

CHILDREN (CARE AND PROTECTION) FURTHER 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 make miscellaneous amendments to the Children (Care and Protection) Act 1987 with respect to the care and protection of children.

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.

SCHEDULE 1—AMENDMENTS

Section 3 (Definitions)

Schedule 1 (1) (a) amends paragraph (a) of the definition of “child care service” in section 3 (1) of the Principal Act so as to extend that definition to include services that are provided otherwise than for fee, gain or reward.

Schedule 1 (1) (b) repeals paragraph (b) of that definition, that paragraph being redundant as a consequence of the amendment made by Schedule 1 (1) (a).

Schedule 1 (1) (c) substitutes the definition of “premises” in section 3 (1) of the Principal Act so as to clarify the ambit of that expression.

Schedule 1 (1) (d) amends the definition of “protected person” in section 3 (1) of the Principal Act so as to extend that definition to include children who are under the guardianship of the Director-General of the Department of Family and Community Services pending adoption under the Adoption of Children Act 1965.

Schedule 1 (1) (e) inserts a new definition of “public place” into section 3 (1) of the Principal Act so as to clarify the ambit of that expression.

Children (Care and Protection) Further Amendment 1988

Schedule 1 (1) (f) inserts a new definition of "vehicle" into section 3 (1) of the Principal Act so as to clarify the ambit of that expression.

Schedule 1 (1) (g) amends section 3 of the Principal Act as a consequence of the amendment to be made by Schedule 1 (1) (b).

Schedule 1 (1) (h) further amends section 3 of the Principal Act so as to provide that a person who is in a vehicle in any place shall, for the purposes of the Principal Act, be taken to be in that place.

Section 12A (Provision of care by the Director-General)

Schedule 1 (2) inserts a new section 12A into the Principal Act. The proposed section will allow the Director-General to place a child who is in the care of the Director-General into the care of some other person who is willing to have the care of the child. A similar power already exists under section 62 of the Principal Act.

Section 20B (Special medical treatment)

Schedule 1 (3) amends section 20B of the Principal Act (to be inserted by the Children (Care and Protection) (Disability Services and Guardianship) Amendment Act 1987 No. 259) so as to restrict the power of the Supreme Court to consent to the carrying out of special medical treatment (that is, treatment that is likely to result in a person's becoming sterile) on children who are under the age of 16 years.

Section 21 (Special medical examinations)

Schedule 1 (4) (a) amends section 21 of the Principal Act so as to enable the Children's Court to order a special medical examination of a child if it is satisfied that it is more probable than not that the child has been sexually assaulted by a parent whose consent to the examination would otherwise be required to be sought.

Schedule 1 (4) (b) further amends section 21 of the Principal Act so as to ensure that the rights conferred by that section on a parent of a child are not conferred on a parent against whom criminal proceedings have been commenced but not concluded, or a parent who has been found guilty of an offence, in relation to an alleged sexual assault on the child.

Schedule 1 (4) (c) further amends section 21 of the Principal Act so as to ensure that the provisions of that section apply to medical examinations carried out under section 23 of the Principal Act.

Section 50 (Children not to be employed in certain cases unless licensed)

Schedule 1 (5) amends section 50 of the Principal Act so as to provide that children under the age of 15 years are not exempt from the licensing requirements of that section merely because they are exempt from attending school.

Section 53 (Licences to employ children for certain purposes)

Schedule 1 (6) (a) amends section 53 of the Principal Act as a consequence of the amendment to be made by Schedule 1 (5).

Schedule 1 (6) (b) further amends section 53 of the Principal Act so as to enable the regulations under the Principal Act to allow licences to be issued authorising a child to be employed between 10 p.m. and 6 a.m.

Section 58 (Service of care applications etc.)

Schedule 1 (7) (a) amends section 58 of the Principal Act so as to ensure that the date set down for the hearing of a care application is no later than 8 days after the day on which the application was made.

Children (Care and Protection) Further Amendment 1988

Schedule 1 (7) (b) further amends section 58 of the Principal Act as a consequence of the amendment to be made by Schedule 1 (7) (a).

Section 59 (Removal of children pursuant to order of the Children's Court)

Schedule 1 (8) (a) amends section 59 of the Principal Act so as to ensure that an order made by the Children's Court under that section must specify the premises to which it relates.

Schedule 1 (8) (b) amends section 59 of the Principal Act so as to provide that the power to enter premises under that section includes the power to observe and converse with persons who are present in those premises.

