



New South Wales

Children and Young Persons (Savings and Transitional) Regulation 2000

under the

Children and Young Persons (Care and Protection) Act 1998

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Children and Young Persons (Care and Protection) Act 1998*.

FAYE LO PO', M.P.,

Minister for Community Services

Explanatory note

The object of this Regulation is to make provisions of a savings and transitional nature as a consequence of the commencement of provisions of the *Children and Young Persons (Care and Protection) Act 1998* and the corresponding repeal of provisions of the *Children (Care and Protection) Act 1987*.

The Regulation is made under section 264 of, and clause 1 of Schedule 3 to, the *Children and Young Persons (Care and Protection) Act 1998*.

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Children and Young Persons (Care and Protection) (Savings and Transitional) Regulation 2000

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Children and Young Persons (Savings and Transitional) Regulation 2000

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Children and Young Persons (Savings and Transitional) Regulation 2000*.

2 Commencement

This Regulation commences on 18 December 2000.

3 Definitions

In this Regulation:

the new Act means the *Children and Young Persons (Care and Protection) Act 1998*.

the old Act means the *Children (Care and Protection) Act 1987*.

4 Notes

The explanatory note and table of contents do not form part of this Regulation.

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Part 2 General provisions

Part 2 General provisions

5 General savings

Except as otherwise provided by this Regulation, nothing in this Regulation affects the application of section 30 of the *Interpretation Act 1987*.

6 Aboriginals and Torres Strait Islanders

If any thing was commenced to be done or omitted under a provision of the old Act but not completed before the repeal of the provision in relation to a child or young person who was not an Aboriginal or Torres Strait Islander under the old Act but who is an Aboriginal or Torres Strait Islander under the new Act, the thing is to be completed:

- (a) under the old Act (except as provided by paragraph (b)), as if the child or young person is an Aboriginal or Torres Strait Islander, and
- (b) in accordance with the Aboriginal and Torres Strait Islander principles in Part 2 of Chapter 2 of the new Act.

7 Temporary care arrangements

- (1) A temporary care arrangement in force under section 14 of the old Act immediately before the repeal of that section is taken to be a temporary care arrangement under section 151 of the new Act and continues for the remainder of the period for which the arrangement was made or renewed.
- (2) An application for the review of a temporary care arrangement under section 14 (9) of the old Act that has not been determined before the repeal of that provision is taken to be an application for the review of a temporary care arrangement under section 152 (6) of the new Act.
- (3) A child or young person who, immediately before the repeal of section 16 of the old Act, was in the custody of the Director-General pursuant to that section is taken to be a child or young person of whom the Director-General has the care responsibility pursuant to section 154 of the new Act.

8 Custody

A person who had the custody of a child or young person in accordance with an order made under section 72 (1) (c) (ii) of the old Act immediately before the repeal of the provision is taken to have those aspects of parental responsibility that are referred to in:

- (a) section 79 (2) (a) of the new Act, and
- (b) section 157 of the new Act.

9 Wards

A child or young person who was a ward under a provision of the old Act immediately before the repeal of the provision is taken to be a child or young person under the parental responsibility of the Minister.

10 Notification of child abuse

- (1) Despite its repeal, section 22 of the old Act continues to apply so as to enable a notification to be made to the Director-General that a child or young person was abused before the repeal of that section.
- (2) A notification under section 22 of the old Act that has not been dealt with before the repeal of that section, or that is made as referred to in subclause (1), is taken to be:
 - (a) except as provided by paragraph (b), a report under section 24 of the new Act, or
 - (b) if the report has been made by a person to whom section 27 (1) of the new Act applies, a report under section 27 of the new Act,

and is to be treated in all respects accordingly under the new Act.

- (3) An investigation under section 22 (7) of the old Act that has not been completed before the repeal of that subsection is taken to be an investigation under section 30 of the new Act, and is to be treated in all respects accordingly under the new Act.
- (4) Section 29 of the new Act applies to a notification under section 22 of the old Act that has been dealt with before the repeal of section 22 of the old Act.

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Clause 11 Children and Young Persons (Savings and Transitional) Regulation 2000

Part 2 General provisions

11 Medical examination of abused children

A notice served under section 23 (1) of the old Act, a requirement of which has not been complied with before the repeal of that provision, is taken, but only for the purpose of enabling the medical examination of the child or young person to whom the notice relates, to be a notice served under section 173 (1) of the new Act.

