



New South Wales

Children (Protection and Parental Responsibility) Regulation 2008

under the

Children (Protection and Parental Responsibility) Act 1997

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Children (Protection and Parental Responsibility) Act 1997*.

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Attorney General

Explanatory note

The object of this Regulation is to remake, with minor changes, the provisions of the *Children (Protection and Parental Responsibility) Regulation 2003* which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) undertakings given under the *Children (Protection and Parental Responsibility) Act 1997* (*the Act*) (clauses 4–6),
- (b) counselling services (clause 7),
- (c) protocols about the way functions conferred on police officers and other persons under Part 3 of the Act are to be exercised (clause 8),
- (d) records to be made by police officers who remove children from public places and escort them to other places (clause 9),
- (e) savings and formal matters (clauses 1–3 and 10).

This Regulation is made under the *Children (Protection and Parental Responsibility) Act 1997*, including sections 26 (2) and 46 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Children (Protection and Parental Responsibility) Regulation 2008

under the

Children (Protection and Parental Responsibility) Act 1997

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Children (Protection and Parental Responsibility) Regulation 2008*.

2 Commencement

This Regulation commences on 1 September 2008.

Note. This Regulation replaces the *Children (Protection and Parental Responsibility) Regulation 2003* which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Interpretation

(1) In this Regulation:

the Act means the *Children (Protection and Parental Responsibility) Act 1997*.

(2) Notes included in this Regulation do not form part of this Regulation.

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Clause 4 Children (Protection and Parental Responsibility) Regulation 2008

Part 2 Parental responsibility

Part 2 Parental responsibility

4 Enforcement of undertakings

A court may use any information available to the court that it considers to be reliable to determine whether a parent or child should be required to attend before the court for failing to comply with an undertaking under Part 2 of the Act.

5 Forfeiture of security for undertakings

A court is not to forfeit any part of the security given by a parent under section 9 of the Act unless:

- (a) the parent is present before the court and has had an opportunity to be heard, or
- (b) a notice to show cause why the security should not be forfeited has first been given personally or by post to the parent and the parent has had an opportunity to show such cause.

6 Refund of security for undertakings

Security given by a person under Part 2 of the Act is to be refunded to the person at the end of the period of the undertaking concerned unless it appears to the court, from any information available to the court at the end of the period, that the person has failed to comply with the undertaking.

7 Counselling

- (1) Before a court requires a person to undergo counselling under Part 2 of the Act, the court must:
 - (a) identify an appropriate professional counsellor or body having counselling facilities to provide the counselling, and
 - (b) ascertain from the counsellor or a person representing the body whether or not the counsellor or body is able to provide, and consents to being nominated by the court as the provider of, the counselling, and
 - (c) determine whether the person will be charged a fee in respect of the counselling and, if a fee is payable, whether the person has the financial capacity to pay the fee or is eligible for government assistance in relation to the provision of the counselling.
- (2) A court is not to require a person to undergo counselling if, in the opinion of the court, the person would suffer undue financial hardship as a consequence of undergoing the counselling.

Part 3 Welfare of children in public places**8 Departmental protocols**

- (1) Protocols may be entered into by the Commissioner of Police and the Director-General of the Department of Community Services regarding the exercise of functions conferred on police officers and other persons under Part 3 of the Act.
- (2) Any such protocol is subject to the provisions of the Act and this Regulation.
- (3) A protocol may be amended, revoked or replaced from time to time.
- (4) A police officer or other person on whom a function is conferred under Part 3 of the Act must as far as practicable exercise the function in conformity with any relevant protocol. However, a failure to comply with a protocol does not invalidate anything done or omitted to be done by the police officer or person.

9 Records

- (1) A police officer who removes a person from a public place under Part 3 of the Act is to make a record of the following particulars:
 - (a) if known to the officer, the person's name and age,
 - (b) if the person expresses any wishes or feelings in relation to the place to which the person is to be escorted under section 22 of the Act—the wishes or feelings expressed,
 - (c) the address of the public place from which the person was removed,
 - (d) the reason why the person was removed from the public place,
 - (e) if he or she arranges for another police officer to escort the person under section 19 (2) or 22 (1) of the Act—the name of that police officer.
- (2) A police officer who removes a person from a public place under Part 3 of the Act or, if another police officer escorts the person in accordance with arrangements made under section 19 (2) or 22 (1) of the Act, the police officer who escorts the person, is to make a record of the following particulars:
 - (a) if the person is escorted to and left at the residence of a parent or the person's care residence—the name of the parent and the address of the parent's residence or the address of the care residence (as the case may require),

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Part 3 Welfare of children in public places

- (b) if the person is escorted to and left at the residence of a close relative—the name of the relative and the address of the residence,
- (c) if the person is left at the residence of a parent or close relative in the care of a person other than the parent or close relative—the name of the person in whose care he or she is left,
- (d) if the person is placed in the care of the Director-General of the Department of Community Services—the name of the person with whom the person is placed,
- (e) if the person is placed in the care of an approved person—the name and address of that person,
- (f) if for any reason the police officer was unable to escort the person to, or leave the person at, a residence of a parent or the person's care residence or the residence of a close relative (or was unable to arrange for another police officer to do so)—the reason.

Part 4 Miscellaneous

10 Savings

Any act, matter or thing that, immediately before the repeal of the *Children (Protection and Parental Responsibility) Regulation 2003*, had effect under that Regulation continues to have effect under this Regulation.