

Children and Young Persons Legislation (Repeal and Amendment) Act 1998 No 158

[1998-158]



New South Wales

Status Information

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill 2006](#)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Children and Young Persons Legislation (Repeal and Amendment) Act 1998 No 158



New South Wales

An Act to repeal the *Children (Care and Protection) Act 1987*; to amend the *Children's Court Act 1987*; and to amend certain other Acts as a consequence of the enactment of the *Children and Young Persons (Care and Protection) Act 1998*.

1 Name of Act

This Act is the *Children and Young Persons Legislation (Repeal and Amendment) Act 1998*.

2 Commencement

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

3 Repeal of *Children (Care and Protection) Act 1987 No 54*

- (1) The *Children (Care and Protection) Act 1987* is repealed.
- (2) Different days may be appointed for the commencement of subsection (1) for the purpose of repealing, on different days, different provisions of the *Children (Care and Protection) Act 1987*.
- (3) For the purpose of giving effect to the amendment made by section 5 and Schedule 2.7, and despite the terms of that amendment:
 - (a) a provision of the *Children (Care and Protection) Act 1987* specified in Schedule 1 to the *Commonwealth Powers (Family Law—Children) Act 1986* does not cease to be so specified until the provision is repealed pursuant to this section, and
 - (b) a provision of the *Children and Young Persons (Care and Protection) Act 1998* does not become a provision specified in Schedule 1 to the *Commonwealth Powers (Family Law—Children) Act 1986* until the provision is commenced pursuant to section 2 of the *Children and Young Persons (Care and Protection) Act 1998*.

4 Amendment of *Children's Court Act 1987 No 53*

The *Children's Court Act 1987* is amended as set out in Schedule 1.

5 Amendment of other Acts

Each Act specified in Schedule 2 is amended as set out in that Schedule.

Schedule 1 Amendment of **Children's Court Act 1987**

(Section 4)

[1] Section 3 Definitions

Omit the definition of **authorised Magistrate** from section 3 (1).

[2] Section 3 (1)

Insert in alphabetical order:

Children's Registrar means a person employed as a Children's Registrar as referred to in section 10A.

[3] Section 7 Appointment of Children's Magistrates

Omit section 7 (2). Insert instead:

(2) A person is qualified to be appointed as a Children's Magistrate if the person:

- (a) is a Magistrate, and
- (b) has, in the opinion of the Chief Magistrate, such knowledge, qualifications, skills and experience in the law and the social or behavioural sciences, and in dealing with children and young people and their families, as the Chief Magistrate considers necessary to enable the person to exercise the functions of a Children's Magistrate.

[4] Section 7 (2A)

Insert before section 7 (3):

(2A) A Children's Magistrate is to undertake and complete such ongoing courses of training as the Chief Magistrate may, in consultation with the Senior Children's Magistrate, require.

[5] Section 8 (4)

Insert after section 8 (3):

(4) On appointment, the Senior Children's Magistrate is taken to be a Deputy Chief Magistrate appointed as such under section 15 (1) of the *Local Courts Act 1982*.

[6] Section 10 Authorised Magistrates

Omit the section.

[7] Section 10A

Insert before section 11:

10A Children's Registrars

- (1) Such Children's Registrars as may be necessary to enable the Court to exercise its jurisdiction are to be employed under the *Public Sector Management Act 1988*.
- (2) A Children's Registrar has such functions as may be conferred or imposed on a Children's Registrar by the rules or by or under any other Act.

[8] Section 11 Other Registrars and other officers of the Court

Omit "Registrars". Insert instead "Other Registrars".

[9] Section 13 Single member to exercise jurisdiction of the Court

Omit section 13 (b) and the word "or" at the end of section 13 (a).

[10] Part 3A

Insert after section 15:

Part 3A Advisory committee and clinic

15A Children's Court Advisory Committee

- (1) The Attorney General is to establish, in accordance with the rules, a Children's Court Advisory Committee.
- (2) The Senior Children's Magistrate is to be the Chairperson of the Committee.
- (3) The Committee has the following functions:
 - (a) consulting with persons using the Court,
 - (b) providing advice to the Attorney General and the Minister for Community Services,
 - (c) providing advice to the Court on the rules of the Court, on practice directions and on procedures before the Court,
 - (d) such other functions as may be conferred or imposed on the Committee by

the rules or by or under any other Act.

