



New South Wales

Children and Young Persons (Care and Protection) Miscellaneous Amendments Act 2000 No 76

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New South Wales

Children and Young Persons (Care and Protection) Miscellaneous Amendments Act 2000 No 76

Act No 76, 2000

An Act to make miscellaneous amendments to the *Children and Young Persons (Care and Protection) Act 1998*; to amend the *Children and Young Persons Legislation (Repeal and Amendment) Act 1998*; and for other purposes. [Assented to 9 November 2000]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Children and Young Persons (Care and Protection) Miscellaneous Amendments Act 2000*.

2 Commencement

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

3 Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157

The *Children and Young Persons (Care and Protection) Act 1998* is amended as set out in Schedules 1 and 2.

4 Amendment of Children and Young Persons Legislation (Repeal and Amendment) Act 1998 No 158

The *Children and Young Persons Legislation (Repeal and Amendment) Act 1998* is amended as set out in Schedule 3.

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

(Section 3)

[1] Section 28

Omit the section. Insert instead:

28 Records of reports and subsequent action

The Director-General must keep a record of:

- (a) all reports made to or by the Director-General, and
- (b) any action taken as a consequence of a report, and
- (c) any subsequent disposition of and dealings with children and young persons to whom such reports or actions relate,

subject to the regulations.

[2] Section 29 Protection of persons who make reports

Omit “as evidence against the person who made the report or any other person” from section 29 (1) (d).

Insert instead “(other than care proceedings in the Children’s Court, or any appeal arising from those care proceedings)”.

[3] Section 29 (1A)

Insert after section 29 (1):

- (1A) A certificate purporting to be signed by the Director-General that a document relating to a child or young person is a report to which this section applies is admissible in any proceedings and, in the absence of evidence to the contrary, is proof that the document is such a report.

[4] Section 60 Definitions

Insert “, and includes a contact order under section 86” after “young person”
in the definition of *care order*.

[5] Section 64 Notification of care applications

Insert “, subject to section 64A” after “located” in section 64 (4).

[6] Section 64A

Insert after section 64:

64A Evidence in the form of a recording

- (1) In this section, *recording* means:
 - (a) an audio recording, or
 - (b) a video recording, or
 - (c) a video recording accompanied by a separately but contemporaneously recorded audio recording.
- (2) If:
 - (a) any evidence in support of a care application in relation to a child or young person comprises a recording, and
 - (b) the Director-General considers it would be inappropriate for the parents of the child or young person to be given a copy of the recording,the Director-General may decline to cause a copy of the recording to be served on the parents under section 64 (4) and, instead, must serve a notice on the parents that complies with subsection (3).
- (3) The notice must:
 - (a) be in writing, and
 - (b) specify each recording proposed to be used in evidence, and
 - (c) inform the parents that they, and their lawyer, are entitled to listen to or view the recording at a place

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- nominated by the Director-General and at a mutually convenient time, and
- (d) identify the person responsible for arranging access to each recording.
- (4) The notice must be given to the parents, or their lawyer, at least 14 days before the care application is heard.
 - (5) The parents, and their lawyer, are entitled to listen to or view each recording, on one or more occasions, before the care application is heard.
 - (6) The Children's Court may, on application of the parents of a child or young person the subject of a care application, direct the Director-General to cause a copy of any recording proposed to be used in evidence in the care application to be served on the parents.

[7] Section 65 Preliminary conferences

Insert “, unless the Children's Registrar is of the opinion that the holding of such a conference should be deferred until a later time in the proceedings” after “parties” in section 65 (1).

[8] Section 65 (1A)

Insert after section 65 (1):

- (1A) Despite subsection (1), a Children's Registrar may dispense with the requirement for a preliminary conference between the parties if:
 - (a) there has been a defended hearing in relation to an application for an assessment order under section 53, an interim care order under section 69, or a care order under section 70, and the Children's Registrar considers that no useful purpose will be served by a preliminary conference, or
 - (b) the parties consent to dispense with the preliminary conference, or

- (c) there are circumstances, identified by the Children's Court Rules, in which the requirement for a preliminary conference may be dispensed with.

