



New South Wales

Children and Young Persons (Care and Protection) Amendment Bill 2005

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Children and Young Persons (Care and Protection) Act 1998* (**the Principal Act**):

- (a) to make explicit provision for the Children's Court to issue notices requiring the attendance of children and young persons and their parents before the Children's Court and subpoenas for the attendance of witnesses to give evidence and produce documents to the Court, and
 - (b) to enable the Children's Court to issue notices requiring the attendance before the Children's Court of persons who have or have had care responsibility for a child or young person and requiring other persons to attend to give information concerning the whereabouts of children and young persons, and
 - (c) to enable the Children's Court to issue warrants for the arrest of children, young persons, parents and other persons who do not appear as required by such notices and witnesses who do not comply with such subpoenas, and
 - (d) to enable the Children's Court, a Children's Registrar or other Registrar of the Children's Court and certain authorised justices to grant bail to such persons, and
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- (e) to enable the Children's Court or any of those persons to issue warrants of commitment to correctional centres, detention centres and other places of security where bail is not dispensed with or granted, and
- (f) to require a care plan to be presented to the Children's Court and for the Court to be satisfied as to its terms before the Court makes an order giving an authorised carer sole parental responsibility for a child or young person under section 149, and
- (g) to provide for the prescription by the regulations of medical treatments as special medical treatments for the purposes of section 175, and
- (h) to repeal section 176 (Special medical examinations), and
- (i) to make it clear that community based and private children's services are exempt from the requirements of the *State Records Act 1998*, and
- (j) to provide as a ground on which a search warrant in respect of the presence of a child or young person may be applied for, and issued, under section 233 (1) (a) of the Principal Act that a child or young person is at risk of serious harm, and
- (k) to enable the regulations to exempt certain centre based children's services from the requirement that they be licensed and to regulate the services so exempted, and
- (l) to enable the regulations to apply, adopt or incorporate, wholly or in part and with or without modifications, any standard, rule, code, specification or other document prescribed or published by any person or body (whether of New South Wales or elsewhere) and as in force at a particular time or from time to time, and
- (m) to clarify certain provisions concerning the removal of children and young persons from, and search for children and young persons in, premises and places, and
- (n) to make provision of a savings and transitional or consequential nature.

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 that gives effect to the amendments to the *Children and Young Persons (Care and Protection) Act 1998* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Children's Court Act 1987* set out in Schedule 2.

Schedule 1 Amendment of Children and Young Persons (Care and Protection) Act 1998

Compelling attendance and the giving of evidence

Schedule 1 [5]–[7] amend section 96 and **Schedule 1 [8]** inserts a new Part (proposed sections 109–109X) in Chapter 6 to achieve the objects set out in paragraphs (a)–(e) of the Overview.

Section 96 of the Principal Act currently enables the Children’s Court to require the attendance in proceedings before it with respect to a child or young person of the child or young person and of any parent of the child or young person. **Schedule 1 [5]–[7]** amend section 96 to expand the persons whom the Children’s Court may require to attend such proceedings to include any other person who has, or has had, care responsibility for the child or young person and, if the whereabouts of the child or young person is unknown to the Children’s Court, of any person the Children’s Court has reasonable cause to believe knows, or has information concerning, the whereabouts of the child or young person. The Children’s Court may require the attendance at proceedings by issue of a care proceedings attendance notice under proposed section 109A (to be inserted by **Schedule 1 [8]**). If a person fails to attend when required to do so by such a notice the Children’s Court will be able to issue a warrant for the person’s arrest to compel attendance under proposed section 109B (to be inserted in the Principal Act by **Schedule 1 [8]**).

Section 109 of the Principal Act currently applies the provisions of the *Criminal Procedure Act 1986* relating to warrants and subpoenas for the attendance of witnesses in proceedings before a Local Court for offences punishable on summary conviction to the attendance of witnesses in proceedings before the Children’s Court and production of documents in proceedings before the Children’s Court in the same way as those provisions apply to the attendance of witnesses in proceedings for such offences.

Schedule 1 [8] repeals section 109 and inserts a new Part 2 (proposed sections 109–109X) into Chapter 6 of the Principal Act.

Proposed section 109 contains definitions for the purposes of the new Part.

Proposed section 109A provides for issue of care proceedings attendance notices.

Proposed section 109B enables the Children’s Court to issue a warrant to arrest a person if it is satisfied that there are substantial reasons to do so and that it is in the interests of the safety, welfare or well-being of a child or young person the subject of care proceedings to do so. Circumstances in which such a warrant may be issued include (but are not limited to) a person failing to attend the proceedings as required by a care proceedings attendance notice or where a child, young person or parent absconds from such proceedings. The Children’s Court or a Registrar (defined as a Children’s Registrar or other Registrar of the Children’s Court or an authorised justice within the meaning of the *Bail Act 1978*) may (if bail is not dispensed with or granted) commit an adult who is arrested to a correctional centre or other place of security, a young person who is arrested to a detention centre or other place of

security or place a child who is arrested in the care responsibility of the Director-General.

Proposed section 109C explicitly provides for the Children's Court, a Children's Magistrate or such a Registrar to issue a subpoena to give evidence, a subpoena for production or a subpoena both to give evidence and for production at the request of a party to proceedings in the Children's Court.

Proposed section 109D makes provision with respect to service of subpoenas.

Proposed section 109E provides for the reimbursement of a person who is subpoenaed for the reasonable expenses of complying with the subpoena.

Proposed section 109F ensures that a document or thing cannot be required to be produced by subpoena unless it is specified or sufficiently described and is a document or thing that could be required to be produced in the Supreme Court.

