

Passed by both Houses



New South Wales

Children and Young Persons (Care and Protection) Amendment (Parent Responsibility Contracts) Bill 2006

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

Children and Young Persons (Care and Protection) Amendment (Parent Responsibility Contracts) Bill 2006

Act No , 2006

An Act to amend the *Children and Young Persons (Care and Protection) Act 1998* to make provision with respect to parent responsibility contracts; to amend consequentially the *Children's Court Rule 2000*; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Children and Young Persons (Care and Protection) Amendment (Parent Responsibility Contracts) Act 2006*.

2 Commencement

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

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

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

4 Consequential amendment of Children's Court Rule 2000

The *Children's Court Rule 2000* is amended as set out in Schedule 2.

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- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.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 Amendment of Children and Young Persons (Care and Protection) Act 1998

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order:

contract breach notice—see section 38E.

parent responsibility contract—see section 38A.

primary care-giver, in relation to a child or young person, means each person who is primarily responsible for the care and control, including the day-to-day care and control, of the child or young person (whether or not that person is the person with parental responsibility or care responsibility for the child or young person).

[2] Chapter 4, Part 1, heading

Insert before section 34:

Part 1 Action taken by Director-General

[3] Section 34 Taking of action by Director-General

Insert after section 34 (2) (b):

- (b1) development, in consultation with one or more primary care-givers for a child or young person, of a parent responsibility contract instead of taking a matter concerning the child's or young person's need for care and protection before the Children's Court (except in the event of a breach of the contract),

[4] Chapter 4, Part 2, heading

Insert before section 37:

Part 2 Use of alternative dispute resolution

[5] Chapter 4, Part 3 and Division 1, headings

Insert before section 38:

Part 3 Care plans and parent responsibility contracts

Division 1 Care plans

[6] Section 38 Development and enforcement of care plans

Omit “registered in” from section 38 (1). Insert instead “registered with”.

[7] Section 38 (1), note

Insert at the end of the subsection:

Note. Section 38F provides that a care plan or parent responsibility contract is taken to be registered with the Children’s Court when it is filed with the registry of the Court without the need for any order or other further action by the Court.

[8] Section 38 (3)

Omit the subsection and the note at the end of the section. Insert instead:

- (3) The Children’s Court may make such other orders by consent for the purpose of giving effect to a care plan (being orders of the same kind as it could make in a care application that is duly made under Part 2 of Chapter 5) without the need for a care application under that Part and without the need to be satisfied of the existence of any of the grounds under section 71 if the Court is satisfied that:
- (a) the proposed order will not contravene the principles of this Act, and
 - (b) the parties to the care plan understand its provisions and have freely entered into it, and
 - (c) in the case of a party other than the Director-General, the party has received independent advice concerning the provisions to which the proposed order will give effect.

[9] Chapter 4, Part 3, Divisions 2 and 3

Insert after section 38:

Division 2 Parent responsibility contracts

38A Parent responsibility contracts

- (1) A *parent responsibility contract* is an agreement between the Director-General and one or more primary care-givers for a child or young person that contains provisions aimed at improving the parenting skills of the primary care-givers and encouraging them to accept greater responsibility for the child or young person.
- (2) A parent responsibility contract must:
 - (a) be in writing, and
 - (b) be signed by the Director-General and each primary care-giver who is to be a party to the contract, and
 - (c) be in the form (if any) prescribed by the regulations, and
 - (d) be registered with the Children's Court, and
 - (e) specify the period (not exceeding 6 months) during which the contract will be in force, commencing on the date on which the agreement is registered with the Children's Court, and
 - (f) specify the circumstances in which a breach of a term of the contract by a primary care-giver will authorise the Director-General to file a contract breach notice with the Children's Court.
- (3) No more than one parent responsibility contract may be entered into within any period of 12 months between the Director-General and any of the same primary care-givers for a child or young person.
- (4) Before entering into a parent responsibility contract, the Director-General must give the other proposed parties to the contract a reasonable opportunity to obtain independent advice concerning the provisions of the contract.
- (5) Without limiting subsection (1), a parent responsibility contract may make provision for or with respect to any or all of the following:
 - (a) attendance of a primary care-giver for treatment for alcohol, drug or other substance abuse during the term of the contract,
 - (b) attendance of a primary care-giver for counselling,