[9] Section 65 (5)

Insert "(including this section)" after "this Act".

[10] Section 72 Determination as to care and protection

Insert "that the child or young person is in need of care and protection or" after "probabilities," in section 72 (1).

[11] Section 86 Contact orders

Omit section 86 (2) and (3). Insert instead:

- (2) The Children's Court may make an order that contact be supervised by the Director-General or a person employed within the Department only with the Director-General's or person's consent.
- (3) An order of the kind referred to in subsection (1) (a) does not prevent more frequent contact with a child or young person with the consent of a person having parental responsibility for the child or young person.
- (4) An order of the kind referred to in subsection (1) (b) may be made only with the consent of the person specified in the order and the person who is required to supervise the contact.

[12] Section 102 Support persons

Omit section 102 (4). Insert instead:

- (4) A support person cannot give instructions on behalf of the participant.
- (5) A support person may, with the leave of the Children's Court, act as an interpreter for a participant if the participant does not sufficiently speak or understand English.
- (6) Without limiting section 254, that section applies to a support person who acts as an interpreter for a participant.

[13] Section 105 Publication of names and identifying information

Insert “in any form that may be accessible by a person in New South Wales”
after “broadcast” in section 105 (1).

[14] Section 124A

Insert after section 124:

124A Notification and participation of Children’s Guardian

- (1) The Director-General must 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.
- (2) The Children’s Guardian is entitled to be a party to any proceedings before the Children’s Court under this Part concerning a child or young person.

[15] Section 127 Apprehension of child or young person who breaches compulsory assistance order

Insert “and the Director-General or a police officer believes on reasonable grounds that the child or young person is in a situation of potential harm” after “lawful authority”.

[16] Sections 133–133B

Omit section 133. Insert instead:

133 Notification of Children’s Guardian of orders

The Children’s Court must notify the Children’s Guardian of the making of an order under this Part, unless the Children’s Guardian was a party to the proceedings in which the order was made.

133A Monitoring of orders by Children’s Guardian

The Children’s Guardian must monitor the circumstances of a child or young person who is subject to an order under this Part.

133B Variation and revocation of orders

An application may be made at any time for the variation or revocation of an order under this Part in respect of a child or young person by:

- (a) the child or young person, or
- (b) the Director-General, or
- (c) the Children's Guardian, or
- (d) a person having parental responsibility for the child or young person, or
- (e) any person who considers himself or herself to have a sufficient interest in the welfare of the child or young person.

[17] Section 135 What is "out-of-home care"?

Insert after section 135 (2):

- (3) Out-of-home care of a child or young person commences:
 - (a) immediately on the making of a care order for a period of more than 14 days, or
 - (b) in any other case:
 - (i) immediately the period or periods referred to in subsection (1) (c) (ii) have elapsed, or
 - (ii) immediately the child or young person is placed with an authorised carer,
- whichever first occurs.

[18] Section 158 Physical restraint of child or young person

Omit "or might cause the loss of or damage to any property" from section 158 (1).

[19] Section 158 (2)

Omit "or loss of or damage to any property" wherever occurring.

[20] Section 158 (3)

Omit the subsection. Insert instead:

- (3) If a child or young person is restrained under this section, the restraint must be consistent with any behaviour management requirements of a care plan applying to the child or young person, otherwise reasonable force may be used.

[21] Section 158 (5)

Insert “, and who is able to satisfy the court on the balance of probabilities that his or her actions were reasonable in all the circumstances of the case,” after “section” where secondly occurring.

[22] Section 161 Financial assistance for children and young persons in out-of-home care

Omit “an allowance” from section 161 (1).
Insert instead “financial assistance”.

