



New South Wales

Children and Young Persons (Care and Protection) Miscellaneous Amendments Act 2006 No 95

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New South Wales

Children and Young Persons (Care and Protection) Miscellaneous Amendments Act 2006 No 95

Act No 95, 2006

An Act to amend the *Children and Young Persons (Care and Protection) Act 1998* to strengthen the protections it affords to children and young persons, to provide for the transfer of child protection orders and proceedings between jurisdictions and to make other miscellaneous amendments to that Act; and for other purposes. [Assented to 27 November 2006]

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 2006*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Schedule 3 [6] commences on the commencement of Schedule 1 [7] to the *Children and Young Persons (Care and Protection) Amendment Act 2005*.
- (3) Schedule 3 [10] and [11] commence on the commencement of Schedule 1 [64] to the *Children and Young Persons (Care and Protection) Amendment Act 2006*.

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, 2 and 3.

4 Amendment of other Acts

The Acts specified in Schedule 4 are amended as set out in that Schedule.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments to Children and Young Persons (Care and Protection) Act 1998 relating to parent and carer harm

(Section 3)

[1] Section 23 Child or young person at risk of harm

Insert after section 23 (e) before the note to the section:

- (f) the child was the subject of a pre-natal report under section 25 and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

[2] Section 25 Pre-natal reports

Omit the note to the section. Insert instead:

Note. The intentions of this section are:

- (a) to allow assistance and support to be provided to the expectant mother to reduce the likelihood that her child, when born, will need to be placed in out-of-home care, and
- (b) to provide early information that a child who is not yet born may be at risk of harm subsequent to his or her birth, and
- (c) in conjunction with section 23 (f) and section 27, to provide for mandatory reporting if there are reasonable grounds to believe that the child is at risk of harm subsequent to his or her birth.

[3] Section 106A

Insert after section 106:

106A Admissibility of certain other evidence

- (1) The Children's Court must admit in proceedings before it any evidence adduced that a parent or primary care-giver of a child or young person the subject of a care application:
 - (a) is a person:
 - (i) from whose care and protection a child or young person was previously removed by a court under this Act or the *Children (Care and Protection) Act 1987*, or by a court of another jurisdiction under an Act of that jurisdiction, and
 - (ii) to whose care and protection the child or young person has not been restored, or

- (b) is a person who has been named or otherwise identified by the coroner or a police officer (whether by use of the term “person of interest” or otherwise) as a person who may have been involved in causing a reviewable death of a child or young person.
- (2) Evidence adduced under subsection (1) is prima facie evidence that the child or young person the subject of the care application is in need of care and protection.
- (3) A parent or primary care-giver in respect of whom evidence referred to in subsection (1) has been adduced may rebut the prima facie evidence referred to in subsection (2) by satisfying the Children’s Court that, on the balance of probabilities:
 - (a) the circumstances that gave rise to the previous removal of the child or young person concerned no longer exist, or
 - (b) the parent or primary care-giver concerned was not involved in causing the relevant reviewable death of the child or young person,as the case may require.
- (4) This section has effect despite section 93 and despite anything to the contrary in the *Evidence Act 1995*.
- (5) In this section, ***reviewable death of a child or young person*** means a death of a child or young person that is reviewable by the Ombudsman under Part 6 of the *Community Services (Complaint, Reviews and Monitoring) Act 1993*.

[4] Section 107 Examination and cross-examination of witnesses

Insert after section 107 (3):

(3A) Certain questions

For the purposes of this section, questions to a witness who is a parent or a primary care-giver of a child or young person the subject of a care application concerning the witness’s previous history of dealings with any child or young person are taken not to be intrinsically offensive, scandalous or oppressive.

[5] Section 248 Provision and exchange of information

Insert after section 248 (1):

- (1A) Information about the following may be furnished under this section in the same way as information about a child or young person or class of children or young persons may be furnished:
- (a) an unborn child who is the subject of a pre-natal report under section 25,
 - (b) the family of an unborn child the subject of such a report,
 - (c) the expected date of birth of an unborn child the subject of such a report.

[6] Section 248 (3) and (4)

Insert “or (1A)” after “subsection (1)” wherever occurring.

Schedule 2 Amendments to Children and Young Persons (Care and Protection) Act 1998 relating to reciprocal arrangements

(Section 3)

[1] Section 229 Unauthorised removal of children and young persons

Insert after section 229 (1):

- (1A) A person must not, by any conduct carried out within the State, without lawful excuse remove a child or young person from the care of a person into whose care and protection the child or young person has been placed under a child protection order, or an interim order, within the meaning of Chapter 14A (other than an order under this Act).

Maximum penalty: 200 penalty units.

[2] Chapter 14A

Insert after section 231:

Chapter 14A Transfer of child protection orders and proceedings

Part 1 Introductory

231A Purpose of Chapter

The purpose of this Chapter is to provide for the transfer of child protection orders and proceedings between New South Wales and another State or a Territory of Australia or between New South Wales and New Zealand:

- (a) so that children and young persons who are in need of protection may be protected despite moving from one jurisdiction to another, and
- (b) so as to facilitate the timely and expeditious determination of court proceedings relating to the protection of a child or young person.

231B Definitions

(1) In this Chapter:

child protection order, in relation to a child or young person, means a final order made under a child welfare law or an interstate law that gives:

- (a) a Minister of the Crown in right of a State, or
- (b) a government department or statutory authority, or
- (c) a person who is the head of a government department or statutory authority or otherwise holds an office or position in, or is employed in, a government department or statutory authority, or
- (d) an organisation or the chief executive (by whatever name called) of an organisation,

responsibility in relation to the parental or care responsibility for, supervision of, or contact with, the child or young person, however that responsibility is described.

child protection proceeding means any proceeding brought in a court under a child welfare law for:

- (a) the making of a finding that a child or young person is in need of protection or any other finding (however described) the making of which is under the child welfare law a prerequisite to the exercise by the court of a power to make a child protection order, or
- (b) the making of a child protection order or an interim order or for the variation or revocation or the extension of the period of such an order.

child welfare law means:

- (a) this Act, or
- (b) a law of another State that, under an order in force under subsection (2), is declared to be a child welfare law for the purposes of this Chapter, or
- (c) a law of another State that substantially corresponds to this Act.