15B Children’s Court Clinic

- (1) The Attorney General is to establish and maintain, in accordance with the rules, a Children’s Court Clinic.
- (2) The Children’s Court Clinic has the following functions:
 - (a) making clinical assessments of children,
 - (b) submitting reports to courts,
 - (c) such other functions as may be prescribed by the rules.

[11] Section 16 Functions of the Senior Children’s Magistrate

Omit “and” where lastly occurring in section 16 (1) (c).

[12] Section 16 (1) (d)

Omit “Court.”. Insert instead “Court,”.

[13] Section 16 (1) (e)-(g)

Insert after section 16 (1) (d):

, and

- (e) provide judicial leadership to the Court, and
- (f) in conjunction with the Chief Magistrate, develop practice directions and recommendations for rules, and
- (g) oversee the training of Children’s Magistrates and prospective Children’s Magistrates in accordance with the rules.

[14] Section 17 Delegation

Omit section 17 (1) (b) and the word “or” at the end of section 17 (1) (a).

[15] Section 22 Judicial notice of signatures

Omit section 22 (c).

[16] Section 22 (d)

Omit the paragraph. Insert instead:

- (d) a Children’s Registrar or other Registrar of the Court,

[17] Section 24

Insert after section 23:

24 Savings and transitional provisions

Schedule 2 has effect.

[18] Schedule 2

Insert after Schedule 1:

Schedule 2 Savings and transitional provisions

(Section 24)

Part 1 Preliminary

1 Saving and transitional regulations

- (1) The Governor may make regulations, not inconsistent with this Act, containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Children and Young Persons (Care and Protection) Act 1998

Children and Young Persons Legislation (Repeal and Amendment) Act 1998

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of **Children and Young Persons Legislation (Repeal and Amendment) Act**

1998

2 Definitions

In this Part, **the amending Act** means the *Children and Young Persons Legislation (Repeal and Amendment) Act 1998*.

3 Children's Magistrates

A person holding the office of Children's Magistrate immediately before the repeal and re-enactment of section 7 (2) by the amending Act may be reappointed to that office for one further term if the person is qualified under that subsection as in force immediately before its repeal and re-enactment.

4 Authorised Magistrates

- (1) Despite the repeal of section 10 (2) by the amending Act, the Governor may, by proclamation published in the Gazette, revoke a proclamation under section 10 (1).
- (2) The provisions of this Act relating to authorised Magistrates continue to apply (as if they had not been repealed by the amending Act) to and in respect of each place specified in a proclamation under section 10 (1) (being a proclamation that had not been revoked before the repeal of section 10) until such time as the proclamation is revoked under subclause (1).

5 Venue

- (1) Sittings of the Court may be held in the Court House:
 - (a) at any place at which a Local Court is established (or is taken to have been established) for the time being under section 6 (1) of the *Local Courts Act 1982*, or
 - (b) at any of the places specified in the Schedule to the proclamation under section 10 published in the Gazette on 27 November 1992 at page 8552.
- (2) Each Court House referred to in subclause (1) is taken to be a building approved under section 19 (1) (a). The Attorney General may, by notice published in the Gazette, revoke an approval under that section.

Schedule 2 Amendment of other Acts

(Section 5)

2.1 Administrative Decisions Legislation Amendment Act 1997 No 77

Omit Schedule 1.3.

2.2 Adoption of Children Act 1965 No 23

[1] Section 6 Definitions

Omit the definition of **Foster parent**. Insert instead:

Foster parent means any person who has the daily care and control of a child under out-of-home care arrangements made under the *Children and Young Persons (Care and Protection) Act 1998*.

[2] Section 18 Who may be adopted

Insert “or as a person under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*,” after “1987,” in section 18 (1) (b) (ii).

[3] Sections 24, 34 (4), 43 (2)

Omit “a ward under the *Children (Care and Protection) Act 1987*” wherever occurring.

Insert instead “under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*”.

