

CHILDREN (CARE AND PROTECTION) BILL 1987*

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Community Welfare Bill 1987.

The object of this Bill is to re-enact, with modifications, the provisions of Parts VII and XII of the Community Welfare Act 1982, being the provisions of that Act that relate to the welfare of children and the establishment of a Community Welfare Appeals Tribunal.

PART 1—PRELIMINARY

This Part contains general provisions that are applicable to the whole of the proposed Act including provisions—

- (a) providing for the short title to the proposed Act (clause 1);
- (b) providing for the commencement of the proposed Act on such day or days as the Governor-in-Council may appoint (clause 2);
- (c) defining certain expressions for the purposes of the proposed Act, in particular, the expressions “abuse”, “child”, “child care service”, “Director-General”, “fostering authority”, “parent”, “person responsible”, “private fostering agency”, “private fostering service”, “residential child care centre” and “ward” (clause 3);
- (d) specifying the various family relationships that constitute relationships for the purposes of the proposed Act (clause 4);

* Amended in committee—see table at end of volume.

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- (e) enabling the Minister administering the proposed Act (“the Minister”) to establish facilities for the purposes of the proposed Act (clause 5);
- (f) enabling the Minister to appoint Visitors for facilities (clause 6);
- (g) providing that the placement of a child in care does not imply the granting of custody in relation to the child (clause 7);
- (h) providing that a person is not the guardian of a child merely because the person has the care or custody of the child (clause 8);
- (i) providing that the duties of a person who has the care of a child are the same as those of a person who has the custody of the child (clause 9);
- (j) describing the circumstances under which a child will be deemed to be a child in need of care for the purposes of the proposed Act (clause 10); and
- (k) enabling the Minister and the Director-General to delegate certain functions arising by virtue of their having the care, custody or guardianship of children under the proposed Act (clause 11).

PART 2—CHILDREN’S WELFARE

DIVISION 1—*Provision of care*

This Division deals generally with the provision of services and assistance to children and contains provisions—

- (a) specifying the objects of the proposed Part 2 (clause 12);
- (b) enabling services to be provided for children in need of care (clause 13);
- (c) providing for the making of temporary care arrangements with respect to children under the age of 14 years (clause 14);
- (d) providing for the making of temporary custody orders with respect to children under the age of 16 years (clause 15);
- (e) specifying the effect of temporary care arrangements and temporary custody orders (clause 16);
- (f) enabling temporary refuge to be provided for children (clause 17);
- (g) requiring that children in “alternative care” be accommodated separately from children who are detained in relation to offences committed by them or alleged to be so committed (clause 18);
- (h) requiring the Director-General to maintain a register of children in “alternative care” (clause 19);
- (i) providing for the granting of consent to medical and dental treatment to children in “alternative care” (clause 20);
- (j) controlling the conduct of certain kinds of medical examination in relation to certain classes of children in “alternative care” (clause 21);

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- (k) providing that the Director-General is to be notified of instances of child abuse (clause 22);
- (l) providing for the compulsory medical examination of children allegedly the subject of child abuse (clause 23); and
- (m) providing for the issue of search warrants to facilitate the production of children for medical examination as referred to in clause 23 (clause 24).

DIVISION 2—Offences

This Division creates certain offences in relation to child abuse, in particular—

- (a) the offence of child abuse (clause 25);
- (b) the offence of neglecting to provide adequate food and clothing, etc., for a child (clause 26);
- (c) the offence of removing a child from the care of a person without lawful authority (clause 27);
- (d) the offence of tattooing a child without the consent of the child's parents (clause 28); and
- (e) the offence of leaving a child unsupervised in a motor vehicle (clause 29).

PART 3—LICENSING OF CHILD CARE ARRANGEMENTS

DIVISION 1—Child care services

This Division concerns the licensing of child care services and contains provisions—

- (a) specifying the kinds of child care service to which the Division applies (clause 30);
- (b) prohibiting the provision of certain kinds of child care service by unlicensed persons (clause 31);
- (c) providing for the issue of licences (clause 32 and Schedule 1); and
- (d) providing for the termination of child care services that are being illegally provided (clause 33).

DIVISION 2—Residential child care centres

This Division concerns the licensing of residential child care centres and contains provisions—

- (a) prohibiting the conduct of residential child care centres by unlicensed persons (clause 34);
- (b) prohibiting the conduct of residential child care centres at unlicensed premises (clause 35);
- (c) providing for the issue of licences (clause 36 and Schedule 1);

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- (d) requiring the removal of children from unlicensed residential child care centres (clause 37);
- (e) requiring the notification of deaths occurring at licensed residential child care centres (clause 38); and
- (f) enabling certain persons to enter the premises of a residential child care centre without a warrant (clause 39).

DIVISION 3—Private fostering agencies

This Division concerns the licensing of private fostering agencies and contains provisions—

- (a) prohibiting the conduct of unauthorised private fostering agencies (clause 40); and
- (b) providing for the issue of authorities (clause 41 and Schedule 1).