Children's Court:

- (a) in relation to New South Wales—means the Children's Court of New South Wales, and
- (b) in relation to a State other than New South Wales—means the court with jurisdiction to hear and determine a child protection proceeding at first instance.

home order means a child protection order made in New South Wales.

interim order means:

- (a) an order made under section 231N, or
- (b) an equivalent order made under an interstate law.

interstate law means:

- (a) a law of another State that, under an order in force under subsection (3), is declared to be an interstate law for the purposes of this Chapter, or
- (b) a law of another State that substantially corresponds to this Chapter.

interstate officer, in relation to a State other than New South Wales, means:

- (a) the holder of an office or position that, under an order in force under subsection (4), is declared to be an office or position the holder of which is the interstate officer in relation to that State for the purposes of this Chapter, or
- (b) the person holding the office or position to which there is given by or under the child welfare law of that State principal responsibility for the protection of children and young persons in that State.

participating State means a State in which an interstate law is in force.

proposed interstate order means a home order in the form in which it is proposed to be transferred to another State.

sending State means the State from which a child protection order or proceeding is transferred under this Chapter or an interstate law.

State means:

- (a) a State or a Territory of Australia, or
- (b) New Zealand.

working day:

- (a) in relation to a court, means a day on which the offices of the court are open, and
 - (b) in relation to the Director-General, means a day on which the principal office of the Department is open.
- (2) The Governor may, by order published in the Gazette, declare a law of a State (other than New South Wales) to be a child welfare law for the purposes of this Chapter.

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- (3) The Governor may, by order published in the Gazette, declare a law of a State (other than New South Wales) to be an interstate law for the purposes of this Chapter.
 - (4) The Governor may, by order published in the Gazette, declare an office or position in a State (other than New South Wales) to be an office or position the holder of which is the interstate officer in relation to that State for the purposes of this Chapter.

Part 2 Transfer of child protection orders

Division 1 Administrative transfers

231C When Director-General may transfer order

- (1) The Director-General may transfer a home order to a participating State if:
 - (a) in his or her opinion a child protection order to the same or a similar effect as the home order could be made under the child welfare law of that State, and
 - (b) the home order is not the subject of an appeal to the District Court, and
 - (c) the relevant interstate officer has consented in writing to the transfer and to the terms of the proposed interstate order, and
 - (d) any person whose consent to the transfer is required under section 231D has so consented, and
 - (e) the child or young person who is the subject of the order has not given written notice of opposition to the decision to transfer the order in accordance with section 231F (3) (b) and the Director-General certifies in writing that he or she made all reasonable efforts to ensure that the child or young person had an opportunity to seek legal advice in relation to the decision.
- (2) The Director-General may include in the proposed interstate order any conditions that could be included in a child protection order of that type made in the relevant participating State.
- (3) In determining whether a child protection order to the same or a similar effect as the home order could be made under the child welfare law of a participating State, the Director-General must disregard the period for which it is possible to make such an order in that State.

- (4) The Director-General must determine, and specify in the proposed interstate order:
 - (a) the type of order under the child welfare law of the participating State that the proposed interstate order is to be, and
 - (b) the period for which it is to remain in force.
- (5) The period must be:
 - (a) if the same period as that of the home order is possible for the proposed interstate order under the child welfare law of the participating State—that period (commencing on, and including, the date of the registration of the interstate order in that State), or
 - (b) in any other case—as similar a period as is possible under that law, but in no case longer than the period of the home order.

231D Persons whose consent is required

- (1) If the home order is an order granting parental responsibility wholly or partly to the Minister, an order granting care responsibility to the Director-General, or an order for supervision, consent to a transfer under this Division is required from:
 - (a) the parents of the child or young person, and
 - (b) any other person who is granted contact with the child or young person under the order, and
 - (c) any person who holds, solely or jointly, any aspect of parental responsibility for the child or young person.
- (2) However, if any of the persons referred to in subsection (1) (a), (b) or (c) is residing, or intending to reside, in the relevant participating State, consent to the transfer is not required from that person or from any other of the persons referred to in those paragraphs who consents to the child or young person residing in that State.

231E Director-General to have regard to certain matters

In determining whether to transfer a child protection order to a participating State under this Division, the Director-General must have regard to:

- (a) all the matters referred to in section 9, and

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- (b) whether the Director-General or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order relating to the child or young person, and
 - (c) the fact that it is preferable that a child or young person is subject to a child protection order made under the child welfare law of the State where the child or young person resides, and
 - (d) any sentencing order under any Act, other than a fine, in force in respect of the child or young person or any criminal proceedings pending against the child or young person in any court.

231F Notification to child or young person and his or her parents

- (1) If the Director-General has decided to transfer a child protection order to a participating State under this Division, the Director-General must cause:
 - (a) the parents of the child or young person who is the subject of the order, and
 - (b) any person having parental responsibility for the child or young person who is the subject of the order, and
 - (c) if the child or young person concerned is of or above the age of 12 years, the child or young person,to be served with a notice of the decision as soon as practicable but in any event no later than 3 working days after making it.
- (2) A notice under subsection (1) served on a parent of, or a person having parental responsibility for, the child or young person must, in addition to providing notice of the decision, inform the parent or person that:
 - (a) the parent or person may make a written request under Division 2 of Part 2 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997* for a written statement of reasons for the decision, and
 - (b) the decision may be reviewed by the Administrative Decisions Tribunal, whose decision may be appealed against to the Appeal Panel of that Tribunal, and
 - (c) the parent or person may make an application for review (and the notice must also provide details of how such an application may be made).

