

CHILDREN (CARE AND PROTECTION) AMENDMENT BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Children (Care and Protection) Act 1987 so as—

- (a) to provide that temporary care arrangements must not be made or renewed by the Director-General of the Department of Family and Community Services in respect of children under 16 years of age who are in need of care unless a parent of the child consents or the parents cannot reasonably be located; and
- (b) to remove from the Act alternative provisions under which the Director-General may provide services or make temporary custody orders for children in need of care, or offer temporary refuge to children; and
- (c) to authorise the removal of an infant (of less than 6 months of age) from the unauthorised care of a person who is not the legal guardian of the infant; and
- (d) to authorise the apprehension without a warrant of a homeless child in a public place who is under 16 years of age, whether or not the child is in immediate danger of abuse; and
- (e) to enable the Children's Court to adjourn care proceedings for a period exceeding 8 days in cases where the child is in the temporary care of the Director-General; and
- (f) to make other minor amendments for related purposes.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

Clause 4 contains savings and transitional provisions.

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SCHEDULE 1—AMENDMENTS**Temporary care arrangements**

Schedule 1 (3) amends section 14 to provide that the Director-General must not make or renew a temporary care arrangement in respect of a child under 16 years of age who is in need of care unless a parent of the child consents or the parents cannot reasonably be located. Under such an arrangement the Director-General assumes temporarily the custody of the child. The amendment removes the present provision that a parent or other person who has the care of a child under 14 years of age may apply for such a care arrangement and that, in the case of a child over the age of 14 years, the child (and only the child) may apply for such a care arrangement. If a parent is located after a temporary care arrangement is made or renewed and the Director-General does not terminate the arrangement, the existing provisions of section 14 allow the parent or the child to apply to the Children's Court for a review of the arrangement. If a parent objects to the Director-General making or renewing a temporary care arrangement, the Director-General may (if necessary) institute care proceedings in the Children's Court under Part 5.

Schedule 1 (5) amends section 16 to require the Director-General to keep the parents informed of the whereabouts of a child who is subject to a temporary care arrangement, unless the Director-General considers that the disclosure would be prejudicial to the child's welfare and interests. A parent dissatisfied with any such refusal may apply to the Children's Court for a direction that the Director-General disclose the whereabouts of the child concerned.

Removal of alternative provisions for temporary care of children

Schedule 1 (2) repeals section 13 (Provision of services for children in need of care). The section authorises the Director-General to provide children in need of care with accommodation, maintenance, care, advisory services and other prescribed facilities and services. In so far as the services involve accommodation etc., they provide an alternative to the making of a temporary care arrangement (and to the proposed requirement for parental consent). The Director-General does not require special authority for the other services having regard to the general welfare assistance that may be provided under Part 4 of the Community Welfare Act 1987.

Schedule 1 (4) repeals section 15 (Temporary custody orders). The section enables the Director-General to obtain custody of a child under 16 years of age who has been in a detention centre. The making of the order is subject to similar constraints that presently apply to temporary care arrangements. The alternative procedure for a temporary care arrangement or a care application will remain applicable for a child to whom the repealed section applies. **Schedule 1 (10) and (11)** make consequential amendments to sections 97 and 100 as a result of the proposed repeal of section 15.

Schedule 1 (6) repeals section 17 (Temporary refuge). The section entitles a child to seek temporary refuge with the Director-General. The section is not subject to the constraints which apply to the making of a temporary care arrangement and provides an alternative to the making of such an arrangement (and to the proposed requirement for parental consent).

Unauthorised fostering

Schedule 1 (1) amends the definition in section 10 of a "child in need of care" for the purposes of the Act by including an infant of less than 6 months of age in the unauthorised care of a person who is not the legal guardian of the infant where the unauthorised care is likely to continue. As a result it will be possible to obtain a warrant to remove the child from any premises and to bring a care application in the Children's Court.

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Schedule 1 (7) changes from 50 days to 28 days the minimum period of unauthorised fostering before the person who places the child in that foster care or the person providing that foster care is guilty of an offence.

Apprehension of homeless children

Schedule 1 (8) amends section 60 (Removal of children without warrant). At present a member of the police force or an authorised officer of the Department of Family and Community Services may (without a warrant) enter and remove a child in need of care from any land or premises only if the child is in immediate danger of abuse. The proposed amendment will authorise such a member or officer to remove from a public place a child who is apparently under the age of 16 years if the child is in need of care (but not necessarily in immediate danger of abuse), but only if the child is reasonably suspected of living in or habitually frequenting a public place and is not under the supervision or control of a responsible adult. Any child so removed is required to be placed in the temporary care of the Director-General pending a care application to the Children's Court.

Adjournments by the Children's Court

Schedule 1 (9) amends section 76 (Adjournments by the Children's Court). The amendment removes a provision that prevents the Children's Court from adjourning care proceedings for more than 8 days in cases where the child is in the temporary care of the Director-General. The opportunity has also been taken to remove the obligation on the Children's Court to supply to a child its reasons for any adjournment for a period, or periods, exceeding 42 days if the child is less than 10 years of age.