DIVISION 4—Fostering

This Division concerns the licensing of foster parents and contains provisions—

- (a) prohibiting unlicensed persons from fostering children (clause 42);
- (b) providing for the issue of authorities (clause 43 and Schedule 1);
- (c) prohibiting persons from placing children with unlicensed persons for the purpose of the children's being fostered (clause 44);
- (d) prohibiting the payment of large lump sums in respect of the fostering of children (clause 45); and
- (e) restricting the commencement of proceedings for an offence arising as referred to in clauses 42 and 44 from being taken otherwise than by or with the approval of the Director-General (clause 46).

DIVISION 5—General

This Division concerns general matters arising under the proposed Part 3 and contains provisions—

- (a) requiring the Director-General to report to the Minister on the activities of licensees under proposed Divisions 1 and 2 (clause 47); and
- (b) enabling the Minister to grant and revoke exemptions from specified provisions of the proposed Part (clauses 48 and 49).

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PART 4—EMPLOYMENT OF CHILDREN

This Part concerns the employment of children and contains provisions—

- (a) prohibiting the employment of children who are under the age of 15 years (other than children who hold certificates of exemption from school attendance, granted by the Minister for Education) unless they are licensed (clause 50);
- (b) prohibiting the employment of children for pornographic purposes (clause 51);
- (c) prohibiting the employment of children to take part in inherently dangerous entertainments or exhibitions (clause 52);
- (d) providing for the granting of licences (clause 53); and
- (e) preserving the effect of the Occupational Health and Safety Act 1983 in relation to the employment of children (clause 54).

PART 5—CHILDREN IN NEED OF CARE

DIVISION 1—*Preliminary*

This Division contains an objects clause (clause 55) and an interpretation clause (clause 56).

DIVISION 2—*Care applications*

This Division concerns the making of applications for orders referred to in clause 72 and contains provisions—

- (a) enabling the Director-General (and, in certain cases, the parent of a child) to make care applications in respect of children in need of care (clause 57);
- (b) providing for the service of care applications (clause 58);
- (c) providing for the removal of children from premises pursuant to an order of the Children's Court (clause 59);
- (d) providing for the removal of children from premises without warrant in cases of suspected child abuse (clause 60);
- (e) providing for the removal of children from premises pursuant to a search warrant in cases where children are believed to be in need of care (clause 61);
- (f) enabling the Director-General to have the care of children pending the hearing of care applications made in respect of them (clause 62); and
- (g) imposing certain duties on the Director-General in relation to children kept in the Director-General's care, as referred to in clause 62 (clause 63).

DIVISION 3—*Hearings*

This Division concerns the hearing of care applications and contains provisions—

- (a) facilitating the compulsory attendance of witnesses (clause 64);

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- (b) providing for rights of appearance (clause 65);
- (c) enabling the Children's Court to appoint a guardian ad litem for a child or order separate representation for a child (clause 66);
- (d) providing for the exclusion of the general public from hearings (clause 67);
- (e) prohibiting the publication of the names of children involved in hearings (clause 68);
- (f) requiring the Children's Court to explain court procedures, etc., to children involved in hearings (clause 69);
- (g) enabling hearings to be conducted informally and without adherence to the rules of evidence (clause 70); and
- (h) restricting the admissibility of certain statements made by children involved in hearings (clause 71).

DIVISION 4—Children's Court orders

This Division concerns the orders that the Children's Court may make in respect of a care application and contains provisions—

- (a) specifying the various orders that may be made in respect of a child in need of care (clause 72);
- (b) imposing restrictions on the kinds of order that may be made and the circumstances under which those kinds of order may be made (clause 73);
- (c) requiring the Children's Court to have regard to an assessment report before making an order that removes a child from the custody of those currently responsible for the child (clause 74); and
- (d) providing for the variation and rescission of orders referred to in clause 72 (clause 75).

DIVISION 5—Adjournments

This Division concerns adjournments and contains provisions—

- (a) restricting the power of the Children's Court to grant adjournments for more than 8 days at a time or more than 42 days altogether (clause 76);
- (b) providing for the care of children during adjournments (clause 77);
- (c) imposing certain duties on the Children's Court in relation to children ordered to be kept in the Director-General's care during the period of an adjournment (clause 78);
- (d) providing for the enforcement of undertakings given by and with respect to children in relation to their care during the period of an adjournment (clause 79); and

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- (e) enabling certain justices to exercise limited powers of adjournment pending the initial hearing of a care application (clause 80).

DIVISION 6—Appeals

This Division (consisting of clause 81) provides for an appeal to the District Court by a person who is dissatisfied with a decision of the Children's Court under the proposed Part 5.