- (3) A notice under subsection (1) served on the child or young person must, in addition to providing notice of the decision, inform the child or young person that:
 - (a) the child or young person may seek legal advice in relation to the decision, and
 - (b) the child or young person may oppose the decision by writing to the Director-General, within 28 days after the date of service of the notice, and stating that the child or young person opposes the decision, and
 - (c) if notice of opposition is given in accordance with paragraph (b), the order cannot be transferred by the Director-General under this Division.
- (4) The Director-General must make all reasonable efforts to ensure that a child or young person on whom a notice is served under subsection (1) has an opportunity to seek legal advice in relation to the decision to transfer the child protection order.
- (5) Service of a notice on a person is not required under subsection (1) if it cannot be effected after making all reasonable efforts.

Division 2 Judicial transfers

231G When Children's Court may make order under this Division

The Children's Court may make an order under this Division transferring a child protection order to a participating State if:

- (a) an application for the making of the order is made by the Director-General, and
- (b) the child protection order is not subject to an appeal to the District Court, and
- (c) the relevant interstate officer has consented in writing to the transfer and to the provisions of the proposed interstate order.

231H Service of application

The Director-General must as soon as possible cause a copy of an application for an order under this Division to be served on each party to the proceedings in relation to the child protection order concerned.

231I Type of order

- (1) If the Children's Court determines to transfer a home order under this Division, the terms of the proposed interstate order must be terms that could be terms of a child protection order made under the child welfare law of the participating State and that the Children's Court believes to be:
 - (a) to the same or a similar effect as the terms of the home order, or
 - (b) otherwise in the best interests of the child or young person.
- (2) The Children's Court may include in the proposed interstate order any conditions that could be included in a child protection order of that type made in the relevant participating State.
- (3) In determining whether an order to the same or a similar effect as the home order could be made under the child welfare law of a participating State, the Children's Court must disregard the period for which it is possible to make such an order in that State.
- (4) The Children's Court must determine, and specify in the proposed interstate order, the period for which it is to remain in force.
- (5) The period must be any period that is possible for a child protection order of the type of the proposed interstate order under the child welfare law of the participating State and that the Children's Court considers to be appropriate (commencing on, and including, the date of its registration in that State).

231J Children's Court to have regard to certain matters

- (1) The Children's Court must not make an order under this Division unless it has received and considered:
 - (a) an updated care plan, if a care plan under section 78 was prepared in relation to the original care order, or
 - (b) in any other case, a report by the Director-General that contains the matters required by the regulations to be included in the report.
- (2) In determining what order to make on an application under this Division, the Children's Court must have regard to:
 - (a) the matters referred to in section 9, and
 - (b) whether the Director-General or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order relating to the child or young person, and

- (c) the fact that it is preferable that a child or young person is subject to a child protection order made under the child welfare law of the State where the child or young person resides, and
 - (d) any information given to the Children's Court by the Director-General or otherwise concerning any sentencing order under any Act, other than a fine, in force in respect of the child or young person or any criminal proceedings pending against the child or young person in any court.
- (3) The Director-General must provide to the Children's Court an updated care plan or report referred to in subsection (1), in accordance with the rules of the Children's Court.
- (4) Other requirements concerning the hearing and the making of an application, and the form of a care plan, under this Division may be prescribed by the regulations.

231K Appeals

- (1) A party to an application for an order under this Division who is dissatisfied with an order of the Children's Court transferring, or refusing to transfer, a child protection order to a participating State, may, in accordance with the rules of the District Court, appeal to the District Court against the order.
- (2) An appeal under subsection (1):
- (a) must be instituted, and (except where instituted by the Director-General) written notice of it must be served on the Director-General, within 10 working days after the day on which the order complained of was made, and
 - (b) operates as a stay of an order transferring the child protection order to a participating State.
- (3) The District Court cannot extend the time limit fixed by subsection (2) (a).
- (4) Section 91 (2)–(6) and (8) apply to an appeal under this section as if the appeal were an appeal under section 91 and as if the term "order" in section 91 (2) referred to the order to transfer or refuse to transfer the child protection order.

Part 3 Transfer of child protection proceedings

231L When Children's Court may make order under this Part

- (1) The Children's Court may make an order under this Part transferring a child protection proceeding pending in the Children's Court to the Children's Court in a participating State if:
 - (a) an application for the making of the order is made by the Director-General, and
 - (b) the relevant interstate officer has consented in writing to the transfer.
- (2) The proceeding is discontinued in the Children's Court on the registration in the Children's Court in the participating State, in accordance with the interstate law, of an order referred to in subsection (1).

231M Children's Court to have regard to certain matters

In determining whether to make an order transferring a proceeding under this Part, the Children's Court must have regard to:

- (a) the matters referred to in section 9, and
- (b) whether any other proceedings relating to the child or young person are pending, or have previously been heard and determined, under the child welfare law in the participating State, and
- (c) the place where any of the matters giving rise to the proceeding in the Children's Court arose, and
- (d) the place of residence, or likely place of residence, of the child or young person, his or her parents and any other people who are significant to the child or young person (as referred to in section 9 (g)), and
- (e) whether the Director-General or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order relating to the child or young person, and
- (f) the fact that it is preferable that a child or young person is subject to a child protection order made under the child welfare law of the State where the child or young person resides, and

- (g) any information given to the Children's Court by the Director-General or otherwise concerning any pending criminal proceedings or sentencing order that is currently in force (other than a fine) in respect of the child or young person.

