Examples of 'special circumstances' might include:

- Permanency plans with a goal of restoration where a parent is undertaking a long term drug rehabilitation program that will not be completed within the 24 month time frame.
- Permanency plans with a goal of adoption or guardianship, where FACS assesses the proposed adoptive parent or proposed guardian will need more time to demonstrate independence in meeting the long term needs of the child without case management and supervision (before seeking a guardianship or adoption order).
- Permanency plans with a goal of adoption, where FACS anticipates that it will take longer than 24 months to file an adoption application in the Supreme Court. (Once an adoption application is filed, the Supreme Court has power to make an interim parental responsibility order pending the outcome of the adoption application).
- Permanency plans involving therapeutic treatment unable to be completed within 24 months.

The Children's Court will ultimately determine what is a 'special circumstance.'

The amendments made to section 82 of the Care Act (see [section 9](#)) will balance the increased use of shorter term court orders under PSP as the discretion and oversight of the Children's Court has been strengthened. Under the amendments, the court will be empowered to relist matters on receipt of section 82 reports where it is not satisfied proper arrangements have been made for the care and protection of a child.

## 8 Realistic possibility of restoration

Section 83 of the Care Act provides that the Children's Court cannot make a final care order unless it has determined whether or not there is a realistic possibility of restoration. Currently, the decision about whether there is a

realistic possibility of restoration is made as at the date of the hearing. It is a point in time assessment. This test has been developed through case law<sup>4</sup>.

The amendments to section 83 will overcome the point in time assessment and enable the Children's Court to consider whether restoration is realistic within 24 months. This is called the 'within a reasonable period test.'

The amendments enable restoration to be assessed over a longer period of time, rather than at the date of the hearing.

## 8.1 Evidence for the Children's Court

Evidence will need to be provided of the minimum outcomes parents need to achieve during the 'reasonable period' that is, up to a maximum 24 months. Details of the actions FACS need to undertake during this period to support the family working towards restoration and the actions that parents need to take are included in the child's care plan filed in the court.

Care is taken to ensure actions to be undertaken by FACS are:

- within control of FACS (to initiate action) and
- operationally realistic and appropriate.

## 9 Section 82 reports

Amendments to section 82 of the Care Act will broaden the oversight of the Children's Court and provide increased accountability for FACS and funded service providers commissioned by FACS to provide case management for children.

Where the Children's Court is not satisfied proper arrangements have been made for the care and protection of the child, the Children's Court may re-list the matter for a 'progress review.'

The power to invite anyone involved in the initial court proceedings (as a 'party') to make an application for leave under section 90 has been removed.

Although a section 90 application may be made to vary or rescind a care order, the leave threshold considerations for a section 90 application have changed (see [section 11](#)).

### 9.1 Evidence for the Children's Court

During a progress review, anyone involved in the court proceedings (as a 'party') may be invited to provide evidence to the court in relation to their efforts to implement the care plan.

When a child is being case managed by a funded service provider, the funded service provider will be responsible for providing this evidence to the relevant FACS Child and Family District Unit team for FACS to provide the evidence to the court.

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<sup>4</sup> See *In the matter of Campbell* [2011] NWSC 761

## 10 Contact orders for the life of a guardianship order

The amendments will empower the Children's Court to make contact orders for longer than 12 months where a guardianship order is made and it is in the child's best interests.

This amendment and the existing provisions, ensure changes in circumstances can be accommodated. Parties may agree to vary or rescind the contact orders by a contact variation agreement under section 86A of the Care Act. Not everyone involved in the court proceedings (as a 'party') in which the order was made need to agree, only those that are affected. Such agreements may not necessarily involve FACS (unless FACS is an affected party).

To be binding, these agreements need to be in writing and filed in the registry of a Children's Court. Once registered these agreements have the effect of a court order and will override any previous contact orders.

It is important to note, these amendments do not mean FACS intends to supervise or fund supervised contact where a guardianship order has been made by the Children's Court. Where an order has been made by the Children's Court allocating parental responsibility for a child to a person under a guardianship order, the child is not in OOHC – they are in the independent care of their guardian.

However, a guardian is able to nominate a person or agency (other than FACS) to supervise contact. If that person or agency (such as a contact service) agrees to supervise contact, then the court can make an order for contact to be supervised by that person or agency.

Free mediation is available from [Legal Aid NSW](#) for contact mediations where there is a dispute about contact or a proposal to change contact orders.

## 11 Section 90

### 11.1 Section 90 - Leave factor considerations

Placement stability is an important factor in facilitating a child's healthy development.

An application to vary or rescind a previous care order can only be made with leave of the Children's Court. Leave may only be granted if the court finds that there has been a significant change in any relevant circumstances since the care order was made or last varied. This threshold test remains unchanged.

The Children's Court takes certain matters into consideration before granting leave. These factors have changed.