DIVISION 7—Effect of orders under sec. 72

This Division concerns the way in which orders referred to in clause 72 may be enforced and contains provisions—

- (a) requiring a child and the premises where the child resides to be subject to inspection and requiring a child to accept supervision (clause 82);
- (b) providing for entry without warrant to premises subject to inspection as referred to in clause 82 (clause 83); and
- (c) enabling the Children's Court to compel attendance of a child in respect of whom an undertaking has not been complied with (clause 84).

DIVISION 8—General

This Division contains general provisions—

- (a) applying the provisions of the Justices Act 1902 to the issue of summonses and warrants to compel the attendance of witnesses (clause 85);
- (b) providing for the care of children arrested under a warrant referred to in clause 85 (clause 86);
- (c) imposing certain requirements with respect to the care of Aboriginal children (clause 87); and
- (d) conferring certain powers on the Supreme Court with respect to the discharge of children who are in the care of the Director-General under the proposed Part 5 (clause 88).

PART 6—WARDS AND PROTECTED PERSONS

This Part concerns wards and protected persons and contains provisions—

- (a) specifying guidelines for the treatment of wards and protected persons (clause 89);
- (b) providing that the Minister has the guardianship of a ward (clause 90);
- (c) conferring certain functions on the Minister in relation to wards and protected persons (clause 91);
- (d) conferring certain functions on the Minister in relation to former wards and protected persons (clause 92);

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- (e) enabling the Minister to direct a ward or protected person who has left proper custody to return to that custody or be placed in the custody of some other person (clause 93);
- (f) providing for the issue of search warrants in respect of wards and protected persons who have left proper custody (clause 94);
- (g) providing for the establishment of reciprocal arrangements with other States in relation to the custody and guardianship of interstate wards (clause 95); and
- (h) preserving the jurisdiction of the Supreme Court with regard to custody and guardianship of children (clause 96).

PART 7—CHILDREN'S BOARDS OF REVIEW

This Part concerns the constitution and functions of proposed Children's Boards of Review and contains provisions—

- (a) defining expressions for the purposes of the proposed Part, in particular, the expressions "Board of Review" and "child in care" (clause 97);
- (b) establishing a Children's Review Panel consisting of suitably qualified persons, one of whom is to be an Aboriginal (clause 98 and Schedule 2);
- (c) providing for the establishment of Boards of Review (clause 99);
- (d) specifying the functions of a Board of Review (clause 100); and
- (e) providing for the distribution of copies of reports made by a Board of Review (clause 101).

PART 8—COMMUNITY WELFARE APPEALS TRIBUNAL

This Part concerns the constitution and functions of the proposed Community Welfare Appeals Tribunal and contains provisions—

- (a) defining expressions for the purposes of the proposed Part, in particular, the expression "Tribunal" (clause 102);
- (b) establishing a Community Welfare Appeals Tribunal and providing for its constitution and procedure (clause 103 and Schedules 3 and 4);
- (c) providing for the making of appeals to the Tribunal in relation to various matters arising under the proposed Act (clause 104);
- (d) specifying who may be a party to an appeal (clause 105);
- (e) providing for the lodgment of documents with the Tribunal (clause 106);
- (f) providing for the making of interlocutory orders by the Tribunal in relation to matters the subject of an appeal (clause 107);
- (g) specifying the powers of the Tribunal with respect to an appeal (clause 108);
- (h) specifying that the decision of the Tribunal is, subject to appeal on a question of law, final and binding (clause 109);

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- (i) providing for an appeal to the Supreme Court, on a question of law, from any decision of the Tribunal (clause 110);
- (j) conferring certain powers of entry into premises on members of the Tribunal (clause 111); and
- (k) requiring reports to be furnished to the Minister on the work and activities of the Tribunal (clause 112).

PART 9—MISCELLANEOUS

This Part contains miscellaneous provisions including provisions—

- (a) providing for the service of notices under the proposed Act (clause 113);
 - (b) requiring certain notices to be written in the language of the persons to whom they are addressed (clause 114);
 - (c) prohibiting the unlawful disclosure of information obtained in the administration or execution of the proposed Act (clause 115);
 - (d) providing for the issue of search warrants in cases where a breach of the proposed Act or the regulations under the proposed Act is suspected (clause 116);
 - (e) prohibiting the obstruction of officers who are exercising functions under the proposed Act (clause 117);
 - (f) prohibiting persons from misrepresenting themselves to be officers of the Department (clause 118);
 - (g) prohibiting the making of false or misleading statements in or in connection with any application made under the proposed Act (clause 119);
 - (h) providing a general penalty of \$1,000 or imprisonment for 12 months, or both, in respect of offences against the proposed Act (clause 120);
 - (i) providing that offences against the proposed Act or the regulations under the proposed Act shall be dealt with summarily by a Local Court constituted by a Magistrate sitting alone (clause 121);
 - (j) providing for the taking of evidence from children who are victims of child abuse (clause 122);
 - (k) providing for evidentiary matters (clause 123); and
 - (l) enabling the Governor-in-Council to make regulations for the purposes of the proposed Act (clause 124).
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