231N Interim order

- (1) If the Children's Court makes an order transferring a proceeding under this Part, the Children's Court may also make an interim order.
- (2) An interim order:
 - (a) may allocate parental responsibility for the child or young person to any person solely or jointly, and
 - (b) may give responsibility for the supervision of the child or young person to the interstate officer in the participating State or any other person in that State to whom responsibility for the supervision of a child or young person could be given under the child welfare law of that State, and
 - (c) remains in force for the period (not exceeding 30 days) specified in the order.
- (3) The Children's Court in the participating State may revoke an interim order in accordance with the relevant interstate law.

231O Appeals

- (1) A party to an application for an order under this Part who is dissatisfied with an order of the Children's Court transferring, or refusing to transfer, a child protection proceeding may, in accordance with the rules of the District Court, appeal to the District Court against the order.
- (2) An appeal under subsection (1):
 - (a) must be instituted, and (except where instituted by the Director-General) written notice of it must be served on the Director-General, within 10 working days after the day on which the order complained of was made, and
 - (b) operates as a stay of an order transferring the child protection proceeding to a participating State.
- (3) The District Court cannot extend the time limit fixed by subsection (2) (a).

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- (4) Section 91 (2)–(6) and (8) apply to an appeal under this section as if the appeal were an appeal under section 91 and as if the term “order” in section 91 (2) referred to the order to transfer or refuse to transfer the child protection proceeding.

Part 4 Registration

231P Filing and registration of interstate documents

- (1) Subject to subsection (3), the Director-General must as soon as possible file in the Children’s Court for registration a copy of a child protection order transferred to New South Wales under an interstate law.
- (2) Subject to subsection (3), the Director-General must as soon as possible file in the Children’s Court for registration a copy of an order under an interstate law to transfer a child protection proceeding to New South Wales, together with a copy of any interim order made in relation to that order.
- (3) The Director-General must not file in the Children’s Court a copy of a child protection order or of an order to transfer a child protection proceeding if:
- (a) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) is subject to appeal or review or a stay, or
 - (b) the time for instituting an appeal or seeking a review has not expired,
- under the interstate law.

231Q Notification by appropriate Children’s Registrar

The appropriate Children’s Registrar must immediately notify the appropriate officer of the Children’s Court in the sending State and the interstate officer in that State of:

- (a) the registration of any document filed under section 231P, or
- (b) the revocation under section 231R of the registration of any document so filed.

231R Revocation of registration

- (1) An application for the revocation of the registration of any document filed under section 231P may be made to the Children's Court by:
 - (a) the Director-General, or
 - (b) the child or young person concerned, or
 - (c) a parent of the child or young person concerned, or
 - (d) a party to the proceeding in the Children's Court in the sending State in which the decision to transfer the order or proceeding (as the case requires) was made.
- (2) The appropriate Children's Registrar must cause a copy of an application under subsection (1) to be sent by post or given as soon as possible to:
 - (a) the relevant interstate officer, and
 - (b) any person by whom such an application could have been made.
- (3) The Children's Court may revoke the registration of a document filed under section 231P only if satisfied that it was inappropriately registered because:
 - (a) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) was at the time of registration subject to appeal or review or a stay, or
 - (b) the time for instituting an appeal or seeking a review had not expired,
under the interstate law.
- (4) The appropriate Children's Registrar must cause any document filed in the Children's Court under section 231P to be sent to the Children's Court in the sending State if the registration of the document is revoked.
- (5) The revocation of the registration of a document does not prevent the later re-registration of that document.

Part 5 Miscellaneous

231S Effect of registration of transferred order

- (1) On an order being registered in a participating State under an interstate law, the child protection order made by the Children's Court under this Act ceases to have effect.
- (2) Despite subsection (1), an order that has ceased to have effect by force of that subsection is revived if the registration of the child protection order transferred from New South Wales is revoked in the participating State under the interstate law.
- (3) The period for which a child protection order is revived is the balance of the period for which it would have remained in force but for the registration of the transferred order.

231T Transfer of Children's Court file

The appropriate Children's Registrar must, subject to and in accordance with the rules of the Children's Court (if any), cause all documents filed in the Children's Court in connection with a child protection proceeding, and an extract from any part of the register that relates to a child protection proceeding, to be sent to the Children's Court in a participating State if:

- (a) the child protection order or proceeding is transferred to the participating State, and
- (b) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) is not subject to appeal or review or a stay, and
- (c) the time for instituting an appeal or seeking a review has expired,

under this Chapter.

231U Hearing and determination of transferred proceeding

In hearing and determining a child protection proceeding transferred to the Children's Court under an interstate law, the Children's Court:

- (a) is not bound by any finding of fact made in the proceeding in the Children's Court in the sending State before its transfer, and
- (b) may have regard to the transcript of, or any evidence adduced in, the proceeding referred to in paragraph (a).

231V Disclosure of information

- (1) Despite anything to the contrary in this Act, the Director-General may disclose to an interstate officer any information that has come to his or her notice in the exercise of functions under this Act if the Director-General considers that it is necessary to do so to enable the interstate officer to exercise functions under a child welfare law or an interstate law.
- (2) Any information disclosed to the Director-General under a provision of a child welfare law or an interstate law that substantially corresponds to subsection (1) must be taken for the purposes of any provision of this Act relating to the disclosure of information to have been information given directly to the Director-General in New South Wales instead of to an interstate officer.

231W Discretion of Director-General to consent to transfer

- (1) If, under an interstate law, there is a proposal to transfer a child protection order to New South Wales, the Director-General may consent or refuse to consent to the transfer and the terms of the proposed interstate order.
- (2) If, under an interstate law, there is a proposal to transfer a child protection proceeding to the Children's Court in New South Wales, the Director-General may consent or refuse to consent to the transfer.

