

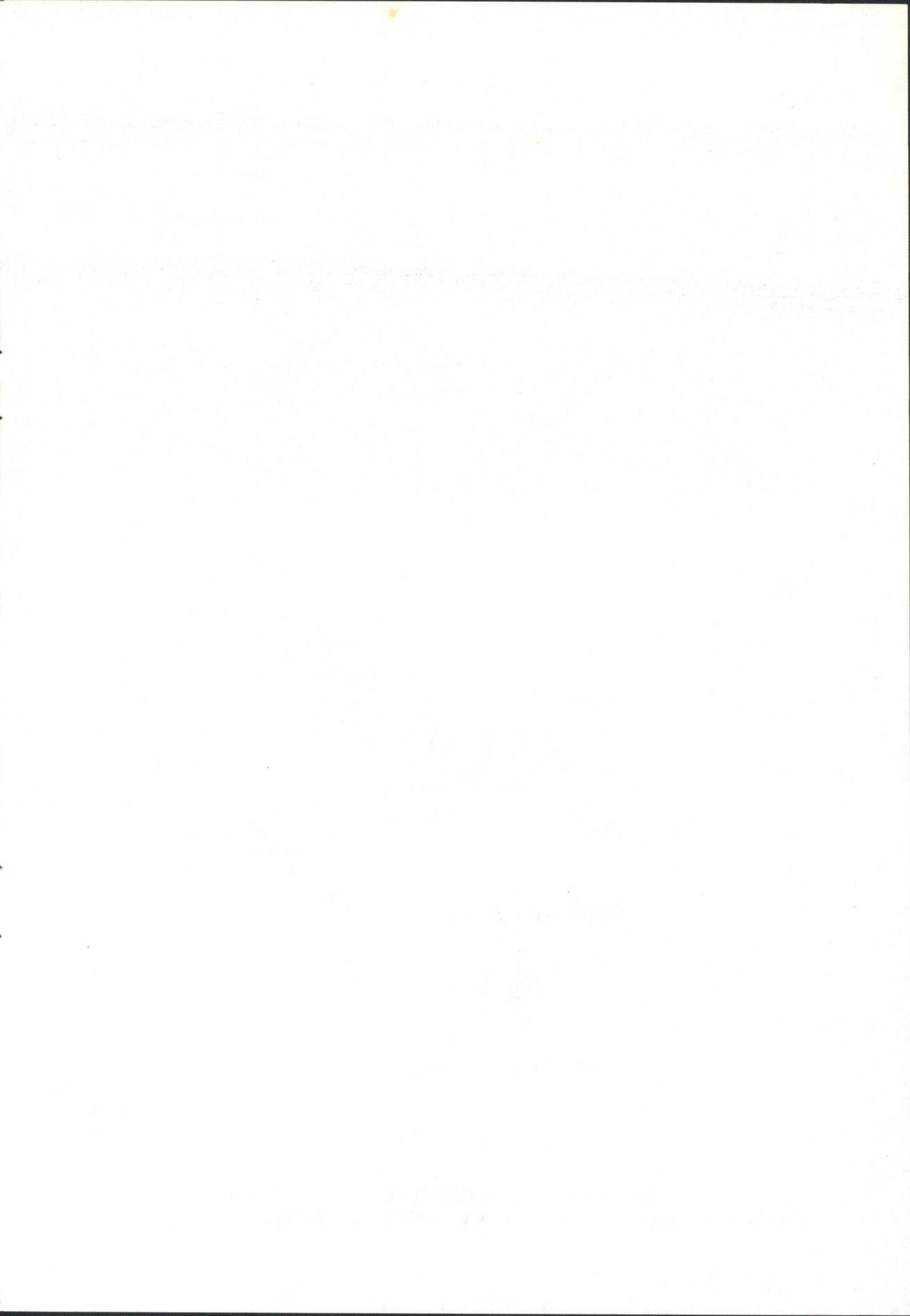
CHILDREN (CARE AND PROTECTION) FURTHER AMENDMENT BILL 1988

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Amendment of Children (Care and Protection) Act 1987 No. 54
- SCHEDULE 1—AMENDMENTS
-



This PUBLIC BILL originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, , 1988*

NEW SOUTH WALES



Act No. , 1988

An Act to amend the Children (Care and Protection) Act 1987 so as to make further provision with respect to the care and protection of children.

Children (Care and Protection) Further Amendment 1988

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Children (Care and Protection) Further Amendment Act 1988.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Children (Care and Protection) Act 1987 No. 54

3. The Children (Care and Protection) Act 1987 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**)—

(a) Section 3 (1), definition of “child care service”—

15 From paragraph (a) omit “and that is provided for fee, gain or reward;”, insert instead “; or”.

(b) Section 3 (1), definition of “child care service”—

Omit paragraph (b).

(c) Section 3 (1), definition of “premises”—

20 Omit the definition, insert instead:

“premises” includes a structure, building, vehicle, vessel or place (including a public or other place), whether built on or not, and any part thereof;

(d) Section 3 (1), definition of “protected person”—

25 After paragraph (a), insert:

(a1) a child who is under the guardianship of the Director-General pursuant to section 34 (Guardianship of child awaiting adoption) of the Adoption of Children Act 1965;

(e) Section 3 (1)—

30 After the definition of “protected person”, insert:

“public place” means—

(a) a place (whether or not covered by water); or

(b) a part of premises,

*Children (Care and Protection) Further Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

that is open to the public, or is used by the public, whether or not on payment of money or other consideration, whether or not it is ordinarily so open or used and whether or not the public to whom it is open consists only of a limited class of persons;

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(f) Section 3 (1)—

After the definition of “residential child care centre”, insert:

“vehicle” includes—

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- (a) a motor vehicle (whether or not still capable of being driven); and
- (b) a train or other vehicle used on a railway; and
- (c) a caravan or anything else constructed to be drawn by a vehicle or animal.

(g) Section 3 (4)—

15

Omit the subsection.

(h) After section 3 (9), insert:

(9A) For the purposes of this Act, a person who is in a vehicle in any place shall be taken to be in that place.

(2) Section 12A—

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After section 12, insert—

Provision of care by the Director-General

25

12A. (1) The Director-General may place a child who is in the care of the Director-General by virtue of any provision of this Act (Part 6 excepted) in the care of any person approved by the Director-General and willing to have the care of the child.

(2) For the purposes of this Act, a reference to a child who is in the care of the Director-General includes a reference to a child who is placed in the care of some other person under this section.

(3) Section 20B (**Special medical treatment**)—

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After section 20B (2), insert:

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(2A) Consent to the carrying out of special medical treatment on a child who is under the age of 16 years shall not be given unless the Supreme Court is satisfied that it is necessary to carry out the treatment on the child in order to save the child’s life or to prevent serious damage to the child’s health.

*Children (Care and Protection) Further Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*(4) Section 21 (**Special medical examinations**)—

(a) Section 21 (6)—

Omit the subsection, insert instead:

(6) The Children's Court, on the application of the Minister,
and on being satisfied that—

(a) consent to a special medical examination is unreasonably refused; or

(b) it is impracticable for any reason (including the need for a special medical examination to be carried out as soon as practicable, whether because of the medical condition of the child or otherwise) to obtain consent to a special medical examination; or

(c) it is more probable than not that the child has been sexually assaulted by a parent whose consent to a special medical examination would otherwise be required to be sought,

may order that the examination be carried out without the necessity for any such consent.

(b) After section 21 (10), insert:

(10A) Nothing in this section requires—

(a) any consent to a special medical examination to be obtained; or

(b) any nomination or preference referred to in subsection (7) to be sought,

from a parent against whom criminal proceedings have been commenced but not concluded, or a parent who has been found guilty of an offence, in relation to an alleged sexual assault on the child.

(c) Section 21 (12), definition of "special medical examination"—

At the end of the definition, insert " , and includes any such examination carried out in the course of a medical examination under section 23".

(5) Section 50 (**Children not to be employed in certain cases unless licensed**)—

Section 50 (2) (b)—

Omit the paragraph.

SCHEDULE 1—AMENDMENTS—*continued*(6) Section 53 (**Licences to employ children for certain purposes**)—

(a) Section 53 (1)—

Omit the subsection, insert instead:

5 (1) In this section, a reference to a child does not include a reference to a child who is of or above the age of 15 years.

(b) Section 53 (6)—

Omit the subsection, insert instead:

10 (6) Except in such circumstances, and subject to such conditions, as may be prescribed by the regulations, a licence shall not authorise a child to be employed between the hours of 10 p.m. on any day and 6 a.m. on the following day.