12 Care responsibility for children and young persons

If a person had the care of a child or young person under a provision of the old Act immediately before its repeal, the person is taken to have the care and protection of the child or young person under, and for the purposes of, the new Act.

13 Provision of care by the Director-General

A child or young person to whom section 12A, 62 (1) or 62A (1) of the old Act applied immediately before its repeal is taken to be a child or young person under the care responsibility of the Director-General for the purposes of the new Act.

14 Ordinary medical and dental treatment

Treatment that could have been, but was not, given to a child under section 20 of the old Act pursuant to a consent granted in accordance with that section at any time before its repeal may be given to the child as if that section had not been repealed.

15 Special medical treatment

Treatment that could have been, but was not, given to a child under section 20B of the old Act pursuant to a consent granted in accordance with that section by the Supreme Court at any time before the repeal of that section may be given to the child as if that section had not been repealed.

Part 3 Children's Court proceedings

16 Existing proceedings

If proceedings under the old Act in the Children's Court or the District Court have been commenced but not completed before the repeal of Division 4 of Part 5 of the old Act, the proceedings are to be continued and completed under the old Act in all respects as if the old Act (or any relevant provision of the old Act) had not been repealed.

17 Orders, requirements and directions of the Children's Court, and undertakings, under the old Act

An order, requirement or direction of the Children's Court under a provision of the old Act, or an undertaking given in accordance with a provision of the old Act, that was in force immediately before the repeal of the provision is not affected by the repeal of the provision but continues in force according to its terms, except to such extent (if any) as may be provided by this Regulation.

18 Right of appeal to District Court

Section 81 of the old Act continues to apply to an order of the Children's Court:

- (a) made before the repeal of that section, or
- (b) made as referred to in clause 17,

as if section 81 of the old Act had not been repealed.

19 Orders for supervision under sec 72 (1) (c) (i) of the old Act

An order in force under section 72 (1) (c) (i) of the old Act immediately before the repeal of that provision is taken:

- (a) to be an order in force under section 76 of the new Act, and
- (b) to be in force for:
 - (i) the unexpired balance of the period (if any) for which the order was expressed to be in force, or
 - (ii) 12 months from the commencement of section 76 of the new Act,

whichever is the lesser.

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Clause 20 Children and Young Persons (Savings and Transitional) Regulation 2000

Part 3 Children's Court proceedings

20 Enforcement of undertakings

A failure or breach in relation to any matter to which a provision of section 79 or 84 of the old Act applied immediately before the repeal of the provision may be dealt with under section 73 (5) of the new Act, whether the failure or breach occurred before or after the repeal of the provision.

21 Rescission and variation of orders

An order of the Children's Court made under a provision of the old Act that was in force immediately before the repeal of the provision may be rescinded or varied under section 90 of the new Act as if it were a care order.

22 Application of old Act to orders under new Act

- (1) For the purposes of the application of the provisions of the old Act that are not repealed on or before the commencement of this Regulation to orders that are made under the new Act after that commencement, an order under a provision of the new Act specified in Column 1 of the following Table is taken to be an order under the provision of the old Act (if any) specified opposite in Column 2 of the Table.

Column 1		Column 2	
Children and Young Persons (Care and Protection) Act 1998		Children (Care and Protection) Act 1987	
Section	Order	Section	Order
38 (3)	Order (by consent) allocating parental responsibility to the Minister	72 (1) (c) (iii)	Order declaring a child to be a ward
38 (3)	Order (by consent) allocating parental responsibility from one parent to the exclusion of the other	72 (1) (c) (ii)	Order granting custody to one parent only
38 (3)	Order (by consent) allocating parental responsibility to one or both parents and a third party	72 (1) (c) (ii)	Order granting custody to parents and a third party jointly