231X Evidence of consent of relevant interstate officer

A document, or a copy of a document, purporting:

- (a) to be the written consent of the relevant interstate officer to:
 - (i) the transfer of a child protection order to a participating State and to the terms of the proposed interstate order, or
 - (ii) the transfer of a child protection proceeding pending in the Children's Court to the Children's Court in a participating State, and
- (b) to be signed by the relevant interstate officer or his or her delegate,

is admissible in evidence in any proceedings under this Chapter and, in the absence of evidence to the contrary, is proof that consent in the terms appearing in the document was duly given by the relevant interstate officer.

Part 6 Reciprocity generally

231Y Definitions

In this Part:

appropriate authority means a person who, pursuant to a child protection order made under a child welfare law other than this Act, is competent to take action equivalent to action that may be taken pursuant to a child protection order made under this Act.

interstate ward means a child who is in New South Wales and who, immediately before entering New South Wales, was subject to a child protection order made under a child welfare law other than this Act, being a child protection order that has not been transferred to New South Wales under this Chapter.

231Z Arrangements for care

- (1) The Minister:
 - (a) may make financial and other arrangements with an appropriate authority for the care of:
 - (i) an interstate ward, or
 - (ii) a child or young person who is under the parental responsibility of the Minister under this Act, and
 - (b) may, at the Minister's discretion, or in accordance with any such arrangements, return an interstate ward to the care of the appropriate authority for the interstate ward, and
 - (c) must, if the appropriate authority for an interstate ward requests the Minister to do so, return the interstate ward to the care of that appropriate authority.
- (2) The Minister is to provide for the accommodation, care and maintenance, in accordance with the arrangements referred to in subsection (1), of any interstate ward to whom such an arrangement applies.

231ZA Declarations concerning parental responsibility: interstate ward

- (1) The Minister may, at the request of an appropriate authority, declare an interstate ward to be a child or young person under the parental responsibility of the Minister under this Act.
- (2) The Minister may revoke a declaration made under this section if:
 - (a) the child protection order to which the child or young person concerned is subject is transferred to New South Wales under this Chapter, or

Schedule 2 Amendments to Children and Young Persons (Care and Protection)
Act 1998 relating to reciprocal arrangements

- (b) an order of a court of competent jurisdiction provides for the future care and protection of the child or young person by a person other than the Minister, or
 - (c) the Minister has reasonable grounds to believe that the child or young person has left New South Wales and will not return.
- (3) A declaration under this section ceases to have effect (despite any other provision of this Act):
- (a) on the day the declaration is revoked by the Minister, or
 - (b) on the rescission or variation of the child protection order to which the child or young person is subject, or
 - (c) on the expiration of the period (if any) specified in that child protection order,
- whichever first occurs.

231ZB Declaration under law of jurisdiction other than NSW

- (1) Any functions exercisable under this Act by any person in relation to a child or young person who is subject to a child protection order made under this Act are taken to be suspended while a declaration concerning the child or young person is in force under a provision of a child welfare law other than this Act that corresponds to section 231ZA (1).
- (2) However, those functions are taken not to be suspended in so far as they may be exercised in accordance with any provision of the child welfare law concerned.

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

Insert after section 245 (1) (f):

- (f1) a decision of the Director-General to transfer a child protection order to a participating State under Division 1 of Part 2 of Chapter 14A,

[4] Section 255 Reciprocity between States and Territories

Omit the section.

Schedule 3 Miscellaneous amendments to Children and Young Persons (Care and Protection) Act 1998

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order:

direct legal representative—see section 99A (1).

independent legal representative—see section 99A (2).

legal representative means an Australian legal practitioner.

[2] Section 29A

Insert after section 29:

**29A Person who makes report is not prevented from helping child or
young person**

For avoidance of doubt, it is declared that a person who is permitted or required by this Part to make a report is not prevented, by reason only of having made that report, from responding to the needs of, or discharging any other obligations in respect of, the child or young person the subject of the report in the course of that person's employment or otherwise.

[3] Section 43 Removal of children and young persons without warrant

Omit "or who are on remand" from section 43 (5).

Insert instead " , who are on remand or who are subject to an order under section 33 (1) (g) of the *Children (Criminal Proceedings) Act 1987*".

[4] Section 69 Interim care orders

Insert after section 69 (1):

- (1A) The Children's Court may make an interim care order prior to determining whether the child or young person is in need of care and protection, if the Court is satisfied that it is appropriate to do so.

[5] Section 71A

Insert after section 71:

71A Effect of conduct outside New South Wales

For the purposes of this Act, it does not matter whether the conduct constituting a reason referred to in section 71 occurred wholly or partly outside the State.

[6] Section 96 Attendance of child or young person, parents and others

Insert after the note to section 96 (6):

(7) In this section:

parent of a child or young person includes a birth parent, or an adoptive parent, of the child or young person who does not have parental responsibility for the child or young person.

[7] Sections 99–99D

Omit section 99. Insert instead:

99 Appointment of legal representative by Children’s Court

- (1) The Children’s Court may appoint a legal representative to act for a child or young person if it appears to the Children’s Court that the child or young person needs to be represented in any proceedings before it.
- (2) A legal representative for a child or young person who has not been appointed by the Children’s Court may appear only with its leave.
- (3) The Children’s Court may withdraw its leave at any time and for any reason (including the child or young person informing the Children’s Court that he or she does not wish to be represented by the legal representative).

99A Legal representative to act as independent legal representative or direct legal representative

- (1) A legal representative for a child or young person is to act as a *direct legal representative* if:
 - (a) the child or young person is capable of giving proper instructions, and
 - (b) a guardian ad litem has not been appointed for the child or young person.