(7) Section 58 (**Service of care applications etc.**)—

(a) After section 58 (1), insert:

15 (1A) The date set down for the hearing of a care application shall be not later than 8 days after the application was made.

(b) Section 58 (2)—

Omit the subsection, insert instead:

20 (2) Failure to comply with the requirements of this section in relation to a care application does not vitiate the application or any decision of the Children's Court on the application.

(8) Section 59 (**Removal of children pursuant to order of the Children's Court**)—

(a) Section 59 (1) (a)—

25 Omit "any premises", insert instead "the premises specified in the order".

(b) After section 59 (2), insert:

(3) In exercising the powers conferred by this section, an authorised officer or member of the police force may observe and converse with any person present in the premises concerned.

30 (9) Section 60 (**Removal of children without warrant**)—

After section 60 (3), insert:

(4) In exercising the powers conferred by this section, an authorised officer or member of the police force may observe and converse with any person present in the premises concerned.

*Children (Care and Protection) Further Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*(10) Section 61 (**Power of search and removal of children in need of care**)—

After section 61 (6), insert:

(7) In exercising the powers conferred by this section, an authorised officer or member of the police force may observe and converse with any person present in the premises concerned.

(11) Section 61A—

After section 61, insert:

Child to be informed of reasons for removal etc.

61A. (1) An officer or member of the police force who removes a child from any premises under section 59, 60 or 61 shall cause notice of—

- (a) the name of the officer or member of the police force and of the fact that the officer or member of the police force is an officer or member of the police force; and
- (b) the reason for which the child is being removed from the premises; and
- (c) the fact that the law authorises the officer or member of the police force to remove the child from the premises; and
- (d) the nature, and address, of the place to which the child is being removed; and
- (e) what is likely to happen in relation to the care of the child as a consequence of his or her being removed from the premises,

to be given to the person (if any) on the premises who appears to the officer or member of the police force to have the care of the child for the time being and, in the case of a child who is of or above the age of 10 years, to the child.

(2) In giving such notice to a child, an officer or member of the police force shall do so in language that can be readily understood by the child.

(3) Failure to comply with any provision of this section does not vitiate any thing done under any other provision of this Act.

(12) Section 62 (**Care of children pending care proceedings**)—

Section 62 (7)—

Omit the subsection.

SCHEDULE 1—AMENDMENTS—*continued*

(13) Sections 62A, 62B—

After section 62, insert:

Authorised officer may assume care of child in hospital etc.

62A. (1) If—

- 5 (a) an authorised officer suspects on reasonable grounds that a child is in need of care by virtue of the child's being in immediate danger of abuse; and
- 10 (b) the officer is satisfied that it is not in the best interests of the child that the child be removed from the premises in which the child is currently located,

the officer may, instead of removing the child from the premises pursuant to section 60 or 61, assume the care of the child in the name of, and on behalf of, the Director-General by means of an order in writing, signed by the officer and served on the person (whether or not a parent of the child) who appears to the officer to be in charge of the premises.

15 (2) A child does not cease to be in immediate danger of abuse merely because of the existence of temporary arrangements (including hospital accommodation) for the care of the child.

20 (3) An order under this section ceases to have effect, unless sooner revoked, on the expiration of 3 days after it was made unless the Director-General has, before the expiration of that period, made a care application with respect to the child.

25 (4) An order under this section does not cease to have effect merely because the child to whom it relates is transferred to different premises.

Duties of Director-General to give information to certain persons

62B. (1) If a child is in the care of the Director-General pursuant to section 62 or 62A, the Director-General—

30 (a) shall, as soon as practicable, cause notice of the fact that the child is in the care of the Director-General, and the fact that an application may be made to the Director-General for the discharge of the child from the care of the Director-General and the procedures for making such an application, to be given to—

35 (i) in the case of a child who is of or above the age of 10 years—the child; and

40 (ii) in the case of a child who is of or above the age of 16 years—such person as the child may nominate, being a person who can reasonably be located; and

*Children (Care and Protection) Further Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

(iii) each person responsible for the child who can reasonably be located; and

(b) shall, in the case of a child who is under the age of 16 years, ensure that the child's parents are kept informed of the whereabouts of the child, unless the Director-General has reason to believe that the disclosure of the child's whereabouts would be prejudicial to the welfare and interests of the child.

(2) The Children's Court, on the hearing of a care application made in respect of a child whose whereabouts have not been disclosed to a parent of the child, may order that the Director-General disclose the whereabouts of the child to such of the parents of the child as it may direct.

(3) Failure to comply with any provision of this section does not vitiate any thing done under any other provision of this Act.

(14) Section 63 (**Director-General etc. to record reasons for certain actions etc.**)—

(a) After section 63 (1), insert:

(1A) If an authorised officer makes an order under section 62A with respect to a child, the officer shall record his or her reasons for doing so and cause a copy of that record to be served on—

(a) in the case of a child who is of or above the age of 10 years—the child; and

(b) each person responsible for the child who can reasonably be located.

(b) Section 63 (2)—

Omit the subsection.

(15) Section 68 (**Publication of names etc.**)—

(a) Section 68 (3) (b)—

Omit "14" wherever occurring, insert instead "16".

(b) Section 68 (3) (b) (i)—

Omit "Minister", insert instead "Children's Court".

(16) Section 71A—

After section 71, insert:

Care proceedings unaffected by pending criminal proceedings

71A. The jurisdiction of the Children's Court to hear and determine proceedings under this Part with respect to a child is not affected merely because criminal proceedings are pending against—

*Children (Care and Protection) Further Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

- (a) the child; or
 (b) any other party to the proceedings; or
 (c) any other person,
 whether or not the criminal proceedings have arisen out of the
 same or similar facts as those out of which the proceedings under
 this Part have arisen.
- 5
- (17) Section 73 (**Restrictions on making orders under sec. 72**)—
- (a) Section 73 (3)—
 Omit “(i) or (iii)”, insert instead “(ii)”.
- 10
- (b) Section 73 (3)—
 Omit “section 72 (1) (c) (ii)”, insert instead “that subparagraph”.
- (18) Section 74 (**Assessment reports**)—
- (a) Section 74 (3)—
 After “a child”, insert “or to any other person appearing in the
 proceedings (other than a barrister or solicitor representing the
 child or any other such person)”.
- 15
- (b) After section 74 (3), insert:
- (4) The Children’s Court may make such orders as it considers
 appropriate to prevent a child from becoming aware of
 information contained in an assessment report if it is of the
 opinion that the prejudicial effect of the child being unaware of
 that information is outweighed by the psychological harm that is
 likely to be occasioned to the child if the child becomes aware of
 that information.
- 20
- (19) Section 77 (**Care of children during adjournments**)—
- (a) Section 77 (1)—
 After “with respect to a child,”, insert “or on an application for
 a rescission or variation of an order under section 72 (1) (b) or
 (c) with respect to a child,”.
- 25
- (b) Section 77 (1) (a)—
 After “Director-General” where firstly occurring, insert “or of
 some other person in whose care the child has been placed
 pursuant to this section”.
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- (c) Section 77 (1) (a) (v)—
 After “Director-General”, insert “or of some other person
 approved by the Children’s Court and willing to have the care of
 the child”.
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*Children (Care and Protection) Further Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

(d) Section 77 (1) (b)—

After “Director-General” where firstly occurring, insert “or of some other person in whose care the child has been placed pursuant to this section”.

5 (e) Section 77 (1) (b) (i), (ii), (iii)—

After “Director-General” wherever occurring, insert “or that other person”.

(f) After section 77 (1), insert:

10 (1A) In addition to any order made under subsection (1), the Children’s Court may make an order granting or prohibiting access, either unconditionally or subject to conditions, to the child to whom the order relates.

(g) Section 77 (2)—

After “subsection (1)”, insert “or (1A)”.

15 (h) Section 77 (5)—

After “Director-General” where firstly occurring, insert “or other person”.

(i) Section 77 (5)—

20 Omit “Director-General’s care”, insert instead “care of the Director-General or that other person”.

(j) Section 77 (7)—

After “Director-General”, insert “or other person”.

(20) Section 81 (**Appeals**)—

After section 81 (4), insert:

25 (4A) Without limiting the generality of subsection (4), the District Court may confirm, vary or set aside the decision of the Children’s Court.

(21) Section 124 (**Regulations**)—

After section 124 (1) (d), insert:

30 (d1) the fostering of children;

(22) Section 125—

After section 124, insert:

Savings and transitional provisions

125. Schedule 3 has effect.

*Children (Care and Protection) Further Amendment 1988***SCHEDULE 1—AMENDMENTS—*continued***

(23) Schedule 3—

After Schedule 2, insert:

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 125)

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PART 1—GENERAL**Savings and transitional regulations**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Children (Care and Protection) Further Amendment Act 1988.