Section 60 (Removal of children without warrant)

Schedule 1 (9) amends section 60 of the Principal Act so as to provide that the power to enter premises under that section includes the power to observe and converse with persons who are present in those premises.

Section 61 (Power of search and removal of children in need of care)

Schedule 1 (10) amends section 61 of the Principal Act so as to provide that the power to enter premises under that section includes the power to observe and converse with persons who are present in those premises.

Section 62 (Care of children pending care proceedings)

Schedule 1 (11) amends section 62 of the Principal Act as a consequence of the amendment to be made by Schedule 1 (2).

Section 62A (Authorised officer may assume care of child in hospital etc.)

Schedule 1 (12) inserts a new section 62A into the Principal Act. The proposed section will allow the care of a child who is in immediate danger of abuse to be assumed in the name of, and on behalf of, the Director-General without the child having to be removed from any premises under section 59, 60 or 61 of the Principal Act.

Section 63 (Director-General etc. to give information to certain persons)

Schedule 1 (13) amends section 63 of the Principal Act so that, where the care of a child has been assumed under proposed section 62A, the child, and a person responsible for the child, will be required to be notified of the reasons for that action having been taken.

Section 68 (Publication of names etc.)

Schedule 1 (14) (a) amends section 68 of the Principal Act so as to increase, from 14 to 16, the age above which a consent to the publication of information concerning proceedings on a care application may be given.

Schedule 1 (14) (b) further amends section 68 of the Principal Act so as to provide that such a consent must be given by the Children's Court rather than, as is presently the case, by the Minister.

Section 71A (Care proceedings unaffected by pending criminal proceedings)

Schedule 1 (15) inserts a new section 71A into the Principal Act. The proposed section will ensure that the hearing of proceedings on a care application is unaffected by the existence of concurrent criminal proceedings arising out of the same or similar facts as those concerned in the proceedings on the care application.

Children (Care and Protection) Further Amendment 1988

Section 73 (Restrictions on making orders under sec. 72)

Schedule 1 (16) (a) and (b) amend section 73 of the Principal Act so as to vary the matters that the Children's Court must take into consideration in deciding what kind of order to make under section 72 of the Principal Act in relation to a child who belongs to a particular cultural group. The new requirement is to be that the Court shall not make an order placing the child in another person's care without having considered the possibility of placing the child in the care of a person who belongs to the same cultural group.

Section 74 (Assessment reports)

Schedule 1 (17) (a) amends section 74 of the Principal Act so as to enable the Children's Court to deny all persons appearing in proceedings on a care application (other than a barrister or solicitor representing any such person) access to assessment reports prepared for the purposes of the proceedings.

Schedule 1 (17) (b) further amends section 74 of the Principal Act so as to enable the Children's Court to make such orders as it considers appropriate to prevent a child from becoming aware of information contained in such a report.

Section 77 (Care of children during adjournments)

Schedule 1 (18) (a) amends section 77 of the Principal Act so as to apply the provisions of that section to proceedings for the rescission or variation of an order under section 72 of the Principal Act.

Schedule 1 (18) (b)–(e) and (h)–(j) further amend section 77 of the Principal Act so as to enable the Children's Court to place a child in the care of a person approved by the Court during the adjournment of proceedings.

Schedule 1 (18) (f) and (g) further amend section 77 of the Principal Act so as to enable the Children's Court to make orders permitting or prohibiting access to a child during the adjournment of proceedings with respect to the child.

Section 81 (Appeals)

Schedule 1 (19) amends section 81 of the Principal Act so as to remove any doubt as to the District Court's powers to confirm, vary or set aside an order of the Children's Court against which an appeal has been made to the District Court under that section.

Section 124 (Regulations)

Schedule 1 (20) amends section 124 of the Principal Act so as to ensure that there is express power in the Principal Act to enable the Governor-in-Council to make regulations with respect to the fostering of children.

Section 125 (Savings and transitional provisions)

Schedule 1 (21) inserts a new section 125 into the Principal Act. The proposed section gives effect to the proposed Schedule 3 of savings and transitional provisions.

Schedule 3 (Savings and transitional provisions)

Schedule 1 (22) inserts a new Schedule 3 into the Principal Act. The proposed Schedule contains—

- (a) a power to make regulations of a savings or transitional nature (Part 1: clause 1);
- and

Children (Care and Protection) Further Amendment 1988

- (b) specific savings and transitional provisions consequent on the enactment of the proposed Act (Part 2: clauses 2–5).
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