-
- (2) A legal representative for a child or young person is to act as an *independent legal representative* if:
- (a) the child or young person is not capable of giving proper instructions, or
 - (b) a guardian ad litem has been appointed for the child or young person.

Note. Section 100 (4) provides that a legal representative of a child or young person for whom a guardian ad litem has been appointed is to act on the instructions of the guardian ad litem.

99B Child under 12 presumed incapable of giving proper instructions

- (1) There is a rebuttable presumption that a child who is less than 12 years of age is not capable of giving proper instructions to his or her legal representative.
- (2) However, the Children's Court may, on the application of a legal representative for a child who is less than 12 years of age, make a declaration that the child is capable of giving proper instructions.

99C Child 12 or older and young person presumed capable of giving proper instructions

- (1) There is a rebuttable presumption that a child who is not less than 12 years of age, or a young person, is capable of giving proper instructions to his or her legal representative. This presumption is not rebutted merely because the child or young person has a disability.
- (2) However, the Children's Court may, on the application of a legal representative for a child who is not less than 12 years of age, or a young person, make a declaration that the child or young person is not capable of giving proper instructions.

99D Role of a legal representative

Without limiting the role of a legal representative for a child or young person in proceedings before the Children's Court:

- (a) the role of a direct legal representative includes the following:
 - (i) ensuring that the views of the child or young person are placed before the Children's Court,
 - (ii) ensuring that all relevant evidence is adduced and, where necessary, tested,
 - (iii) acting on the instructions of the child or young person, and

- (b) the role of an independent legal representative includes the following:
 - (i) if a guardian ad litem has been appointed for the child or young person—acting on the instructions of the guardian ad litem,
 - (ii) interviewing the child or young person after becoming the independent legal representative,
 - (iii) explaining to the child or young person the role of an independent legal representative,
 - (iv) presenting direct evidence to the Children’s Court about the child or young person and matters relevant to his or her safety, welfare and well-being,
 - (v) presenting evidence of the child’s or young person’s wishes (and in doing so the independent legal representative is not bound by the child’s or young person’s instructions),
 - (vi) ensuring that all relevant evidence is adduced and, where necessary, tested,
 - (vii) cross-examining the parties and their witnesses,
 - (viii) making applications and submissions to the Children’s Court for orders (whether final or interim) considered appropriate in the interests of the child or young person,
 - (ix) lodging an appeal against an order of the Children’s Court if considered appropriate.

[8] Section 148 Disclosure of information concerning placement to parents
Omit the section.

[9] Chapter 8, Part 2, Division 1A
Insert after section 149A:

Division 1A Disclosure to parents and significant persons of information concerning placement in out-of-home care

149B Definitions

- (1) In this Division, *parent*, in relation to the child or young person concerned, means:
 - (a) the person (other than the Minister or the Director-General) who had parental responsibility for the

child or young person immediately before the child or young person was placed in out-of-home care, and

- (b) if the person referred to in paragraph (a), or the Minister or the Director-General, had parental responsibility for the child or young person pursuant to an order of the Children's Court—the person who had parental responsibility for the child or young person immediately before the order of the Children's Court was made.
- (2) A reference in this Division to a person who is *significant* to a child or young person is a reference to a person referred to in section 9 (g).

149C Disclosure to parents and significant persons

- (1) The designated agency responsible for the placement of a child or young person in out-of-home care must, in accordance with this Division, disclose information concerning the placement of the child or young person to the following persons:
 - (a) the birth parents and adoptive parents (if any) of the child or young person,
 - (b) any other person who is significant to the child or young person and who makes a written request for the information.
- (2) The information must be disclosed as soon as practicable after the placement of the child or young person.
- (3) This section is subject to sections 149E (Consent of authorised carer to disclosure of high level identification information) and 149I (Refusal to disclose information concerning placement).

149D Type and amount of information to be disclosed

When considering the type and amount of information to be disclosed under this Division, the designated agency must have regard to:

- (a) the wishes of the child or young person and authorised carer concerned, and
- (b) any guidelines prepared by the Children's Guardian in relation to disclosure, which may include, but are not limited to, any guidelines relating to the following:
 - (i) particular classes of people, in addition to parents and including persons significant to the child or young person, who should normally receive information concerning placement,

- (ii) particular types of information concerning placement that should normally be disclosed,
- (iii) guidance as to any persons who should not receive information concerning placement,
- (iv) guidance as to how the child or young person concerned is to participate in any decision-making processes relating to the disclosure of information concerning the authorised carer of the child or young person.

149E Consent of authorised carer to disclosure of high level identification information

- (1) Except as provided by this section (and despite section 149C), a designated agency must not disclose high level identification information concerning the placement of a child or young person unless:
 - (a) the designated agency has contacted the authorised carer of the child or young person concerned and requested the consent of that authorised carer to the disclosure, and
 - (b) the authorised carer has consented in writing to the disclosure.
- (2) The information may be disclosed even though the authorised carer of the child or young person concerned has refused to consent to the disclosure, or has not consented to the disclosure within 28 days after being requested to do so under this section, if the designated agency:
 - (a) believes on reasonable grounds that the disclosure will not pose any risk to the safety, welfare or well-being of:
 - (i) the child or young person concerned, or
 - (ii) the authorised carer of the child or young person, or
 - (iii) any member of the family or household of the authorised carer of the child or young person, and
 - (b) complies with sections 149F and 149G.