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(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

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(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

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(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**PART 2—PROVISIONS CONSEQUENT ON THE ENACTMENT OF
THE CHILDREN (CARE AND PROTECTION) FURTHER
AMENDMENT ACT 1988**

Definition

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2. In this Part—

“amending Act” means the Children (Care and Protection) Further Amendment Act 1988.

Current care applications

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3. The amendment made by Schedule 1 (7) (a) to the amending Act does not apply to any proceedings on a care application made in accordance with Part 5 of this Act before the commencement of that amendment.

Children (Care and Protection) Further Amendment 1988

SCHEDULE 1—AMENDMENTS—*continued*

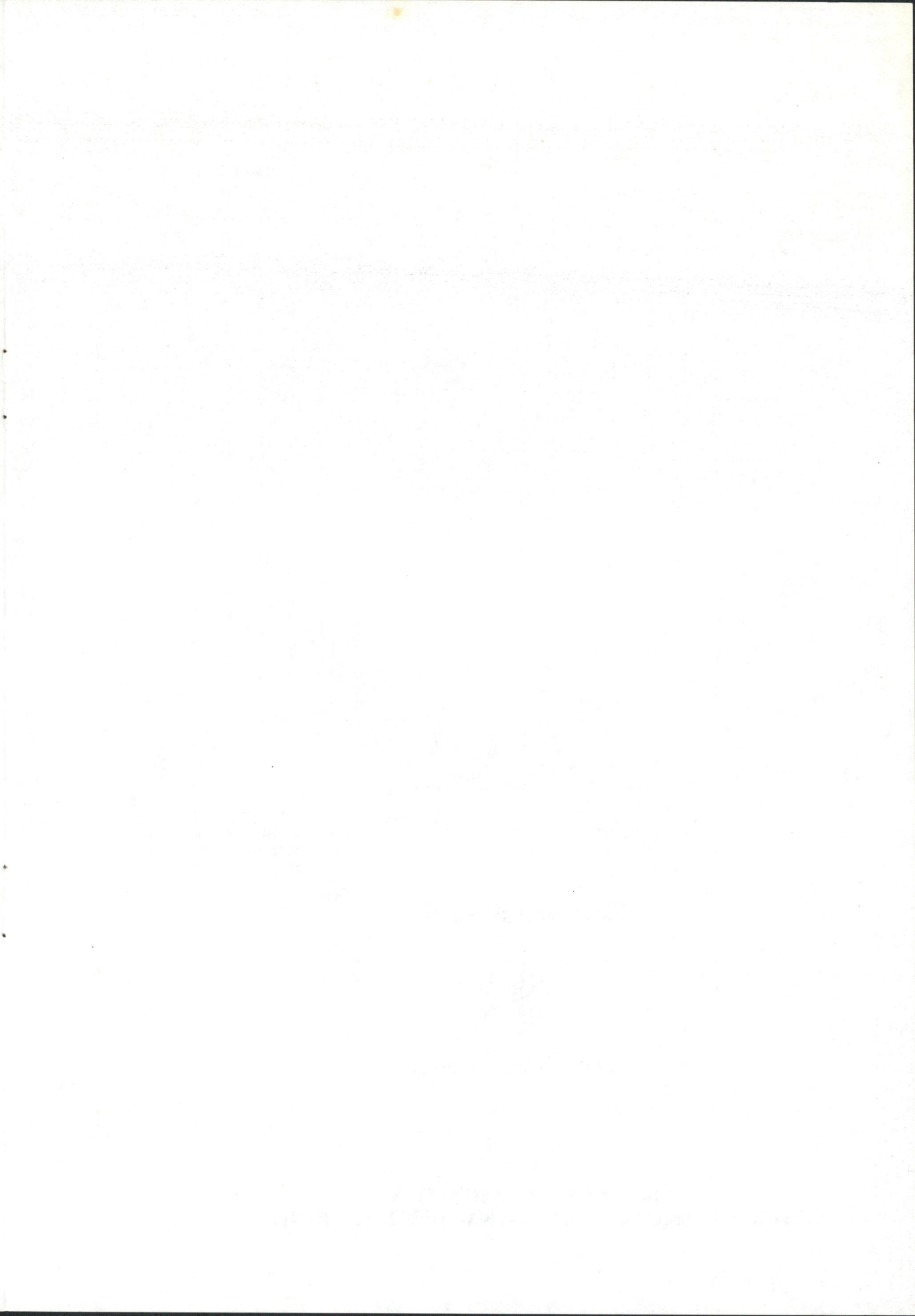
Orders for the removal of children from premises

4. The amendment made by Schedule 1 (8) (a) to the amending Act does not apply to any order made by the Children's Court under section 59 of this Act before the commencement of that amendment.

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Consents for publication of names etc.

5. The amendments made by Schedule 1 (15) to the amending Act do not apply to any consent given by the Minister under section 68 of this Act before the commencement of those amendments.





LEGISLATIVE COUNCIL

CHILDREN (CARE AND PROTECTION) FURTHER AMENDMENT BILL 1988Amendments to be moved in Committee

Mrs Chadwick

1. Page 6, Schedule 1, line 9. Omit "Section 62A", insert instead "Sections 62A, 62B".
2. Page 6, Schedule 1. After line 34, insert:

Duties of Director-General to give information to certain persons

62B. (1) If a child is in the care of the Director-General pursuant to section 62 or 62A, the Director-General -

- (a) shall, as soon as practicable, cause notice of the fact that the child is in the care of the Director-General, and the fact that an application may be made to the Director-General for the discharge of the child from the care of the Director-General and the procedures for making such an application, to be given to -

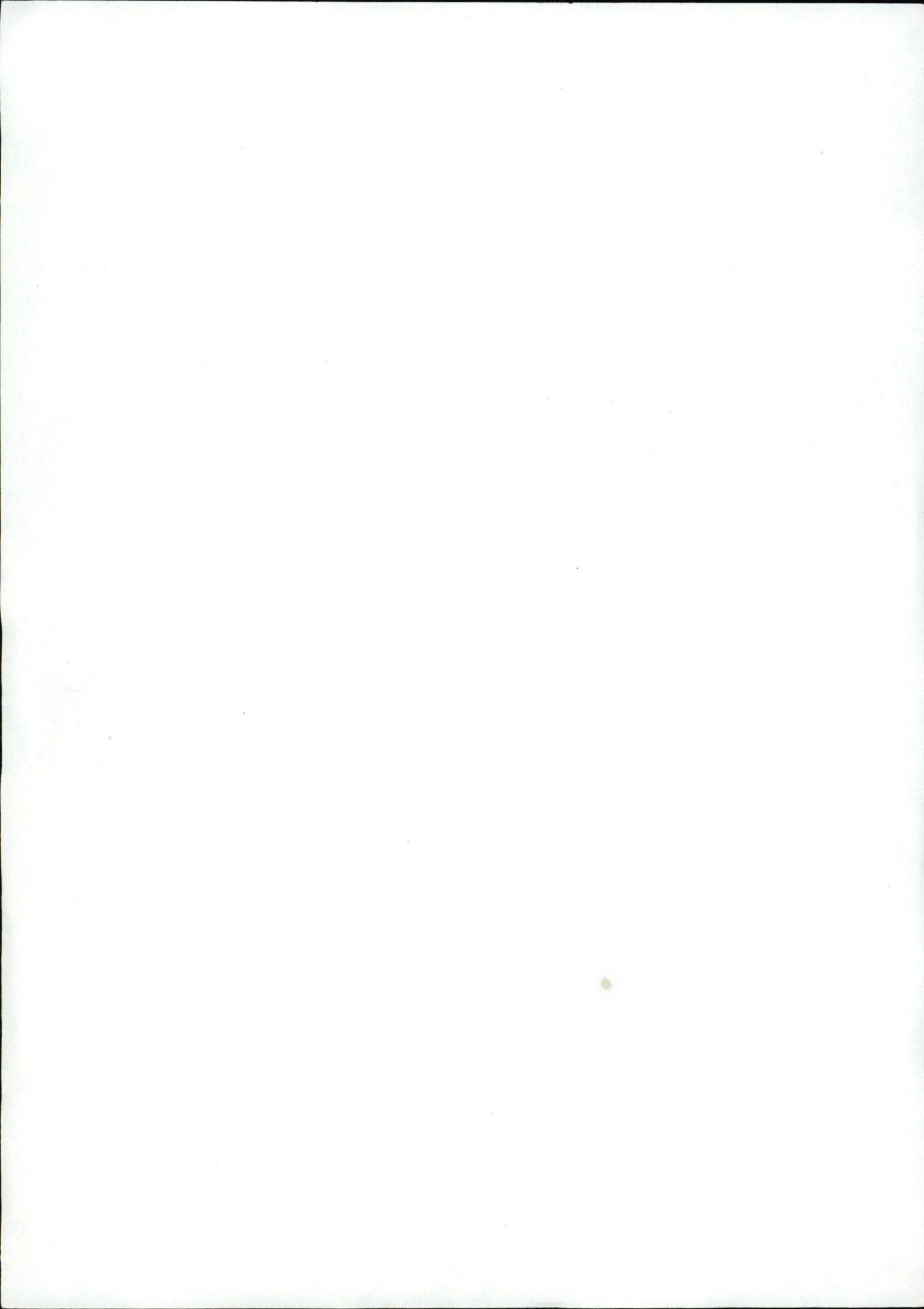
- (i) in the case of a child who is of or above the age of 10 years - the child; and
- (ii) in the case of a child who is of or above the age of 16 years - such person as the child may nominate, being a person who can reasonably be located; and
- (iii) each person responsible for the child who can reasonably be located; and