- (c) requirements relating to alcohol or drug testing that a primary care-giver must undergo during the term of the contract,
 - (d) permitting information about the contract (including compliance with the contract) to be shared between persons and agencies involved in the implementation of the provisions of the contract,
 - (e) participation in courses aimed at improving the parenting skills of the primary care-givers (including, for example, courses relating to behavioural management and financial management),
 - (f) monitoring of compliance with the terms of the contract.
- (6) However, a parent responsibility contract may not make provision for or with respect to any of the following:
- (a) the allocation of parental responsibility for a child or young person,
 - (b) the placement of a child or young person in out-of-home care.
- Note.** Care plans may make provision for the allocation of parental responsibility.
- (7) Any term of a parent responsibility contract that makes provision for or with respect to a matter referred to in subsection (6) has no effect.
- (8) A parent responsibility contract takes effect only if (and when) it is registered with the Children's Court.
- Note.** Section 38F provides that a care plan or parent responsibility contract is taken to be registered with the Children's Court when it is filed with the registry of the Court without the need for any order or other further action by the Court.
- (9) The Director-General is to cause a copy of the parent responsibility contract to be given to each other party to the contract as soon as is reasonably practicable after it is registered with the Children's Court.
- (10) A parent responsibility contract remains in force for the period specified in the contract, unless sooner terminated.

38B Amendment of parent responsibility contracts

- (1) The Director-General may, with the agreement of the other parties to a parent responsibility contract, vary any of the terms of the contract (but not so as to increase the period during which the contract is to be in force).

- (2) A varied parent responsibility contract has effect only if (and when) a copy of the contract that includes the variations made to it is registered with the Children's Court.
- (3) A registered varied parent responsibility contract has effect as such only from the date it is registered until the end of the period originally specified in the contract for its duration.

38C Termination of parent responsibility contracts

- (1) The Director-General may terminate a parent responsibility contract before the expiry of the period specified in the contract for its duration (the *contract period*) by:
 - (a) filing a contract breach notice with the Children's Court, or
 - (b) causing a notice terminating the contract (a *termination notice*) to be served on each other party to the contract.
- (2) The Director-General may cause a termination notice to be served on each other party to the contract for any reason and at any time during the contract period.
- (3) If a parent responsibility contract is terminated by service of a termination notice, the Director-General is to cause the registry of the Children's Court to be notified of the termination of the contract as soon as is reasonably practicable after its termination.

38D Effect of parent responsibility contract

- (1) A parent responsibility contract may be used as evidence of an attempt to resolve a matter concerning a child's or young person's need for care and protection without bringing a care application in accordance with Part 2 of Chapter 5.
- (2) A refusal by a primary care-giver for a child or young person to enter into a parent responsibility contract may also be used as evidence of an attempt to resolve a matter concerning the child's or young person's need for care and protection without bringing a care application in accordance with Part 2 of Chapter 5.
- (3) Except to the extent that this Division or any other provision of this Act provides otherwise:
 - (a) a parent responsibility contract does not create a legally enforceable agreement, and
 - (b) any failure to comply with the terms of such a contract (or any thing done or omitted to be done in connection with the negotiation of, or entry into, the contract) does not give rise to civil liability of any kind.

38E Contract breach notices

- (1) The Director-General may file a ***contract breach notice*** with the Children's Court in relation to a parent responsibility contract if:
 - (a) a primary care-giver for a child or young person who is a party to the contract has breached a term of the contract, and
 - (b) the contract authorises the Director-General to file a contract breach notice with the Children's Court for breaches of the kind committed by the primary care-giver.
- (2) A contract breach notice must state the following matters:
 - (a) the name of the primary care-giver for a child or young person who is alleged to have breached the parent responsibility contract,
 - (b) each provision of the parent responsibility contract that the primary care-giver is alleged to have breached,
 - (c) the manner in which the primary care-giver is alleged to have breached the provision,
 - (d) the care orders that the Director-General will seek from the Children's Court in respect of the child or young person concerned,
 - (e) such other matters as may be prescribed by the regulations.
- (3) The Director-General is to cause a copy of a contract breach notice filed with the Children's Court (along with a copy of the parent responsibility contract) to be served on each of the following persons as soon as is reasonably practicable after filing the notice:
 - (a) each primary care-giver who is a party to the parent responsibility contract,
 - (b) the child or young person for whom the party breaching the contract is a primary care-giver.
- (4) In any care application that is made by the Director-General duly filing a contract breach notice with the Children's Court it is to be presumed (unless the presumption is rebutted by a party to the proceedings other than the Director-General) that the child or young person in respect of whom the application is made is in need of care and protection.

Note. The filing of a contract breach notice with the Children's Court operates as a care application by the Director-General. See section 61A (1).

- (5) A reference in this Act to the Director-General duly filing a contract breach notice is a reference to the Director-General filing the notice in accordance with the provisions of this section.

Division 3 Registration of care plans and parent responsibility contracts

38F When registration occurs

A care plan or parent responsibility contract is taken to be registered with the Children's Court when it is filed with the registry of the Court without the need for any order or other further action by the Court.