149F Disclosure of high level identification information without consent of authorised carer

- (1) Before disclosing high level identification information without the consent of the authorised carer of the child or young person concerned, the designated agency:
 - (a) must provide written reasons to the authorised carer as to why it believes that the disclosure of the information will

-
- not pose any risk of the kind referred to in section 149E (2) (a), and
- (b) if the child or young person concerned is 12 years of age or older—must provide a copy of the written reasons to the child or young person (unless the agency considers that it is not in the child or young person’s best interests to do so), and
 - (c) if the child concerned is less than 12 years of age—must supply a copy of the written reasons to any person nominated by the child (unless the agency considers that it is not in the child’s best interests to do so or that the child is too young to nominate a person), and
 - (d) must ensure that a copy of the written reasons is retained on the designated agency’s file for the purpose of disclosing them to the child after he or she reaches the age of 12 (unless the agency considers that it is not in the child’s best interests to do so).
- (2) The designated agency must also give the authorised carer a written notice stating:
- (a) that the information will not be disclosed within the period of 21 days after the date of the notice, and
 - (b) that the decision to disclose the information may be reviewed by the Administrative Decisions Tribunal:
 - (i) on the application of the authorised carer, or
 - (ii) on the application of the designated agency (on behalf of the authorised carer) at the request of the authorised carer made before the expiry of the 21-day period referred to in paragraph (a).

149G Application for review of decision to disclose high level identification information

- (1) If a designated agency decides to disclose high level identification information under this Division despite the authorised carer’s refusing, or failing to give, consent to the disclosure, the authorised carer:
 - (a) may apply to the Administrative Decisions Tribunal for a review of the decision to disclose the information, or
 - (b) may, within the time allowed under section 149F (2) (b) (ii), request the designated agency to apply to the Administrative Decisions Tribunal, on behalf of the authorised carer, for a review of the decision to disclose the information.

- (2) The designated agency must comply with any request made in accordance with subsection (1) (b) and, before doing so, must carry out an internal review of the decision in accordance with section 53 of the *Administrative Decisions Tribunal Act 1997* as modified by section 149H and the regulations (if any).
- (3) If an application is made to the Administrative Decisions Tribunal under this section, the designated agency must not disclose the information to which the application relates otherwise than in accordance with the final determination of the application (unless the application is withdrawn by or at the request of the authorised carer).

149H Modification of Administrative Decisions Tribunal Act 1997

- (1) If an application for a review of a decision to disclose high level identification information under this Division is to be made by a designated agency at the request of, and on behalf of, an authorised carer:
 - (a) the designated agency is taken to be an *interested person* for the purposes of the ADT Act, and
 - (b) the following provisions of the ADT Act do not apply in relation to the application:
 - (i) Division 2 (Duty to give reasons on request) of Part 2 of Chapter 5,
 - (ii) section 53 (2) (Requirements for an application),
 - (iii) Division 2 (Effect of pending applications on reviewable decisions) of Part 3 of Chapter 5, and
 - (c) a reference in section 58 (1) of the ADT Act to receiving notice of an application is to be construed as a reference to the making of an application, and
 - (d) a reference in section 58 of the ADT Act to the giving of reasons under section 49 of that Act is to be construed as a reference to the provision of reasons to the authorised carer under section 149F of this Act, and
 - (e) the application is taken, after it is made, to have been made by the authorised carer.
- (2) The regulations may further modify the application of the ADT Act in relation to an application referred to in subsection (1).
- (3) In this section, *the ADT Act* means the *Administrative Decisions Tribunal Act 1997*.

149I Refusal to disclose information concerning placement

- (1) Despite section 149C, a designated agency must refuse to disclose information concerning placement under this Division, or must impose conditions on the disclosure, if it believes on reasonable grounds that the disclosure of the information would adversely affect the safety, welfare or well-being of:
 - (a) the child or young person concerned, or
 - (b) an authorised carer of that child or young person, or
 - (c) any member of the family or household of the authorised carer of that child or young person.
- (2) If a designated agency decides to refuse to disclose information concerning placement under this Division, it must give written notification of the decision:
 - (a) to the parents of the child or young person, and
 - (b) to any other person who is significant to the child or young person and who has made a written request for the information.
- (3) For the purposes of deciding whether or not to refuse to disclose information concerning placement, or to disclose such information subject to conditions, the designated agency must have regard to:
 - (a) the wishes of the child or young person concerned, and
 - (b) any guidelines prepared by the Children's Guardian (as referred to in section 149D (b)).

149J Disclosure not contravention of confidentiality or contravention of privacy law

A disclosure of information concerning placement made in good faith under this Division does not constitute a contravention of any provision as to confidentiality in this Act or a contravention of the *Health Records and Information Privacy Act 2002* or the *Privacy and Personal Information Protection Act 1998*.

149K No conflict with court order

- (1) This Division does not authorise a disclosure of information concerning placement if that disclosure is prevented by an order of any court or tribunal.
- (2) This Division does not prevent a disclosure of information concerning placement if that disclosure is required by an order of any court or tribunal.

[10] Section 168 Access to personal information

Insert after section 168 (1):

- (1A) In this section, a reference to records kept by a designated agency includes a reference to records formerly kept by the agency and delivered to the Director-General as referred to in section 170 (2A).

[11] Section 170 Retention of records

Insert at the end of section 170 (3):

However, subsection (2A) applies despite the provisions of that Act.

[12] Section 199 Definitions

Insert in alphabetical order:

exempt premises means:

- (a) any premises belonging to a class of premises prescribed by the regulations for the purposes of this paragraph, and
- (b) in relation to any provision of this Chapter, any premises declared to be exempt premises for the purposes of that provision by an order of the Minister published in the Gazette, being an order that is in force.

[13] Section 199, definition of “home based children’s service”

Insert “by the carer” after “provided”.

[14] Section 199 (2)

Insert at the end of section 199:

- (2) The Minister may make orders of the kind referred to in paragraph (b) of the definition of *exempt premises* in subsection (1).