- (b) shall, in the case of a child who is under the age of 16 years, ensure that the child's parents are kept informed of the whereabouts of the child, unless the Director-General has reason to believe that the disclosure of the child's whereabouts would be prejudicial to the welfare and interests of the child.

(2) The Children's Court, on the hearing of a care application made in respect of a child whose whereabouts have not been disclosed to a parent of the child, may order that the Director-General disclose the whereabouts of the child to such of the parents of the child as it may direct.

(3) Failure to comply with any provision of this section does not vitiate any thing done under any other provision of this Act.

3. Page 6, Schedule 1, lines 35, 36. Omit "(Director-General etc. to give information to certain persons)", insert instead "(Director-General etc. to record reasons for certain actions etc.)".
 4. Page 7, Schedule 1. After line 4, insert:
 - (b) Section 63 (2) -
Omit the subsection.
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LEGISLATIVE COUNCIL

CHILDREN (CARE AND PROTECTION) FURTHER AMENDMENT BILL 1988

Amendment to be moved in Committee

Mrs Grusovin

Page 6, Schedule 1. After line 5, insert:

(11) Section 61A---

After section 61, insert:

Child to be informed of reasons for removal etc.

61A. (1) An officer or member of the police force who removes a child from any premises under section 59, 60 or 61 shall cause notice of -

- (a) the name of the officer or member of the police force and of the fact that the officer or member of the police force is an officer or member of the police force; and
- (b) the reason for which the child is being removed from the premises; and
- (c) the fact that the law authorises the officer or member of the police force to remove the child from the premises; and
- (d) the nature, and address, of the place to which the child is being removed; and
- (e) what is likely to happen in relation to the care of the child as a consequence of his or her being removed from the premises,

to be given to the person (if any) on the premises who appears to the officer or member of the police force to have the care of the child for the time being and, in the case of a child who is of or above the age of 10 years, to the child.

(2) In giving such notice to a child, an officer or member of the police force shall do so in language that can be readily understood by the child.

(3) Failure to comply with any provision of this section does not vitiate any thing done under any other provision of this Act.

**CHILDREN (CARE AND PROTECTION) FURTHER
AMENDMENT BILL 1988**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to make miscellaneous amendments to the Children (Care and Protection) Act 1987 with respect to the care and protection of children.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

SCHEDULE 1—AMENDMENTS

Section 3 (Definitions)

Schedule 1 (1) (a) amends paragraph (a) of the definition of "child care service" in section 3 (1) of the Principal Act so as to extend that definition to include services that are provided otherwise than for fee, gain or reward.

Schedule 1 (1) (b) repeals paragraph (b) of that definition, that paragraph being redundant as a consequence of the amendment made by Schedule 1 (1) (a).

Schedule 1 (1) (c) substitutes the definition of "premises" in section 3 (1) of the Principal Act so as to clarify the ambit of that expression.

Schedule 1 (1) (d) amends the definition of "protected person" in section 3 (1) of the Principal Act so as to extend that definition to include children who are under the guardianship of the Director-General of the Department of Family and Community Services pending adoption under the Adoption of Children Act 1965.

Schedule 1 (1) (e) inserts a new definition of "public place" into section 3 (1) of the Principal Act so as to clarify the ambit of that expression.

Children (Care and Protection) Further Amendment 1988

Schedule 1 (1) (f) inserts a new definition of "vehicle" into section 3 (1) of the Principal Act so as to clarify the ambit of that expression.

Schedule 1 (1) (g) amends section 3 of the Principal Act as a consequence of the amendment to be made by Schedule 1 (1) (b).

Schedule 1 (1) (h) further amends section 3 of the Principal Act so as to provide that a person who is in a vehicle in any place shall, for the purposes of the Principal Act, be taken to be in that place.

Section 12A (Provision of care by the Director-General)

Schedule 1 (2) inserts a new section 12A into the Principal Act. The proposed section will allow the Director-General to place a child who is in the care of the Director-General into the care of some other person who is willing to have the care of the child. A similar power already exists under section 62 of the Principal Act.

Section 20B (Special medical treatment)

Schedule 1 (3) amends section 20B of the Principal Act (to be inserted by the Children (Care and Protection) (Disability Services and Guardianship) Amendment Act 1987 No. 259) so as to restrict the power of the Supreme Court to consent to the carrying out of special medical treatment (that is, treatment that is likely to result in a person's becoming sterile) on children who are under the age of 16 years.

Section 21 (Special medical examinations)

Schedule 1 (4) (a) amends section 21 of the Principal Act so as to enable the Children's Court to order a special medical examination of a child if it is satisfied that it is more probable than not that the child has been sexually assaulted by a parent whose consent to the examination would otherwise be required to be sought.

Schedule 1 (4) (b) further amends section 21 of the Principal Act so as to ensure that the rights conferred by that section on a parent of a child are not conferred on a parent against whom criminal proceedings have been commenced but not concluded, or a parent who has been found guilty of an offence, in relation to an alleged sexual assault on the child.

Schedule 1 (4) (c) further amends section 21 of the Principal Act so as to ensure that the provisions of that section apply to medical examinations carried out under section 23 of the Principal Act.

Section 50 (Children not to be employed in certain cases unless licensed)

Schedule 1 (5) amends section 50 of the Principal Act so as to provide that children under the age of 15 years are not exempt from the licensing requirements of that section merely because they are exempt from attending school.

Section 53 (Licences to employ children for certain purposes)

Schedule 1 (6) (a) amends section 53 of the Principal Act as a consequence of the amendment to be made by Schedule 1 (5).

Schedule 1 (6) (b) further amends section 53 of the Principal Act so as to enable the regulations under the Principal Act to allow licences to be issued authorising a child to be employed between 10 p.m. and 6 a.m.

Section 58 (Service of care applications etc.)

Schedule 1 (7) (a) amends section 58 of the Principal Act so as to ensure that the date set down for the hearing of a care application is no later than 8 days after the day on which the application was made.

Children (Care and Protection) Further Amendment 1988

Schedule 1 (7) (b) further amends section 58 of the Principal Act as a consequence of the amendment to be made by Schedule 1 (7) (a).

Section 59 (Removal of children pursuant to order of the Children's Court)

Schedule 1 (8) (a) amends section 59 of the Principal Act so as to ensure that an order made by the Children's Court under that section must specify the premises to which it relates.

Schedule 1 (8) (b) amends section 59 of the Principal Act so as to provide that the power to enter premises under that section includes the power to observe and converse with persons who are present in those premises.

Section 60 (Removal of children without warrant)

Schedule 1 (9) amends section 60 of the Principal Act so as to provide that the power to enter premises under that section includes the power to observe and converse with persons who are present in those premises.

Section 61 (Power of search and removal of children in need of care)

Schedule 1 (10) amends section 61 of the Principal Act so as to provide that the power to enter premises under that section includes the power to observe and converse with persons who are present in those premises.

Section 62 (Care of children pending care proceedings)

Schedule 1 (11) amends section 62 of the Principal Act as a consequence of the amendment to be made by Schedule 1 (2).

Section 62A (Authorised officer may assume care of child in hospital etc.)

Schedule 1 (12) inserts a new section 62A into the Principal Act. The proposed section will allow the care of a child who is in immediate danger of abuse to be assumed in the name of, and on behalf of, the Director-General without the child having to be removed from any premises under section 59, 60 or 61 of the Principal Act.

