

Children and Young Persons (Care and Protection) Miscellaneous Amendments Bill 2000

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to make miscellaneous amendments to the *Children and Young Persons (Care and Protection) Act 1998*, several of which are minor or by way of statute law revision, and
- (b) to amend the *Children and Young Persons Legislation (Repeal and Amendment) Act 1998* to enable the progressive repeal of provisions of the *Children (Care and Protection) Act 1987* so as to match the progressive commencement of the provisions of the *Children and Young Persons (Care and Protection) Act 1998* that will replace them.

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 on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Children and Young Persons (Care and Protection) Act 1998* set out in Schedules 1 and 2.

Clause 4 is a formal provision giving effect to the amendment to the *Children and Young Persons Legislation (Repeal and Amendment) Act 1998* set out in Schedule 3.

Schedule 1 General amendments to Children and Young Persons (Care and Protection) Act 1998

Reports

Schedule 1 [1] extends the obligation under section 28 of the Act of the Director-General of the Department of Community Services (*the Director-General*) to keep records of reports made to or by the Director-General by adding a requirement that the Director-General keep records of action taken as a consequence of a report as well as of subsequent arrangements concerning children and young persons to whom the reports relate.

Schedule 1 [2] amends section 29 of the Act to make it clear that reports can be used as evidence in care proceedings before the Children's Court (and any subsequent appeal) but not in other proceedings.

Schedule 1 [3] amends section 29 of the Act to enable certificate evidence to be given by the Director-General that a document is a report under that section and therefore has the protections conferred by that section.

Care orders

Schedule 1 [4] amends section 60 of the Act to make it clear that a contact order is a type of care order.

Schedule 1 [9] amends section 86 of the Act relating to the making of contact orders by the Children's Court. The amendment clarifies the circumstances in which more frequent contact may occur with a child or young person through the giving of consent by a person having parental responsibility for the child or young person. The amendment also provides that the Children's Court cannot make an order that contact be supervised by the Director-General or a person employed within the Department of Community Services except with the Director-General's or person's consent.

Care proceedings

Schedule 1 [6] inserts proposed section 64A. The proposed section provides that the

Director-General does not have to provide parents with a copy of evidence in the form of a recording (such as an audio or video recording) if the Director-General considers it would be inappropriate to do so. Instead, the Director-General is to give an adequate opportunity to the parents of the child or young person, and their lawyer, to listen to or view the recording. The Children's Court may overturn a decision of the Director-General not to provide parents with a copy of recorded evidence.

Schedule 1 [5] makes a consequential amendment.

Section 65 of the Act currently requires that a preliminary conference be held for all care proceedings after copies of the care application have been served. **Schedule 1 [7]** amends section 65 to provide that a preliminary conference does not have to be held if the Children's Registrar is of the opinion that it would not be appropriate in the circumstances to hold a preliminary conference or that the holding of such a conference should be deferred until a later time in the care proceedings.

Schedule 1 [8] also amends section 65 of the Act. The amendment provides that the powers of a Children's Registrar under that section may, as with any other powers of a Children's Registrar under the Act, be exercised by the Children's Court.

Schedule 1 [10] amends section 102 of the Act to enable the support person who is entitled to accompany a participant in care proceedings to act, with the leave of the Children's Court, as an interpreter for the participant if the participant does not sufficiently speak or understand English. The support person is required to maintain confidentiality.

Schedule 1 [11] amends section 105 of the Act to prohibit the name or identifying information of a child or young person who is, or is reasonably likely to be, involved in Children's Court proceedings to be broadcast "in any form that may be accessible by a person in New South Wales".

Compulsory assistance orders

Schedule 1 [12] inserts proposed section 124A. The proposed section requires the Director-General to notify the Children's Guardian immediately an application is made for a compulsory assistance order or an interim compulsory assistance order in relation to a child or young person. The Children's Guardian is also entitled to be a party to any proceedings before the Children's Court concerning the order.

Schedule 1 [13] amends section 127 of the Act which deals with the circumstances in which a child or young person who breaches a compulsory assistance order may be apprehended by the Director-General or a police officer. The Director-General or a police officer cannot act unless they believe on reasonable grounds that the child or young person is in a situation of potential harm.

Schedule 1 [14] replaces section 133 of the Act with proposed sections 133–133B. Proposed section 133 requires the Children's Court to notify the Children's Guardian of the making of a compulsory assistance order or an interim compulsory assistance order, unless the Children's Guardian was a party to the proceedings in which the order was made. Proposed section 133A requires the Children's Guardian to monitor the circumstances of a child or young person who is subject to such an order. Proposed section 133B enables an application to be made at any time for the variation or revocation of such an order by the child or young person in respect of whom the order is made, the Director-General, the Children's Guardian, a person having parental responsibility for the child or young person, or any person who considers himself or herself to have a sufficient interest in the welfare of the child or young person.

Out-of-home care

Schedule 1 [15] amends section 135 of the Act to clarify the time at which out-of-home care commences.

Section 158 of the Act specifies the circumstances in which a child or young person in out-of-home care may be physically restrained. **Schedule 1 [16]** and **[17]** remove, as a ground of restraint, the belief that a child or young person is behaving in such a manner that, unless restrained, he or she might cause the loss of or damage to property. **Schedule 1 [18]** limits the form of restraint to a form that is consistent with any behavioural management requirements of a care plan that applies to the child or young person concerned. **Schedule 1 [19]** provides that,

for a person who restrains a child or young person in accordance with section 158 to be absolved from criminal and civil liability, he or she must be able to satisfy the court, on the balance of probabilities, that his or her actions were reasonable in all the circumstances of the case.

Schedule 1 [20]–[24] amend section 161 of the Act to broaden the kinds of financial assistance that may be provided to children and young persons in out-of-home care.

Special medical treatment

Schedule 1 [25] provides that, if a regulation is made approving the granting of consent to the carrying out of special medical treatment, a consent that would have been lawful if the regulation had been in force at the time the consent was granted is taken to have been lawfully granted.

Schedule 2 Minor amendments to Children and Young Persons (Care and Protection) Act 1998

Meaning of “Aboriginal” and “Torres Strait Islander”

Schedule 2 [1]–[6], [20], [23] and [24] correct certain references to Aboriginals and Torres Strait Islanders. The definitions of those terms are also made consistent with the definitions contained in the proposed *Adoption Act 2000*.

Consistency of expression

Schedule 2 [7], [10], [12], [14], [15] and [19] create consistency in the use of the term “allocate” where it relates to parental responsibility.

Schedule 2 [8] amends the heading to a section so that it reflects more precisely the content of the section.

Schedule 2 [16]–[18] replace the expression “case conference” with the more commonly used term “review”.

Exercise of functions by Departmental officers

Schedule 2 [21], [25], [26], [28], [31] and [32] provide for the Director-General of the Department of Community Services, rather than an officer of that Department, to exercise certain functions and thereby create greater consistency with the way in which other functions are conferred under the provisions of the Act.

Regulation-making powers

Schedule 2 [9], [30] and [33] clarify and extend the power to make regulations for the purposes of the Act.

Other minor amendments

Schedule 2 [11], [13], [22], [27] and [29] correct grammatical errors and inconsistencies in the Act and make other minor amendments.

Schedule 3 Amendment of Children and Young Persons Legislation (Repeal and Amendment) Act 1998

Schedule 3 amends the *Children and Young Persons Legislation (Repeal and Amendment) Act 1998* to enable the progressive repeal of provisions of the *Children (Care and Protection) Act 1987* so as to match the progressive commencement of the provisions of the *Children and Young Persons (Care and Protection) Act 1998* that will replace them.