[23] Section 161 (1A)

Insert after section 161 (1):

- (1A) Without limiting subsection (1), financial assistance may take the form of a grant, an allowance or a refund of expenditure, or any other form of financial assistance that the Director-General may approve generally, or in a particular case or class of cases.

[24] Section 161 (3)

Omit “an allowance under subsection (1) was being paid”.
Insert instead “financial assistance under this section was being provided”.

[25] Section 161 (3)

Omit “pay an allowance”. Insert instead “provide financial assistance”.

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Protection) Act 1998

[26] Section 161 (3)

Omit “the allowance is granted”.

Insert instead “the financial assistance is provided”.

[27] Section 175 (6)

Insert after section 175 (5):

- (6) Any thing that was done before the commencement of a regulation made for the purposes of subsection (2) (c) and that would have been lawful if the regulation had been in force at the time the thing was done is taken to have been lawfully done at the time that it was done.

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

(Section 3)

[1] Section 3 Definitions

Omit the definition of *Aboriginal and Torres Strait Islander*.

[2] Section 3, definition of “Torres Strait Islander”

Insert in appropriate order:

Torres Strait Islander—see section 5.

[3] Section 5

Omit the section. Insert instead:

5 Meaning of “Aboriginal” and “Torres Strait Islander”

(1) In this Act:

Aboriginal has the same meaning as in the *Aboriginal Land Rights Act 1983*.

Aboriginal child or young person means a child or young person descended from an Aboriginal and includes a child or young person who is the subject of a determination under subsection (2).

Torres Strait Islander means a person who:

- (a) is descended from a Torres Strait Islander, and
- (b) identifies as a Torres Strait Islander, and
- (c) is accepted as a Torres Strait Islander by a Torres Strait Islander community.

Torres Strait Islander child or young person means a child or young person descended from a Torres Strait Islander and includes a child or young person who is the subject of a determination under subsection (3).

- (2) Despite the definition of *Aboriginal* in the *Aboriginal Land Rights Act 1983*, the Children’s Court may determine that a child or young person is an Aboriginal for the purposes of this Act if the Children’s Court is satisfied that the child or young person is of Aboriginal descent.
- (3) Despite the definition of *Torres Strait Islander* in subsection (1), the Children’s Court may determine that a child or young person is a Torres Strait Islander for the purposes of this Act if the Children’s Court is satisfied that the child or young person is of Torres Strait Islander descent.
- [4] Section 13 Aboriginal and Torres Strait Islander Child and Young Person Placement Principles**
- Omit “Aboriginal and Torres Strait Islander” wherever occurring.
Insert instead “Aboriginal or Torres Strait Islander”.
- [5] Section 14, heading**
- Omit “Aboriginal”. Insert instead “Aboriginals”.
- [6] Section 14 Records relating to Aboriginals and Torres Strait Islanders**
- Omit “Aboriginal and Torres Strait Islander” from section 14 (2).
Insert instead “Aboriginal or Torres Strait Islander”.
- [7] Section 38 Development and enforcement of care plans**
- Omit “reallocates” from section 38 (2). Insert instead “allocates”.
- [8] Section 53, heading**
- Omit “Examination and”. Insert instead “Making of”.
- [9] Section 78 Care plans**
- Omit “The” from section 78 (5).
Insert instead “Other requirements and the”.

[10] Section 80 Requirement to consider care plan

Omit “re-allocation” from section 80 (b). Insert instead “allocation”.

[11] Section 80

Omit “the care plan”. Insert instead “a care plan”.

[12] Section 82 Monitoring by Children’s Court of order concerning parental responsibility

Omit “or re-allocating” from section 82 (1).

[13] Section 90 Rescission and variation of care orders

Insert “or that allocates specific aspects of parental responsibility from the Minister to another person,” after “Minister,” in section 90 (6).

[14] Section 115 Alternative parenting plan

Omit “re-allocation” from section 115 (1) (b) (i). Insert instead “allocation”.