Section 63 (Director-General etc. to give information to certain persons)

Schedule 1 (13) amends section 63 of the Principal Act so that, where the care of a child has been assumed under proposed section 62A, the child, and a person responsible for the child, will be required to be notified of the reasons for that action having been taken.

Section 68 (Publication of names etc.)

Schedule 1 (14) (a) amends section 68 of the Principal Act so as to increase, from 14 to 16, the age above which a consent to the publication of information concerning proceedings on a care application may be given.

Schedule 1 (14) (b) further amends section 68 of the Principal Act so as to provide that such a consent must be given by the Children's Court rather than, as is presently the case, by the Minister.

Section 71A (Care proceedings unaffected by pending criminal proceedings)

Schedule 1 (15) inserts a new section 71A into the Principal Act. The proposed section will ensure that the hearing of proceedings on a care application is unaffected by the existence of concurrent criminal proceedings arising out of the same or similar facts as those concerned in the proceedings on the care application.

Children (Care and Protection) Further Amendment 1988

Section 73 (Restrictions on making orders under sec. 72)

Schedule 1 (16) (a) and (b) amend section 73 of the Principal Act so as to vary the matters that the Children's Court must take into consideration in deciding what kind of order to make under section 72 of the Principal Act in relation to a child who belongs to a particular cultural group. The new requirement is to be that the Court shall not make an order placing the child in another person's care without having considered the possibility of placing the child in the care of a person who belongs to the same cultural group.

Section 74 (Assessment reports)

Schedule 1 (17) (a) amends section 74 of the Principal Act so as to enable the Children's Court to deny all persons appearing in proceedings on a care application (other than a barrister or solicitor representing any such person) access to assessment reports prepared for the purposes of the proceedings.

Schedule 1 (17) (b) further amends section 74 of the Principal Act so as to enable the Children's Court to make such orders as it considers appropriate to prevent a child from becoming aware of information contained in such a report.

Section 77 (Care of children during adjournments)

Schedule 1 (18) (a) amends section 77 of the Principal Act so as to apply the provisions of that section to proceedings for the rescission or variation of an order under section 72 of the Principal Act.

Schedule 1 (18) (b)–(e) and (h)–(j) further amend section 77 of the Principal Act so as to enable the Children's Court to place a child in the care of a person approved by the Court during the adjournment of proceedings.

Schedule 1 (18) (f) and (g) further amend section 77 of the Principal Act so as to enable the Children's Court to make orders permitting or prohibiting access to a child during the adjournment of proceedings with respect to the child.

Section 81 (Appeals)

Schedule 1 (19) amends section 81 of the Principal Act so as to remove any doubt as to the District Court's powers to confirm, vary or set aside an order of the Children's Court against which an appeal has been made to the District Court under that section.

Section 124 (Regulations)

Schedule 1 (20) amends section 124 of the Principal Act so as to ensure that there is express power in the Principal Act to enable the Governor-in-Council to make regulations with respect to the fostering of children.

Section 125 (Savings and transitional provisions)

Schedule 1 (21) inserts a new section 125 into the Principal Act. The proposed section gives effect to the proposed Schedule 3 of savings and transitional provisions.

Schedule 3 (Savings and transitional provisions)

Schedule 1 (22) inserts a new Schedule 3 into the Principal Act. The proposed Schedule contains—

- (a) a power to make regulations of a savings or transitional nature (Part 1: clause 1);
- and

Children (Care and Protection) Further Amendment 1988

- (b) specific savings and transitional provisions consequent on the enactment of the proposed Act (Part 2: clauses 2-5).
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**CHILDREN (CARE AND PROTECTION) FURTHER
AMENDMENT BILL 1988**

NEW SOUTH WALES



No. , 1988

A BILL FOR

An Act to amend the Children (Care and Protection) Act 1987 so as to make further provision with respect to the care and protection of children.

Children (Care and Protection) Further Amendment 1988

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Children (Care and Protection) Further Amendment Act 1988.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Children (Care and Protection) Act 1987 No. 54

3. The Children (Care and Protection) Act 1987 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**)—

(a) Section 3 (1), definition of “child care service”—

15 From paragraph (a) omit “and that is provided for fee, gain or reward;”, insert instead “; or”.

(b) Section 3 (1), definition of “child care service”—

Omit paragraph (b).

(c) Section 3 (1), definition of “premises”—

20 Omit the definition, insert instead:

“premises” includes a structure, building, vehicle, vessel or place (including a public or other place), whether built on or not, and any part thereof;

(d) Section 3 (1), definition of “protected person”—

25 After paragraph (a), insert:

(a1) a child who is under the guardianship of the Director-General pursuant to section 34 (Guardianship of child awaiting adoption) of the Adoption of Children Act 1965;

(e) Section 3 (1)—

30 After the definition of “protected person”, insert:

“public place” means—

- (a) a place (whether or not covered by water); or
- (b) a part of premises,

CHILDREN (CARE AND PROTECTION) FURTHER AMENDMENT BILL 1988

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Amendment of Children (Care and Protection) Act 1987 No. 54
- SCHEDULE 1—AMENDMENTS
-



SCHEDULE 1—AMENDMENTS—*continued*(6) Section 53 (**Licences to employ children for certain purposes**)—

(a) Section 53 (1)—

Omit the subsection, insert instead:

5 (1) In this section, a reference to a child does not include a reference to a child who is of or above the age of 15 years.

(b) Section 53 (6)—

Omit the subsection, insert instead:

10 (6) Except in such circumstances, and subject to such conditions, as may be prescribed by the regulations, a licence shall not authorise a child to be employed between the hours of 10 p.m. on any day and 6 a.m. on the following day.

(7) Section 58 (**Service of care applications etc.**)—

(a) After section 58 (1), insert:

15 (1A) The date set down for the hearing of a care application shall be not later than 8 days after the application was made.

(b) Section 58 (2)—

Omit the subsection, insert instead:

20 (2) Failure to comply with the requirements of this section in relation to a care application does not vitiate the application or any decision of the Children's Court on the application.

(8) Section 59 (**Removal of children pursuant to order of the Children's Court**)—

(a) Section 59 (1) (a)—

25 Omit "any premises", insert instead "the premises specified in the order".

(b) After section 59 (2), insert:

(3) In exercising the powers conferred by this section, an authorised officer or member of the police force may observe and converse with any person present in the premises concerned.

30 (9) Section 60 (**Removal of children without warrant**)—

After section 60 (3), insert:

(4) In exercising the powers conferred by this section, an authorised officer or member of the police force may observe and converse with any person present in the premises concerned.

SCHEDULE 1—AMENDMENTS—*continued*(10) Section 61 (**Power of search and removal of children in need of care**)—

After section 61 (6), insert:

(7) In exercising the powers conferred by this section, an authorised officer or member of the police force may observe and converse with any person present in the premises concerned.

(11) Section 62 (**Care of children pending care proceedings**)—

Section 62 (7)—

Omit the subsection.

(12) Section 62A—

After section 62, insert:

Authorised officer may assume care of child in hospital etc.

62A. (1) If—

(a) an authorised officer suspects on reasonable grounds that a child is in need of care by virtue of the child's being in immediate danger of abuse; and

(b) the officer is satisfied that it is not in the best interests of the child that the child be removed from the premises in which the child is currently located,

the officer may, instead of removing the child from the premises pursuant to section 60 or 61, assume the care of the child in the name of, and on behalf of, the Director-General by means of an order in writing, signed by the officer and served on the person (whether or not a parent of the child) who appears to the officer to be in charge of the premises.

(2) A child does not cease to be in immediate danger of abuse merely because of the existence of temporary arrangements (including hospital accommodation) for the care of the child.

(3) An order under this section ceases to have effect, unless sooner revoked, on the expiration of 3 days after it was made unless the Director-General has, before the expiration of that period, made a care application with respect to the child.

(4) An order under this section does not cease to have effect merely because the child to whom it relates is transferred to different premises.

(13) Section 63 (**Director-General etc. to give information to certain persons**)—

After section 63 (1), insert:

(1A) If an authorised officer makes an order under section 62A with respect to a child, the officer shall record his or her reasons for doing so and cause a copy of that record to be served on—

SCHEDULE 1—AMENDMENTS—*continued*

that is open to the public, or is used by the public, whether or not on payment of money or other consideration, whether or not it is ordinarily so open or used and whether or not the public to whom it is open consists only of a limited class of persons;

5

(f) Section 3 (1)—

After the definition of “residential child care centre”, insert:

“vehicle” includes—

10

(a) a motor vehicle (whether or not still capable of being driven); and

(b) a train or other vehicle used on a railway; and

(c) a caravan or anything else constructed to be drawn by a vehicle or animal.