Proposed section 109G enables a person who is not a party who is subpoenaed for production to produce the document or thing without attending the proceedings.

Proposed section 109H enables the Children's Court to set aside a subpoena, wholly or in part.

Proposed section 109I provides for inspection of subpoenaed documents and things.

Proposed section 109J sets out the action that may be taken if a person fails, without reasonable excuse, to comply with a subpoena. The Children's Court may issue a warrant for the arrest of the person and provision is made for the issue of warrants of commitment in certain circumstances.

Proposed section 109K enables the Children's Court to issue a warrant for the committal of a person to a correctional centre, detention centre or other place of security if the person has been subpoenaed to give evidence or for production and refuses without reasonable excuse to take an oath, answer questions or produce the document or thing.

Proposed sections 109L–109Q make provision for the issue, form, duration, execution and revocation of arrest warrants to compel attendance as referred to in proposed section 109B.

Proposed sections 109R–109T provide for the form of warrants and execution of warrants of commitment and states the effect of defects in them.

Proposed section 109U applies the *Bail Act 1978* with necessary modifications to a person brought before the Children's Court, a Children's Magistrate or a Registrar of the Children's Court or an authorised justice within the meaning of that Act after being arrested under the new Part. The provision enables the Children's Court or such a Children's Magistrate or a Registrar to grant court bail.

Proposed section 109V provides for the review of bail decisions of the Children's Court or a Registrar.

Proposed section 109W provides for the sealing and signing of warrants.

Proposed section 109X enables the Children's Court to make rules with respect to subpoenas under the new Part.

Schedule 1 [4] inserts a heading into Chapter 6 as a consequence of the insertion of the new Part.

Schedule 1 [1] inserts definitions of *Registrar* and *rules* into the Principal Act for the purposes of the new Part and other provisions.

Orders for sole parental responsibility—care plan must be provided

Under section 149 of the Principal Act an authorised carer who, for a continuous period of not less than 2 years, has the care of a child or young person for whom the Minister has parental responsibility may apply to the Children’s Court for an order awarding the authorised carer sole parental responsibility for the child or young person. **Schedule 1 [9]** inserts proposed section 149AA to require a care plan to be presented to the Children’s Court and for the Children’s Court to be satisfied as to its terms before it makes such an order.

Special medical treatment

Schedule 1 [10] amends the definition of *special medical treatment* in section 175 of the Principal Act to enable medical treatments for the purpose of contraception or menstrual regulation to be prescribed by the regulations instead of being specified in the Act.

Special medical examinations

Section 176 of the Principal Act imposes certain functions on the Children’s Guardian relating to the carrying out of special medical examinations (that is, vaginal or anal examinations or penile examinations involving the insertion of any thing into the penis) of a child or young person who resides in out-of-home care in accordance with an order of the Children’s Court. **Schedule 1 [11]** repeals the section. Such examinations are now rarely, if ever, performed and parental responsibility for children in out-of-home care is generally imposed on the Minister under section 81 of the Principal Act or on a delegate of the Minister not the Children’s Guardian.

Exemption of certain children’s services from State Records Act 1998

The *State Records Act 1998* sets down certain obligations of public offices of the State with respect to the creation, management, protection and preservation of their records. Public offices are defined in that Act to include services exercising any functions of a branch of the Government and this may inadvertently require private individuals and bodies supplying children’s services to comply with those obligations even though the Act does not generally apply to such individuals or bodies. **Schedule 1 [12]** inserts proposed section 218A into the Principal Act to make it clear that such persons or bodies are exempt from the requirements of the *State Records Act 1998*.

Powers of search and removal of children and young persons in need of care and protection

Under section 233 (1) (a) of the Principal Act the Director-General or a police officer may apply to an authorised justice for a search warrant if he or she has reasonable grounds for believing there is a child or young person “in need of care and protection” on premises. However, under section 233 (2) (a), an authorised justice to whom such an application is made may issue the search warrant only if satisfied on reasonable grounds that a child or young person may be “at immediate risk of serious harm” (and that the making of an apprehended violence order would not be sufficient to protect the child or young person). **Schedule 1 [14] and [15]** amend section 233 (1) (a) and (2) (a), respectively, to provide instead that an application for a search warrant may be made if the Director-General or a police officer is satisfied on reasonable grounds that a child or young person may be at risk of serious harm and may be issued if the authorised justice is satisfied on reasonable grounds that a child or young person may be “at risk of serious harm” (and that the making of an apprehended violence order would not be sufficient to protect the child or young person). **Schedule 1 [19]** contains a savings provision that is consequential on the amendments to section 233.

Clarification of certain powers

Schedule 1 [2] and [3] amend section 48 of the Principal Act to make it clear that an order for the removal of a child under the section may authorise removal of the child from any one or more premises or places specified or described in the order not only from one specified premises or place.

Schedule 1 [16] amends section 233 (4) to make a similar clarification with respect to the issue of search warrants issued under that section with respect to children or young persons in need of care and protection.

Regulation-making powers

Schedule 1 [13] amends section 220 of the Principal Act to achieve the object set out in paragraph (k) of the Overview. The amendment will enable the regulations to exempt certain centre based children’s services (for example, short term child care services in shopping centres) from the requirement that they be licensed while imposing minimum standards with which they must comply.

Schedule 1 [17] amends section 264 of the Principal Act to achieve the object set out in paragraph (l) of the Overview.

Schedule 1 [18] amends Schedule 3 to the Principal Act to enable the making of regulations of a savings and transitional nature.

Schedule 2 Amendment of Children’s Court Act 1987

Schedule 2 contains an amendment to the *Children’s Court Act 1987* to enable rules to be made by the Governor with respect to the proceedings under the Principal Act.