[15] Section 149 Order for sole parental responsibility

Omit “re-allocated”. Insert instead “allocated”.

[16] Section 156 Review of voluntary out-of-home care arrangements

Omit “arrange a case conference” from section 156 (1).
Insert instead “conduct a review of the arrangement”.

[17] Section 156 (2) and (3)

Omit “case conference” wherever occurring. Insert instead “review”.

[18] Section 156 (4)

Omit “case conferences”. Insert instead “reviews”.

[19] Section 161 Financial assistance for children and young persons in out-of-home care

Omit “reallocated” from section 161 (2) (b). Insert instead “allocated”.

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[20] Section 170 Retention of records

Omit “Aboriginal” from the note to section 170.
Insert instead “Aboriginals”.

[21] Section 171 Removal of children and young persons from unauthorised out-of-home care

Omit “an officer” from section 171 (1) (b).
Insert instead “the Director-General”.

[22] Section 185 Provision and exchange of information

Omit “prescribed body” from section 185 (1).
Insert instead “prescribed person”.

[23] Section 191 Constitution of Child Death Review Team

Insert “or Torres Strait Islander” after “Aboriginal” where first occurring in section 191 (6).

[24] Section 191 (6)

Omit “Aboriginal” where secondly occurring.
Insert instead “Aboriginals or Torres Strait Islanders”.

[25] Section 195 Confidentiality of information

Omit “officer or” from section 195 (4) (c).

[26] Section 215 Parental contact with children

Omit “an officer of the Department of Community Services” from section 215 (2) (b).
Insert instead “the Director-General”.

[27] Section 220 Regulations

Insert “may” after “the regulations”.

[28] Section 226 Removal of child from place of unlawful employment

Omit “an officer” from section 226 (b).

Insert instead “the Director-General”.

[29] Section 245 Decisions that are reviewable by Administrative Decisions Tribunal

Insert “to impose conditions of an authorisation,” after “authorised carer,” where first occurring in section 245 (1) (a).

[30] Section 264 Regulations

Insert after section 264 (1):

- (1A) In particular, the regulations may make provision for or with respect to the following:
- (a) defining the meanings of the words “related” and “relative” where used in this Act or in a specified provision of this Act,
 - (b) specifying persons, or classes of persons, as being persons to whom section 27 (Mandatory reporting) applies or does not apply,
 - (c) regulating or prohibiting the use or availability of evidence given or produced during the course of alternative dispute resolution under section 37, preliminary conferences under section 65 or alternative dispute resolution under section 114,
 - (d) specifying matters that may or may not be taken into consideration by the Children’s Court in determining whether there has been significant change in any relevant circumstances within the meaning of section 90 (2) (Rescission and variation of care orders),
 - (e) the requirements and form of an alternative parenting plan under section 115,
 - (f) regulating or prohibiting conduct of authorised carers,
 - (g) prescribing a code of conduct for authorised carers,

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- (h) regulating the application of section 168 (Access to personal information),
 - (i) providing for the review by the Administrative Decisions Tribunal of a decision of, or the failure or refusal to make a decision by, the Children’s Guardian.
- (1B) A regulation may not be made for the purposes of subsection (1A) (i) except with the concurrence of the Minister administering the *Administrative Decisions Tribunal Act 1997*.

[31] Schedule 2 Provisions relating to employers’ authorities

Omit “officers” from clause 3 (1). Insert instead “the Director-General”.

[32] Schedule 2, clause 3 (1)

Omit “an officer”. Insert instead “the Director-General”.

[33] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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

(Section 4)

Section 3 Repeal of Children (Care and Protection) Act 1987 No 54

Insert at the end of the section:

- (2) Different days may be appointed for the commencement of subsection (1) for the purpose of repealing, on different days, different provisions of the *Children (Care and Protection) Act 1987*.

[Minister's second reading speech made in—
Legislative Assembly on 21 June 2000
Legislative Council on 11 October 2000]