[4] Sections 31A (2), 34 (2) (a) and (2D)

Omit “a ward within the meaning of the *Children (Care and Protection) Act 1987*” wherever occurring.

Insert instead “under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*”.

[5] Section 34 Guardianship of child awaiting adoption

Omit “becomes a ward within the meaning of the *Children (Care and Protection) Act 1987*” from section 34 (5) (d).

Insert instead “comes under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*”.

[6] Section 35 General effect of adoption orders

Omit “guardianship of the child under section 90 of the *Children (Care and Protection) Act 1987*” from section 35 (1) (d).

Insert instead “parental responsibility under the *Children and Young Persons (Care and Protection) Act 1998*”.

2.3 Bail Act 1978 No 161

Section 58 Indemnification of agreeing parties

Omit section 58 (3A). Insert instead:

(3A) This section does not apply in relation to an indemnity or an agreement to indemnify given by the Minister administering the *Children and Young Persons (Care and Protection) Act 1998* to an officer of the Department of Community Services against any forfeiture that the officer may incur as a result of entering into any agreement under section 36 for the purpose of fulfilling a condition imposed on the grant of bail to a person under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*.

2.4 Children (Community Service Orders) Act 1987 No 56

Section 18 Directions

Omit “*Children (Care and Protection) Act 1987*” from section 18 (1A) (a).

Insert instead “*Community Welfare Act 1987*”.

2.5 Children (Criminal Proceedings) Act 1987 No 55

[1] Section 33 Penalties

Omit “care within the meaning of the *Children (Care and Protection) Act 1987*”.

Insert instead “care and protection under the *Children and Young Persons (Care and Protection) Act 1998*”.

[2] Section 42 Appeals

Omit “in the care or custody of the Minister administering the *Children (Care and Protection) Act 1987*” from section 42 (1) (b) (iii).

Insert instead “under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*”.

2.6 Children (Protection and Parental Responsibility) Act 1997 No 78

[1] Section 3 Definitions

Omit the definition of **carer**. Insert instead:

carer of a person means any person who has the daily care and control of a child under out-of-home care arrangements made under the *Children and Young Persons (Care and*

Protection) Act 1998.

[2] Section 3, definition of “parent”

Omit “*Children (Care and Protection) Act 1987*”.

Insert instead “*Children and Young Persons (Care and Protection) Act 1998*”.

[3] Section 20

Omit the section. Insert instead:

20 Relationship to Children and Young Persons (Care and Protection) Act 1998

- (1) This Division has effect in addition to and does not derogate from the *Children and Young Persons (Care and Protection) Act 1998*.
- (2) In particular, and without limiting subsection (1), nothing in this Division limits the powers conferred under section 39, 43 or 44 or Chapter 15 of the *Children and Young Persons (Care and Protection) Act 1998*.
- (3) Before taking action under section 22 in relation to a person to whom this Division applies, a police officer is to consider whether it would be more appropriate to take action under the *Children and Young Persons (Care and Protection) Act 1998* to best meet the needs of the person.
- (4) Section 27 (Mandatory reporting) of the *Children and Young Persons (Care and Protection) Act 1998* applies to a police officer while exercising functions under this Division.

[4] Section 22 Action that may be taken

Omit “*Children (Care and Protection) Act 1987*” from section 22 (8).

Insert instead “*Children and Young Persons (Care and Protection) Act 1998*”.

[5] Section 24 Approved person

Omit “section 87 of the *Children (Care and Protection) Act 1987*” from section 24 (2).

Insert instead “section 13 of the *Children and Young Persons (Care and Protection) Act 1998*”.

2.7 Commonwealth Powers (Family Law—Children) Act 1986 No 182

Schedule 1 Statutory provisions

Omit the matter relating to the *Children (Care and Protection) Act 1987*.

Insert instead:

Children and Young Persons (Care and Protection) Act 1998: sections 27, 29, 38, 41, 44, 46, 49, 53, 69, 70, 78, 79 (1) (a) (iii) and (1) (b), 81, 116, 118, 119, 138 (1), 149, 151, 152, 153, 154, 157, 173, 175, 176, 182, 245, 247 and 255.

