

**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.

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 I—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*]