(g) Section 3 (4)—

15

Omit the subsection.

(h) After section 3 (9), insert:

(9A) For the purposes of this Act, a person who is in a vehicle in any place shall be taken to be in that place.

(2) Section 12A—

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After section 12, insert—

Provision of care by the Director-General

25

12A. (1) The Director-General may place a child who is in the care of the Director-General by virtue of any provision of this Act (Part 6 excepted) in the care of any person approved by the Director-General and willing to have the care of the child.

(2) For the purposes of this Act, a reference to a child who is in the care of the Director-General includes a reference to a child who is placed in the care of some other person under this section.

(3) Section 20B (**Special medical treatment**)—

30

After section 20B (2), insert:

35

(2A) Consent to the carrying out of special medical treatment on a child who is under the age of 16 years shall not be given unless the Supreme Court is satisfied that it is necessary to carry out the treatment on the child in order to save the child's life or to prevent serious damage to the child's health.

Children (Care and Protection) Further Amendment 1988

SCHEDULE 1—AMENDMENTS—*continued*

(4) Section 21 (**Special medical examinations**)—

(a) Section 21 (6)—

Omit the subsection, insert instead:

(6) The Children's Court, on the application of the Minister, and on being satisfied that—

(a) consent to a special medical examination is unreasonably refused; or

(b) it is impracticable for any reason (including the need for a special medical examination to be carried out as soon as practicable, whether because of the medical condition of the child or otherwise) to obtain consent to a special medical examination; or

(c) it is more probable than not that the child has been sexually assaulted by a parent whose consent to a special medical examination would otherwise be required to be sought,

may order that the examination be carried out without the necessity for any such consent.

(b) After section 21 (10), insert:

(10A) Nothing in this section requires—

(a) any consent to a special medical examination to be obtained; or

(b) any nomination or preference referred to in subsection (7) to be sought,

from a parent against whom criminal proceedings have been commenced but not concluded, or a parent who has been found guilty of an offence, in relation to an alleged sexual assault on the child.

(c) Section 21 (12), definition of "special medical examination"—

At the end of the definition, insert " , and includes any such examination carried out in the course of a medical examination under section 23".

(5) Section 50 (**Children not to be employed in certain cases unless licensed**)—

Section 50 (2) (b)—

Omit the paragraph.

Children (Care and Protection) Further Amendment 1988

SCHEDULE 1—AMENDMENTS—*continued*

- (a) in the case of a child who is of or above the age of 10 years—the child; and
- (b) each person responsible for the child who can reasonably be located.
- 5 (14) Section 68 (**Publication of names etc.**)—
- (a) Section 68 (3) (b)—
Omit “14” wherever occurring, insert instead “16”.
- (b) Section 68 (3) (b) (i)—
Omit “Minister”, insert instead “Children’s Court”.
- 10 (15) Section 71A—
After section 71, insert:
- Care proceedings unaffected by pending criminal proceedings**
- 15 71A. The jurisdiction of the Children’s Court to hear and determine proceedings under this Part with respect to a child is not affected merely because criminal proceedings are pending against—
- (a) the child; or
- (b) any other party to the proceedings; or
- (c) any other person,
- 20 whether or not the criminal proceedings have arisen out of the same or similar facts as those out of which the proceedings under this Part have arisen.
- (16) Section 73 (**Restrictions on making orders under sec. 72**)—
- (a) Section 73 (3)—
- 25 Omit “(i) or (iii)”, insert instead “(ii)”.
- (b) Section 73 (3)—
Omit “section 72 (1) (c) (ii)”, insert instead “that subparagraph”.
- (17) Section 74 (**Assessment reports**)—
- (a) Section 74 (3)—
- 30 After “a child”, insert “or to any other person appearing in the proceedings (other than a barrister or solicitor representing the child or any other such person)”.

*Children (Care and Protection) Further Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

(b) After section 74 (3), insert:

(4) The Children's Court may make such orders as it considers appropriate to prevent a child from becoming aware of information contained in an assessment report if it is of the opinion that the prejudicial effect of the child being unaware of that information is outweighed by the psychological harm that is likely to be occasioned to the child if the child becomes aware of that information.

(18) Section 77 (**Care of children during adjournments**)—

(a) Section 77 (1)—

After "with respect to a child," insert "or on an application for a rescission or variation of an order under section 72 (1) (b) or (c) with respect to a child,".

(b) Section 77 (1) (a)—

After "Director-General" where firstly occurring, insert "or of some other person in whose care the child has been placed pursuant to this section".

(c) Section 77 (1) (a) (v)—

After "Director-General", insert "or of some other person approved by the Children's Court and willing to have the care of the child".

(d) Section 77 (1) (b)—

After "Director-General" where firstly occurring, insert "or of some other person in whose care the child has been placed pursuant to this section".

(e) Section 77 (1) (b) (i), (ii), (iii)—

After "Director-General" wherever occurring, insert "or that other person".

(f) After section 77 (1), insert:

(1A) In addition to any order made under subsection (1), the Children's Court may make an order granting or prohibiting access, either unconditionally or subject to conditions, to the child to whom the order relates.

(g) Section 77 (2)—

After "subsection (1)", insert "or (1A)".

(h) Section 77 (5)—

After "Director-General" where firstly occurring, insert "or other person".

*Children (Care and Protection) Further Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

(i) Section 77 (5)—

Omit “Director-General’s care”, insert instead “care of the Director-General or that other person”.

(j) Section 77 (7)—

5 After “Director-General”, insert “or other person”.

(19) Section 81 (**Appeals**)—

After section 81 (4), insert:

10 (4A) Without limiting the generality of subsection (4), the District Court may confirm, vary or set aside the decision of the Children’s Court.

(20) Section 124 (**Regulations**)—

After section 124 (1) (d), insert:

(d1) the fostering of children;

(21) Section 125—

15 After section 124, insert:

Savings and transitional provisions

125. Schedule 3 has effect.

(22) Schedule 3—

After Schedule 2, insert:

20 **SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 125)

PART 1—GENERAL**Savings and transitional regulations**

25 1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Children (Care and Protection) Further Amendment Act 1988.

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

30 (3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

35 (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Children (Care and Protection) Further Amendment 1988

SCHEDULE 1—AMENDMENTS—*continued*

**PART 2—PROVISIONS CONSEQUENT ON THE ENACTMENT OF
THE CHILDREN (CARE AND PROTECTION) FURTHER
AMENDMENT ACT 1988**

Definition

5

2. In this Part—

“amending Act” means the Children (Care and Protection) Further Amendment Act 1988.

Current care applications

10

3. The amendment made by Schedule 1 (7) (a) to the amending Act does not apply to any proceedings on a care application made in accordance with Part 5 of this Act before the commencement of that amendment.