Column 1		Column 2	
Children and Young Persons (Care and Protection) Act 1998		Children (Care and Protection) Act 1987	
Section	Order	Section	Order
38 (3)	Order (by consent) allocating parental responsibility to another suitable person	72 (1) (c) (ii)	Order placing a child in the custody of a person
46	Emergency care and protection order	77	Order for care of children during adjournments
48	Order for the removal of a child or young person from premises or place specified in the order	59	Order for the removal of a child from premises specified in the order
49 (2)	Order vesting care responsibility in designated agency pending care proceedings	77	Order for care of children during adjournments
53	Examination and assessment orders		No equivalent order
69	Interim care orders	77	Order for the care of children during adjournments
70	Interim care orders	77	Order for the care of children during adjournments
73	Order with undertakings given by person having parental responsibility	72 (1) (b) (i)	Order with undertakings given by person responsible
73	Order with undertakings given by child or young person	72 (1) (b) (ii)	Order with undertakings given by child
73	Order with undertakings given by person having parental responsibility and child or young person	72 (1) (b) (iii)	Order with undertakings given by person responsible and child
74	Consent order directing a person or organisation to provide support services		No equivalent order
75	Order for child or young person to attend a therapeutic or treatment program		No equivalent order

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Clause 22 Children and Young Persons (Savings and Transitional) Regulation 2000

Part 3 Children's Court proceedings

Column 1		Column 2	
Children and Young Persons (Care and Protection) Act 1998		Children (Care and Protection) Act 1987	
Section	Order	Section	Order
76	Order placing a child or young person under the Director-General's supervision (not to exceed 12 months, but may be extended at a later date)	72 (1) (c) (i)	Order placing a child under the supervision of an officer
79 (1) (a) (i)	Order allocating parental responsibility to one parent to the exclusion of the other	72 (1) (c) (ii)	Order granting custody to one parent only
79 (1) (a) (ii)	Order allocating parental responsibility to one or both parents and a third party	72 (1) (c) (ii)	Order granting custody to parents and a third party jointly
79 (1) (a) (iii)	Order allocating parental responsibility to another suitable person	72 (1) (c) (ii)	Order placing a child in the custody of a person
79 (1) (b)	Order allocating parental responsibility to the Minister	72 (1) (c) (iii)	Order declaring a child to be ward
86	Contact order		No equivalent order
90	Rescission and variation of care orders	75	Order rescinding or varying a care order
118 (1)	Order (by consent) giving effect to an alternative parenting plan allocating parental responsibility to another person, other than the Minister	72 (1) (c) (ii)	Order placing a child in the custody of a person
118 (1)	Order (by consent) giving effect to an alternative parenting plan allocating parental responsibility to the Minister	72 (1) (c) (iii)	Order declaring a child to be a ward
119	Registration of an alternative parenting plan involving allocation of parental responsibility to a person other than the Minister	72 (1) (c) (ii)	Order placing a child in the custody of a person

Column 1		Column 2	
Children and Young Persons (Care and Protection) Act 1998		Children (Care and Protection) Act 1987	
Section	Order	Section	Order
119	Registration of an alternative parenting plan allocating parental responsibility to the Minister	72 (1) (c) (iii)	Order declaring a child to be a ward
124	Compulsory assistance order (not yet commenced)		No equivalent order
131	Orders associated with a compulsory assistance order (not yet commenced)		No equivalent order
176 (6)	Order that a child or young person be subject to a special medical examination without consent (not yet commenced)	21 (6)	Order that a child be subject to a special medical examination without consent

- (2) An order made by the Children's Court under section 79 (1) (a) (ii) or (iii) of the new Act is taken to include an order under section 72 (1) (c) (i) of the old Act.
- (3) Section 19 of the old Act applies to a child or young person in respect of whom:
 - (a) an order is made under the new Act that places the child or young person in the care of another person, or
 - (b) a temporary care arrangement is made under section 151 of the new Act.
- (4) A child or young person for whom the Minister acquires parental responsibility under the new Act is taken to be a ward for the purposes of the application, in accordance with this clause, of the provisions of the old Act to the child or young person.

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Clause 23 Children and Young Persons (Savings and Transitional) Regulation 2000

Part 4 Miscellaneous

Part 4 Miscellaneous

23 Evidence of young children

Section 260 of the new Act extends to the evidence of a medical practitioner given before the commencement of that section.

24 Power of search and removal of abused children

A search warrant issued and in force under section 24 of the old Act immediately before the repeal of that section is taken to be a warrant issued and in force under section 233 of the new Act.

BY AUTHORITY