38G Registration does not make care plans and parent responsibility contracts court documents

- (1) The registration of a care plan or a parent responsibility contract with the Children's Court does not make the plan or contract a document of the Court.
- (2) Accordingly, a party to a registered care plan or registered parent responsibility contract does not require the leave or other consent of the Children's Court to provide a copy of the plan or contract to any other person or to use the plan or contract in any proceedings in another court or tribunal.

[10] Chapter 4, Part 4, heading

Insert before section 39:

Part 4 Miscellaneous

[11] Section 61A

Insert after section 61:

61A Applications for care orders by filing contract breach notices

- (1) If the Director-General duly files a contract breach notice with the Children's Court, the filing of the notice is an application for the care orders specified in the notice.

- (2) If a care application is made by filing a contract breach notice, references to a parent in the provisions of this Part relating to the making and determination of a care application in respect of a child or young person are to be read as including a reference to a primary care-giver for the child or young person who is a party to the parent responsibility contract concerned even if he or she is not a parent of the child or young person.
- (3) Accordingly, the Children's Court may make the same kinds of orders in respect of such a primary care-giver for a child or young person as the Court may make in respect of a parent of the child or young person.
- (4) Sections 63 (Evidence of prior alternative action) and 64 (Notification of care applications) do not apply to a care application that is made by filing a contract breach notice.

Note. Section 38E (3) requires the Director-General to notify the other parties to a parent responsibility contract and the children and young persons for whom they are primary care-givers that a contract breach notice has been filed with the Children's Court.

[12] Section 71 Grounds for care orders

Insert after section 71 (1) (h):

- (i) in the case where the application for the order is made by filing a contract breach notice—any presumption arising from the operation of section 38E (4) that the child or young person is in need of care and protection has not been rebutted.

[13] Section 71 (3) (as inserted by Schedule 1 [23] to the Children and Young Persons (Care and Protection) Amendment Act 2006)

Omit the subsection.

[14] Section 73 Order accepting undertakings

Omit "(given by a parent of the child or young person)" from section 73 (1) (a).

Insert instead "(given by a responsible person for the child or young person)".

[15] Section 73 (7)

Insert after section 73 (6):

- (7) In this section:
- responsible person*** for a child or young person means any of the following persons (other than the Director-General or the Minister):
- (a) a person having parental responsibility or care responsibility for the child or young person,
 - (b) a person who is the birth mother or birth father of the child or young person (whether or not the person has parental responsibility or care responsibility for the child or young person),
 - (c) a person who is a primary care-giver for the child or young person (whether or not the person has parental responsibility or care responsibility for the child or young person).

[16] Section 75 Order to attend therapeutic or treatment program

Insert before section 75 (2):

- (1B) The Children's Court may, subject to this section, make an order requiring a parent of a child or young person:
- (a) to attend a therapeutic program relating to sexually abusive behaviours, or
 - (b) to attend any other kind of therapeutic or treatment program,
- in accordance with such terms as are specified in the order.

[17] Section 75 (2) and (2A)

Omit section 75 (2). Insert instead:

- (2) An order cannot be made under this section if:
- (a) in the case of an order under subsection (1)—the child is or has been convicted in criminal proceedings arising from the same sexually abusive behaviours, or
 - (b) in the case of an order under subsection (1B) (a)—the parent is or has been convicted in criminal proceedings arising from the same sexually abusive behaviours.

- (2A) A reference in this section to a therapeutic or treatment program includes a reference to a therapeutic or treatment program that requires a participant to reside at a particular location during the whole or part of the time when the program is being conducted.

[18] Section 75 (3)

Omit “proposed for the child”.

Insert instead “or treatment program proposed for the child or parent (as the case may be)”.

[19] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Children and Young Persons (Care and Protection) Amendment (Parent Responsibility Contracts) Act 2006

[20] Schedule 3, Part 4

Insert at the end of the Schedule:

Part 4 Provisions consequent on enactment of Children and Young Persons (Care and Protection) Amendment (Parent Responsibility Contracts) Act 2006

14 Definition

In this Part:

amending Act means the *Children and Young Persons (Care and Protection) Amendment (Parent Responsibility Contracts) Act 2006*.

15 Effect of re-enactment of section 38 (3)

Section 38 (3) (as substituted by Schedule 1 [8] to the amending Act) extends to proceedings before the Children’s Court that were pending (but not finally determined) immediately before the commencement of Schedule 1 [8] to that Act.

16 Registration of care plans

A care plan that was duly registered immediately before the commencement of section 38F (as inserted by the amending Act) is taken to have been duly registered for the purposes of that section.

Schedule 2 Consequential amendment of Children's Court Rule 2000

(Section 4)

Clause 20 Form of application regarding care proceedings

Insert after clause 20 (2):

- (3) This clause does not apply to any care application made by filing a contract breach notice within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*.

Note. Section 61A of the *Children and Young Persons (Care and Protection) Act 1998* provides that a care application is made if the Director-General files a contract breach notice with the Children's Court.