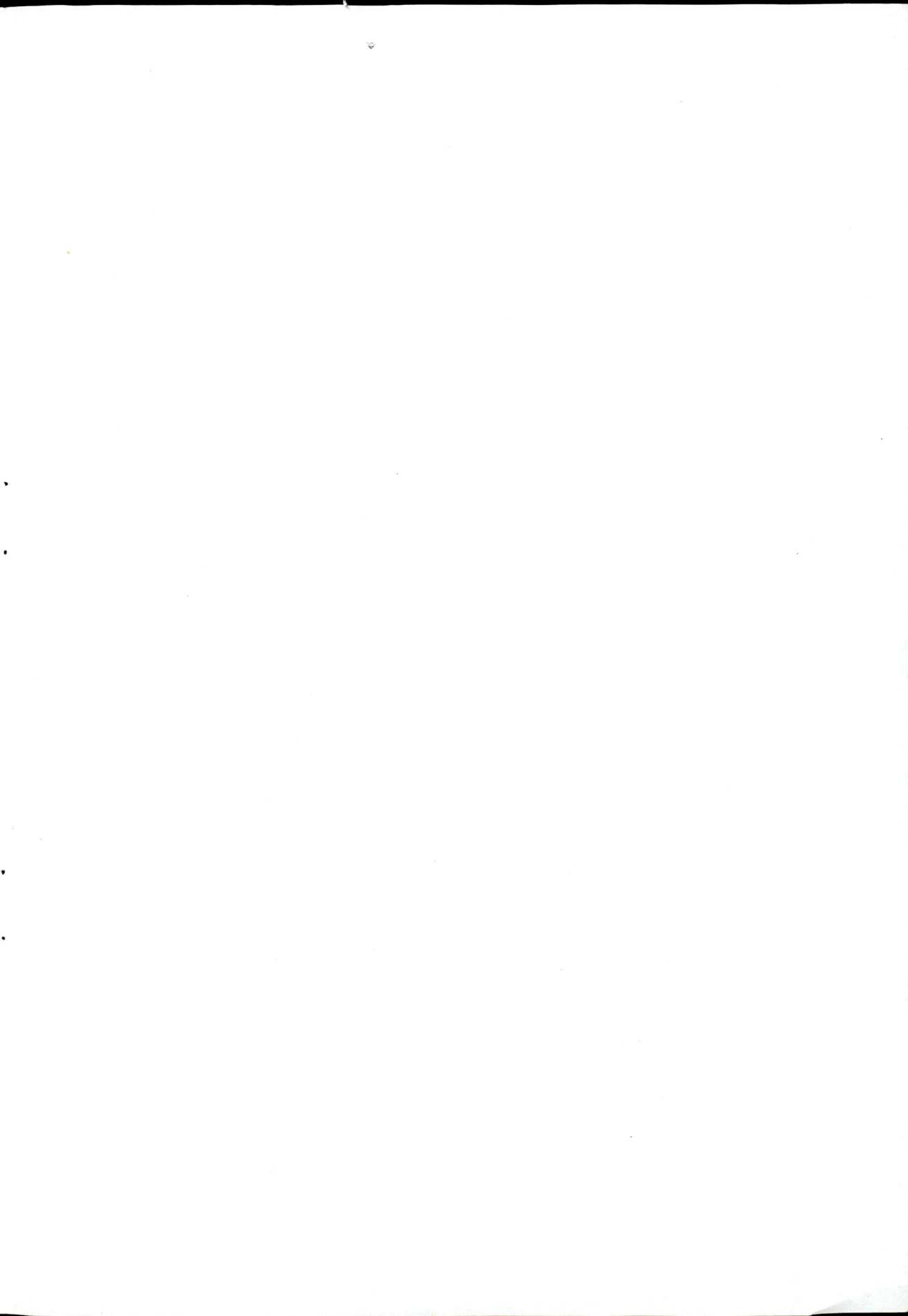
Orders for the removal of children from premises

15

4. The amendment made by Schedule 1 (8) (a) to the amending Act does not apply to any order made by the Children’s Court under section 59 of this Act before the commencement of that amendment.

Consents for publication of names etc.

5. The amendments made by Schedule 1 (14) to the amending Act do not apply to any consent given by the Minister under section 68 of this Act before the commencement of those amendments.





**CHILDREN (CARE AND PROTECTION) FURTHER
AMENDMENT ACT 1988 No. 66**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Amendment of Children (Care and Protection) Act 1987 No. 54
- SCHEDULE 1—AMENDMENTS
-



**CHILDREN (CARE AND PROTECTION) FURTHER AMENDMENT
ACT 1988 No. 66**

NEW SOUTH WALES



Act No. 66, 1988

An Act to amend the Children (Care and Protection) Act 1987 so as to make further provision with respect to the care and protection of children.
[Assented to 21 November 1988]

Children (Care and Protection) Further Amendment 1988

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Children (Care and Protection) Further Amendment Act 1988.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Children (Care and Protection) Act 1987 No. 54

3. The Children (Care and Protection) Act 1987 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**)—

(a) Section 3 (1), definition of “child care service”—

From paragraph (a) omit “and that is provided for fee, gain or reward;”, insert instead “; or”.

(b) Section 3 (1), definition of “child care service”—

Omit paragraph (b).

(c) Section 3 (1), definition of “premises”—

Omit the definition, insert instead:

“premises” includes a structure, building, vehicle, vessel or place (including a public or other place), whether built on or not, and any part thereof;

(d) Section 3 (1), definition of “protected person”—

After paragraph (a), insert:

(a1) a child who is under the guardianship of the Director-General pursuant to section 34 (Guardianship of child awaiting adoption) of the Adoption of Children Act 1965;

(e) Section 3 (1)—

After the definition of “protected person”, insert:

“public place” means—

- (a) a place (whether or not covered by water); or
- (b) a part of premises,

*Children (Care and Protection) Further Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

that is open to the public, or is used by the public, whether or not on payment of money or other consideration, whether or not it is ordinarily so open or used and whether or not the public to whom it is open consists only of a limited class of persons;

(f) Section 3 (1)—

After the definition of “residential child care centre”, insert:

“vehicle” includes—

- (a) a motor vehicle (whether or not still capable of being driven); and
- (b) a train or other vehicle used on a railway; and
- (c) a caravan or anything else constructed to be drawn by a vehicle or animal.

(g) Section 3 (4)—

Omit the subsection.

(h) After section 3 (9), insert:

(9A) For the purposes of this Act, a person who is in a vehicle in any place shall be taken to be in that place.

(2) Section 12A—

After section 12, insert—

Provision of care by the Director-General

12A. (1) The Director-General may place a child who is in the care of the Director-General by virtue of any provision of this Act (Part 6 excepted) in the care of any person approved by the Director-General and willing to have the care of the child.

(2) For the purposes of this Act, a reference to a child who is in the care of the Director-General includes a reference to a child who is placed in the care of some other person under this section.

(3) Section 20B (**Special medical treatment**)—

After section 20B (2), insert:

(2A) Consent to the carrying out of special medical treatment on a child who is under the age of 16 years shall not be given unless the Supreme Court is satisfied that it is necessary to carry out the treatment on the child in order to save the child’s life or to prevent serious damage to the child’s health.

Children (Care and Protection) Further Amendment 1988

SCHEDULE 1—AMENDMENTS—*continued*

(4) Section 21 (**Special medical examinations**)—

(a) Section 21 (6)—

Omit the subsection, insert instead:

(6) The Children's Court, on the application of the Minister, and on being satisfied that—

- (a) consent to a special medical examination is unreasonably refused; or
- (b) it is impracticable for any reason (including the need for a special medical examination to be carried out as soon as practicable, whether because of the medical condition of the child or otherwise) to obtain consent to a special medical examination; or
- (c) it is more probable than not that the child has been sexually assaulted by a parent whose consent to a special medical examination would otherwise be required to be sought,

may order that the examination be carried out without the necessity for any such consent.

(b) After section 21 (10), insert:

(10A) Nothing in this section requires—

- (a) any consent to a special medical examination to be obtained; or
- (b) any nomination or preference referred to in subsection (7) to be sought,

from a parent against whom criminal proceedings have been commenced but not concluded, or a parent who has been found guilty of an offence, in relation to an alleged sexual assault on the child.

(c) Section 21 (12), definition of "special medical examination"—

At the end of the definition, insert " , and includes any such examination carried out in the course of a medical examination under section 23".

(5) Section 50 (**Children not to be employed in certain cases unless licensed**)—

Section 50 (2) (b)—

Omit the paragraph.

Children (Care and Protection) Further Amendment 1988

SCHEDULE 1—AMENDMENTS—*continued*

(6) Section 53 (**Licences to employ children for certain purposes**)—

(a) Section 53 (1)—

Omit the subsection, insert instead:

(1) In this section, a reference to a child does not include a reference to a child who is of or above the age of 15 years.

(b) Section 53 (6)—

Omit the subsection, insert instead:

(6) Except in such circumstances, and subject to such conditions, as may be prescribed by the regulations, a licence shall not authorise a child to be employed between the hours of 10 p.m. on any day and 6 a.m. on the following day.

(7) Section 58 (**Service of care applications etc.**)—

(a) After section 58 (1), insert:

(1A) The date set down for the hearing of a care application shall be not later than 8 days after the application was made.

(b) Section 58 (2)—

Omit the subsection, insert instead:

(2) Failure to comply with the requirements of this section in relation to a care application does not vitiate the application or any decision of the Children's Court on the application.

(8) Section 59 (**Removal of children pursuant to order of the Children's Court**)—

(a) Section 59 (1) (a)—

Omit "any premises", insert instead "the premises specified in the order".

(b) After section 59 (2), insert:

(3) In exercising the powers conferred by this section, an authorised officer or member of the police force may observe and converse with any person present in the premises concerned.

(9) Section 60 (**Removal of children without warrant**)—

After section 60 (3), insert:

(4) In exercising the powers conferred by this section, an authorised officer or member of the police force may observe and converse with any person present in the premises concerned.

*Children (Care and Protection) Further Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*(10) Section 61 (**Power of search and removal of children in need of care**)—

After section 61 (6), insert:

(7) In exercising the powers conferred by this section, an authorised officer or member of the police force may observe and converse with any person present in the premises concerned.