[15] Section 200 Meaning of “children’s services”

Omit section 200 (2) (d). Insert instead:

- (d) a service involving medical or clinical care provided by a hospital,
- (d1) a regular child-minding service:
- (i) that is provided in connection with a hospital, health service or a recreational or commercial facility, and

- (ii) that is provided by or on behalf of the person conducting the hospital, health service or recreational or commercial facility, and
- (iii) that is provided to care for children only:
 - (A) while a sibling of the child being cared for is being treated at the hospital or health service, or
 - (B) while the children's parents or authorised carers are visiting or being treated at the hospital or health service or are using the recreational or commercial facility,

[16] Section 200 (3)

Omit the subsection. Insert instead:

- (3) In this section:
hospital means:
 - (a) a private hospital or day procedure centre licensed under the *Private Hospitals and Day Procedure Centres Act 1988*, or
 - (b) a hospital or an authorised hospital within the meaning of the *Mental Health Act 1990*, or
 - (c) a public hospital within the meaning of the *Health Services Act 1997*.

[17] Section 219 Time for instituting proceedings

Omit the section.

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

Insert after section 245 (1) (i):

- (j) a decision of a designated agency to disclose high level identification information concerning the placement of a child or young person,
- (k) a decision of a designated agency to refuse to disclose information concerning the placement of a child or young person.

[19] Section 245 (1A)

Insert after section 245 (1):

- (1A) Sections 29–31 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* do not apply in respect of a review of a decision referred to in subsection (1) (j) or (k).

[20] Section 246 Separation of children and young persons from offenders

Omit the second paragraph of the note.

[21] Section 246 (2) and (3)

Insert after the note to section 246:

- (2) Subsection (1) does not apply in respect of a child or young person who:
- (a) is on remand, or
 - (b) is subject to an order under section 33 (1) (g) of the *Children (Criminal Proceedings) Act 1987*.
- (3) If a child or young person in the care responsibility of the Director-General or in the parental responsibility of the Minister under this Act is detained by the police on a warrant issued for his or her arrest, the child or young person cannot be held in a detention centre (within the meaning of the *Children (Detention Centres) Act 1987*) pending his or her appearance in court.

[22] Section 258A

Insert after section 258:

258A Time for instituting proceedings

- (1) Proceedings for an offence under this Act or the regulations may be commenced not later than 6 months after the offence was alleged to have been committed.
- (2) Proceedings for an offence against this Act or the regulations may also be commenced:
- (a) in the case of an offence against Chapter 12 or against a regulation made in relation to children's services—within but not later than 2 years after the Director-General became aware of the alleged offence, or
 - (b) in any other case—within but not later than 6 months after the Director-General became aware of the alleged offence.

-
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice or application must contain particulars of the date on which evidence of the alleged offence first came to the attention of the Director-General and need not contain particulars of the date on which the offence was alleged to have been committed. The date on which evidence first came to the attention of the Director-General is the date specified in the court attendance notice or application, unless the contrary is established.
 - (4) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
 - (5) In this section:
evidence of an offence means evidence of any act or omission constituting the offence.

[23] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Children and Young Persons (Care and Protection)
Miscellaneous Amendments Act 2006*

[24] Schedule 3

Insert (with appropriate numbering) at the end of the Schedule:

**Part Provisions consequent on enactment of
Children and Young Persons (Care and
Protection) Miscellaneous Amendments
Act 2006**

Definition

In this Part:

amending Act means the *Children and Young Persons (Care and Protection) Miscellaneous Amendments Act 2006*.

Legal representation

Section 99 as in force before its repeal and re-enactment by the amending Act continues to apply to any proceedings before the Children's Court that were pending (but not finally determined) before that repeal and re-enactment.

Children and Young Persons (Care and Protection) Miscellaneous
Amendments Act 2006 No 95

Schedule 3 Miscellaneous amendments to Children and Young Persons (Care and
Protection) Act 1998

Admissibility of certain evidence

Sections 106A and 107 (3A), as inserted by the amending Act, extend to apply in respect of proceedings before the Children's Court that were pending (but not finally determined) immediately before the commencement of the section concerned.

Exempt premises

Premises that were exempt premises within the meaning of section 200 (3) (b) or (c) immediately before the repeal of those paragraphs by the amending Act are taken to be exempt premises within the meaning of section 199 as amended by the amending Act.

Institution of proceedings

Section 258A, as inserted by the amending Act, extends to apply in respect of offences alleged to have been committed before the commencement of that section.

Schedule 4 Amendment of other Acts

(Section 4)

4.1 Child Protection (International Measures) Act 2006 No 12

Section 4 Application of Act

Insert after section 4 (2):

- (3) This Act does not apply in relation to matters dealt with under an arrangement with New Zealand under Chapter 14A of the *Children and Young Persons (Care and Protection) Act 1998*.
- (4) To the extent that this Act and an arrangement referred to in subsection (3) are inconsistent in providing for the exercise of jurisdiction by a New South Wales authority or a competent authority in a Convention country, this Act prevails.

4.2 Children and Young Persons (Care and Protection) Amendment Act 2005 No 93

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

Insert at the end of section 109B of the *Children and Young Persons (Care and Protection) Act 1998* (as proposed to be inserted by Schedule 1 [8]):

- (6) In this section:
parent of a child or young person includes a birth parent, or an adoptive parent, of the child or young person who does not have parental responsibility for the child or young person.

Children and Young Persons (Care and Protection) Miscellaneous
Amendments Act 2006 No 95

Schedule 4 Amendment of other Acts

**4.3 Children and Young Persons (Care and Protection)
Amendment Act 2006 No 60**

[1] Schedule 1 Amendments

Omit “section 99 (3)” from section 96 (2A) in Schedule 1 [33].

Insert instead “section 99C (1)”.

[2] Schedule 1

Omit Schedule 1 [35]–[38].

[Second reading speech made in—

Legislative Assembly on 24 October 2006

Legislative Council on 15 November 2006]

BY AUTHORITY