The amendments ensure priority is given to a child's views and their need for permanency, stability and security at the leave stage of an application to vary or rescind a care order. They focus on giving the child a voice and the child's best interests.

The Children's Court is required to consider primary and additional considerations. The court will be required to give more weight to the primary considerations, but those considerations may not determine the outcome in every matter. The court also considers the additional considerations and makes their decision consistent with the principle that the safety, welfare and well-being of the child is paramount.

The primary considerations are:

- The views of the child and the weight to be given to those views, having regard to the maturity of the child and capacity to express those views.
- The length of time for which the child has been in the care of the present carer and the stability of present care arrangements.
- If the Children's Court considers the present care arrangements are stable and secure, the course that would result in the least intrusive intervention into the life of the child and whether that course would be in the best interests of the child.

The additional considerations are:

- the age of the child
- the nature of the application
- the plans for the child
- whether the applicant has an arguable case and
- matters concerning the care and protection of the child identified in a section 82 report, or a report prepared in relation to a review directed by the Children's Guardian.

The Children's Court gives consideration to all of these factors in making their decision.

### 11.1.1 Evidence for the Children's Court

Examples of evidence to address the primary considerations could include:

- Views of the child obtained from an interview of the child.
- Length of time and stability of placement, for example information obtained from an interview or home visit with the child and authorised carer, records of observations about the placement including the length and stability of the placement and the quality of the child's relationship with the carer.
- Least intrusive intervention/best interests including all of the above and evidence of the likely impact on the child of varying the care orders and changing the child's placement and evidence of the parent's efforts to address issues and behaviors that led to their child's removal.

The additional considerations are matters the court already takes into consideration when determining a leave application.

## 11.2 Section 90 – Summary dismissal power

Section 90 has been amended to give the court power to summarily dismiss an application for leave (without the leave application being heard). The Children’s Court may dismiss an application for leave to vary or rescind an order if:

- the application is deemed by the court to be frivolous, vexatious or an abuse of process, or
- the application has no reasonable prospect of success, and the applicant has previously made a series of applications for leave under section 90 that the court has previously dismissed.

## 12 Adoption Act amendment – adoption by guardians

Currently, the Supreme Court may set aside (dispense with) the requirement for birth parents to consent to a child’s adoption from OOHC if satisfied that:

- adoption is in the best interests of the child
- the child has established a stable relationship with the carers and
- adoption by those carers will promote the child’s welfare.

This provision will now extend to applications for adoption by guardians.

This amendment to the Adoption Act does not prevent the participation of parents in the adoption process. Parents are still notified, provided with written information about an application for adoption and their consent to their child’s adoption sought. Parents have a right to participate in the adoption process and are encouraged to participate.

Guardianship is not a pathway to adoption.

- These amendments do not provide guardians with preferential access to adoption.
- At the permanency planning stage, where the best option for the child is adoption, then that order is pursued.
- For an adoption order to be made it means the Supreme Court sees this as clearly preferable and in the best interests of the child to any other order that could be made for that child, including guardianship.
- A guardianship assessment is not sufficient for an adoption application. If a guardian wishes to adopt a child in their care, a new assessment by an authorised adoption assessor is undertaken in compliance with the Adoption Act.

Note: Adoption continues to remain the least preferred option for permanent placement of Aboriginal and Torres Strait Islander children.

## 13 Restoration time frames

Previously, where the Children's Court determined there was a realistic possibility of restoration and had endorsed a permanency plan that proposed restoration at some future date, FACS could place children in the care of their parents up to six months prior to the restoration date. The restoration date is usually the date of the expiration of the final court order.

The amendments extend that timeframe from six months to 12 months, providing increased flexibility to place a child in the care of their parents earlier under the existing care plan, where FACS assesses it is safe to do so.

Extending the time frame to 12 months enables parents to demonstrate sustained change with the child in their daily care while FACS continues to provide statutory support to the parent and child to improve the likelihood of successful restoration.

Note: As FACS holds parental responsibility, the decision to place a child with their parents is only made by FACS. Talk to your FACS district's Commissioning and Planning team or Permanency Coordinator about placement of a child with their parent.

## 14 Removing supported OOHC with no order arrangements

The amendments align the provisions in the Care Act with current FACS policy and practice regarding supported care with no order arrangements. That is:

- the pathway into supported care with no order arrangements closed on 01 December 2016, and
- the last date a child could enter supported care with no order arrangements was 30 November 2016.

Note:

- Children may continue to enter supported care arrangements – with an order.
- The Supported Care Allowance continues to be available to authorised carers of children who have been allocated parental responsibility under such arrangements, as the result of:
  - an order of the Children's Court; or
  - a parenting order in favour of the relative or kin under the *Family Law Act 1975* – only in respect of proceedings to which FACS was a party.