(11) Section 61A—

After section 61, insert:

Child to be informed of reasons for removal etc.

61A. (1) An officer or member of the police force who removes a child from any premises under section 59, 60 or 61 shall cause notice of—

- (a) the name of the officer or member of the police force and of the fact that the officer or member of the police force is an officer or member of the police force; and
- (b) the reason for which the child is being removed from the premises; and
- (c) the fact that the law authorises the officer or member of the police force to remove the child from the premises; and
- (d) the nature, and address, of the place to which the child is being removed; and
- (e) what is likely to happen in relation to the care of the child as a consequence of his or her being removed from the premises,

to be given to the person (if any) on the premises who appears to the officer or member of the police force to have the care of the child for the time being and, in the case of a child who is of or above the age of 10 years, to the child.

(2) In giving such notice to a child, an officer or member of the police force shall do so in language that can be readily understood by the child.

(3) Failure to comply with any provision of this section does not vitiate any thing done under any other provision of this Act.

(12) Section 62 (**Care of children pending care proceedings**)—

Section 62 (7)—

Omit the subsection.

*Children (Care and Protection) Further Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

(13) Sections 62A, 62B—

After section 62, insert:

Authorised officer may assume care of child in hospital etc.

62A. (1) If—

- (a) an authorised officer suspects on reasonable grounds that a child is in need of care by virtue of the child's being in immediate danger of abuse; and
- (b) the officer is satisfied that it is not in the best interests of the child that the child be removed from the premises in which the child is currently located,

the officer may, instead of removing the child from the premises pursuant to section 60 or 61, assume the care of the child in the name of, and on behalf of, the Director-General by means of an order in writing, signed by the officer and served on the person (whether or not a parent of the child) who appears to the officer to be in charge of the premises.

(2) A child does not cease to be in immediate danger of abuse merely because of the existence of temporary arrangements (including hospital accommodation) for the care of the child.

(3) An order under this section ceases to have effect, unless sooner revoked, on the expiration of 3 days after it was made unless the Director-General has, before the expiration of that period, made a care application with respect to the child.

(4) An order under this section does not cease to have effect merely because the child to whom it relates is transferred to different premises.

Duties of Director-General to give information to certain persons

62B. (1) If a child is in the care of the Director-General pursuant to section 62 or 62A, the Director-General—

- (a) shall, as soon as practicable, cause notice of the fact that the child is in the care of the Director-General, and the fact that an application may be made to the Director-General for the discharge of the child from the care of the Director-General and the procedures for making such an application, to be given to—
 - (i) in the case of a child who is of or above the age of 10 years—the child; and
 - (ii) in the case of a child who is of or above the age of 16 years—such person as the child may nominate, being a person who can reasonably be located; and

*Children (Care and Protection) Further Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

- (iii) each person responsible for the child who can reasonably be located; and
- (b) shall, in the case of a child who is under the age of 16 years, ensure that the child's parents are kept informed of the whereabouts of the child, unless the Director-General has reason to believe that the disclosure of the child's whereabouts would be prejudicial to the welfare and interests of the child.
- (2) The Children's Court, on the hearing of a care application made in respect of a child whose whereabouts have not been disclosed to a parent of the child, may order that the Director-General disclose the whereabouts of the child to such of the parents of the child as it may direct.
- (3) Failure to comply with any provision of this section does not vitiate any thing done under any other provision of this Act.
- (14) Section 63 (**Director-General etc. to record reasons for certain actions etc.**)—
- (a) After section 63 (1), insert:
- (1A) If an authorised officer makes an order under section 62A with respect to a child, the officer shall record his or her reasons for doing so and cause a copy of that record to be served on—
- (a) in the case of a child who is of or above the age of 10 years—the child; and
- (b) each person responsible for the child who can reasonably be located.
- (b) Section 63 (2)—
- Omit the subsection.
- (15) Section 68 (**Publication of names etc.**)—
- (a) Section 68 (3) (b)—
- Omit "14" wherever occurring, insert instead "16".
- (b) Section 68 (3) (b) (i)—
- Omit "Minister", insert instead "Children's Court".
- (16) Section 71A—
- After section 71, insert:
- Care proceedings unaffected by pending criminal proceedings**
- 71A. The jurisdiction of the Children's Court to hear and determine proceedings under this Part with respect to a child is not affected merely because criminal proceedings are pending against—

Children (Care and Protection) Further Amendment 1988

SCHEDULE 1—AMENDMENTS—*continued*

- (a) the child; or
 - (b) any other party to the proceedings; or
 - (c) any other person,
- whether or not the criminal proceedings have arisen out of the same or similar facts as those out of which the proceedings under this Part have arisen.
- (17) Section 73 (**Restrictions on making orders under sec. 72**)—
- (a) Section 73 (3)—
Omit “(i) or (iii)”, insert instead “(ii)”.
 - (b) Section 73 (3)—
Omit “section 72 (1) (c) (ii)”, insert instead “that subparagraph”.
- (18) Section 74 (**Assessment reports**)—
- (a) Section 74 (3)—
After “a child”, insert “or to any other person appearing in the proceedings (other than a barrister or solicitor representing the child or any other such person)”.
 - (b) After section 74 (3), insert:
(4) The Children’s Court may make such orders as it considers appropriate to prevent a child from becoming aware of information contained in an assessment report if it is of the opinion that the prejudicial effect of the child being unaware of that information is outweighed by the psychological harm that is likely to be occasioned to the child if the child becomes aware of that information.
- (19) Section 77 (**Care of children during adjournments**)—
- (a) Section 77 (1)—
After “with respect to a child,”, insert “or on an application for a rescission or variation of an order under section 72 (1) (b) or (c) with respect to a child,”.
 - (b) Section 77 (1) (a)—
After “Director-General” where firstly occurring, insert “or of some other person in whose care the child has been placed pursuant to this section”.
 - (c) Section 77 (1) (a) (v)—
After “Director-General”, insert “or of some other person approved by the Children’s Court and willing to have the care of the child”.

*Children (Care and Protection) Further Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

- (d) Section 77 (1) (b)—
After “Director-General” where firstly occurring, insert “or of some other person in whose care the child has been placed pursuant to this section”.
- (e) Section 77 (1) (b) (i), (ii), (iii)—
After “Director-General” wherever occurring, insert “or that other person”.
- (f) After section 77 (1), insert:
(1A) In addition to any order made under subsection (1), the Children’s Court may make an order granting or prohibiting access, either unconditionally or subject to conditions, to the child to whom the order relates.
- (g) Section 77 (2)—
After “subsection (1)”, insert “or (1A)”.
- (h) Section 77 (5)—
After “Director-General” where firstly occurring, insert “or other person”.
- (i) Section 77 (5)—
Omit “Director-General’s care”, insert instead “care of the Director-General or that other person”.
- (j) Section 77 (7)—
After “Director-General”, insert “or other person”.
- (20) Section 81 (**Appeals**)—
After section 81 (4), insert:
(4A) Without limiting the generality of subsection (4), the District Court may confirm, vary or set aside the decision of the Children’s Court.
- (21) Section 124 (**Regulations**)—
After section 124 (1) (d), insert:
(d1) the fostering of children;
- (22) Section 125—
After section 124, insert:
Savings and transitional provisions
125. Schedule 3 has effect.

*Children (Care and Protection) Further Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

(23) Schedule 3—

After Schedule 2, insert:

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 125)

PART 1—GENERAL

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Children (Care and Protection) Further Amendment Act 1988.

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**PART 2—PROVISIONS CONSEQUENT ON THE ENACTMENT OF
THE CHILDREN (CARE AND PROTECTION) FURTHER
AMENDMENT ACT 1988**

Definition

2. In this Part—

“amending Act” means the Children (Care and Protection) Further Amendment Act 1988.

Current care applications

3. The amendment made by Schedule 1 (7) (a) to the amending Act does not apply to any proceedings on a care application made in accordance with Part 5 of this Act before the commencement of that amendment.

Children (Care and Protection) Further Amendment 1988

SCHEDULE 1—AMENDMENTS—*continued*

Orders for the removal of children from premises

4. The amendment made by Schedule 1 (8) (a) to the amending Act does not apply to any order made by the Children's Court under section 59 of this Act before the commencement of that amendment.

Consents for publication of names etc.

5. The amendments made by Schedule 1 (15) to the amending Act do not apply to any consent given by the Minister under section 68 of this Act before the commencement of those amendments.

[*Minister's second reading speech made in—
Legislative Council on 13 October 1988
Legislative Assembly on 19 October 1988*]