### 14.1 Review of supported OOHC arrangements

Amendments have been made to the provisions that relate to the review of supported OOHC placements that are supported by a court order.

The requirement that an authorised carer submit an annual self-assessment to the designated agency having supervisory responsibility for the child has not changed.

However there has been a change to the matters to be addressed in the self-assessment report, including verification the child resides with the authorised carer and of the need to provide ongoing support.

In addition, FACS conducts a review concerning the child:

- if the authorised carer dies, within 21 days after the death
- before a planned change of placement and
- within 21 days after an unplanned change of placement.

This review by FACS is to have regard to the following:

- the legal status of the child
- the issues to be addressed while the child is in supported OOHC, what is to be done and who is to undertake responsibility
- the responsibilities of everyone involved in the court proceedings (as a 'party') concerning care
- any special requirements of the child relating to culture, language, religion or disability and
- the appropriateness of making a care application.

At the conclusion of the review, the designated agency is to determine:

- whether restoration of the child to their parents is possible and, if not, how the parenting needs of the child are to be met and
- whether a care application is to be made to provide for the reallocation of parental responsibility in relation to the child.

## 15 Publication of identifying information – child's OOHC status

Section 105 of the Care Act, which contains the prohibition on publishing the names and identifying information of children, has been strengthened.

The amendments put beyond doubt that the fact that a child is in OOHC or under the parental responsibility of the Minister are not to be published, unless the young person, FACS or the Children's Court consents to the publication.

What this means is it will be illegal to publish or broadcast the name of a child and say they are or have been in OOHC, foster care, a ward of the state, in the care of an authorised carer or under the parental responsibility of the Minister, however this is expressed (unless consent has been provided to the publication).

Advice for young people in OOHC on the use of social media is available on the [YOU website](#).



## 15.1 Exceptions to publication for the Coroner

Section 105 contains exceptions to the prohibition on publishing names and identifying information. These exceptions have been retained which include allowing publication with the consent of young person, FACS (for children under the parental responsibility of the Minister), or the Children's Court.

A new exception has been introduced to allow for publication of the name of a child by the Coroner's Court in its findings in an inquest concerning the suspected death of a child, where the Coroner's Court considers the publication or broadcasting would be in the public interest. The Coroner's Court also now has power to consent to the publication of the name of a child whose suspected death is the subject of an inquest if the Coroner's Court considers that the publication or broadcast would be in the public interest.

## 16 Death of guardian or carer with full parental responsibility

A new section 39A in the Care Act provides care responsibility will vest in FACS upon FACS becoming aware of the death of a sole surviving guardian or a carer allocated all aspects of parental responsibility for a child, for a maximum period of 21 days after being notified of the death.

This will allow FACS time to conduct assessments and make any relevant court applications concerning the care arrangements for the child.

The role of FACS is to make sure that appropriate care arrangements are put in place for the child as parental responsibility will generally revert back to the parents upon the death of a sole surviving guardian or carer with all aspects of parental responsibility for the child.

In some cases, FACS may need to file a section 90 application and seek an order from the court, for example, where a guardianship order was recently made and it is clear to FACS that the parents are not yet able to safely care for their children.

Note: The death of an authorised carer is a critical event. Funded service providers are required to immediately report critical events to FACS in accordance with FACS Critical Events Policy.

### 16.1 Assessment of care options

Where a sole surviving guardian or carer has died, each child's situation will need to be assessed on a case by case basis.

When a guardianship order or sole parental responsibility order to a carer has been made, unless the order has been made by consent, the Children's Court will have previously determined that there was no realistic possibility of the child being restored to his or her parents. Assessment is carried out by FACS before a decision is made to in relation to the most appropriate permanent placement for the child. The assessment considers:

- any plans made by the sole surviving guardian or carer about the care of the child in the event of their death, subject to advice and guidance from FACS
- all the close relationships a child has with adults in their network (carer or guardian family and birth family)
- the views of the child
- restoration, if sufficient change has been demonstrated by the parents (or person/s previously with allocated parental responsibility or previous legal guardian/s) over time to show the safety concerns and the dangers present at the time of removal have been resolved or controlled or
- guardianship or adoption, if restoration is not assessed as viable.

## 17 Stronger penalty options

The abuse and neglect offences (sections 227 and 228 of the Care Act) have been amended to include a term of imprisonment of up to two years in addition to, or as an alternative to, the monetary penalties available – being a maximum fine of \$22,000 for each offence.

The amendment means a sentencing court has a range of options available to it, which includes both custodial and non-custodial sentencing options. For example courts will be able to make intensive correction orders (eg home detention, alcohol, drug bans) and community corrections orders (eg community service work, curfews), and can impose tailored conditions to address the factors underlying the offending behaviour.

These amendments do not impact on casework practice, as these matters are already offences under the Care Act and such prosecutions are usually brought by police or the NSW Director of Public Prosecutions.