2.8 Community Services (Complaints, Appeals and Monitoring) Act 1993 No 2

Section 11 Review of situation of person in care

Omit the definition of **child in care** in section 11 (6).

Insert instead:

child in care means:

- (a) a child or young person for whom the Director-General of the Department of Community Services has the care responsibility under section 49 of the *Children and Young Persons (Care and Protection) Act 1998*, or
- (b) a child or young person for whom a person has the daily care and control under out-of-home care arrangements made under the *Children and Young Persons (Care and Protection) Act 1998*, or
- (c) a child or young person who is under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*.

2.9 Companion Animals Act 1998 No 87

Section 14 Dogs prohibited in some public places

Omit “a child care service as defined in the *Children (Care and Protection) Act 1987*” from section 14 (1) (f).

Insert instead “a licensed children’s service within the meaning of Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998*”.

2.10 Coroners Act 1980 No 27

Sections 12B (1) (g) and 13 (1) (h)

Omit “a residential child care centre licensed under the *Children (Care and Protection) Act 1987*” wherever occurring.

Insert instead “a place at which out-of-home care within the meaning of the *Children and Young Persons (Care and Protection) Act 1998* was provided to the person”.

2.11 Crimes Act 1900 No 40

[1] Section 405C Definitions relating to children's evidence

Omit paragraph (d) of the definition of **personal assault offence**.

Insert instead:

(d) an offence under section 227 (Child and young person abuse) of the *Children and Young Persons (Care and Protection) Act 1998*,

[2] Section 562C Making of complaint for court order

Omit section 562C (3) (iii). Insert instead:

(iii) an offence under section 227 (Child and young person abuse) of the *Children and Young Persons (Care and Protection) Act 1998* (but only if the person is a child under the age of 16 years),

[3] Section 562H Telephone interim orders

Omit "section 25 (Child abuse) of the *Children (Care and Protection) Act 1987*" from section 562H (2A).

Insert instead "section 227 (Child and young person abuse) of the *Children and Young Persons (Care and Protection) Act 1998*".

2.12 Criminal Procedure Act 1986 No 209

Schedule 1, Table 1 Indictable offences that are to be dealt with summarily unless prosecuting authority or person charged elects otherwise

Omit item 18 of Part 4 of Table 1.

Insert instead:

18 Children and Young Persons (Care and Protection) Act 1998

An offence under section 105 (2) or 175 (1) of the *Children and Young Persons (Care and Protection) Act 1998*.

2.13 Criminal Records Act 1991 No 8

Section 15 Employment in certain occupations

Omit "child care services under Part 3 of the *Children (Care and Protection) Act 1987*" from section 15 (1).

Insert instead “children’s services under Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998*”.

2.14 Evidence Act 1995 No 25

Section 19 Compellability of spouses and others in certain criminal proceedings

Omit the matter relating to the *Children (Care and Protection) Act 1987*.

Insert instead:

section 222 (Endangering children in employment), 223 (Certain employers of children to be authorised), 227 (Child and young person abuse) or 228 (Neglect of children and young persons) of the *Children and Young Persons (Care and Protection) Act 1998*

2.15 Evidence (Children) Act 1997 No 143

[1] Section 3 Definitions

Omit “section 22 (Notification of child abuse) of the *Children (Care and Protection) Act 1987*” from paragraph (b) of the definition of **investigating official** in section 3 (1).

Insert instead “section 27 (Mandatory reporting) of the *Children and Young Persons (Care and Protection) Act 1998*”.

[2] Section 3 (1), definition of “personal assault offence”

Omit paragraph (d). Insert instead:

(d) an offence under section 227 (Child and young person abuse) of the *Children and Young Persons (Care and Protection) Act 1998*,

2.16 Guardianship Act 1987 No 257

[1] Section 33A Person responsible

Omit “the person responsible for the child within the meaning of the *Children (Care and Protection) Act 1987*” from section 33A (2).

Insert instead “the person having parental responsibility for the child within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*”.

[2] Section 86 Removal of children from unlicensed residential centres

Omit “the child shall be deemed to be a child in need of care within the meaning of the *Children (Care and Protection) Act 1987* and, on application made to the Children’s Court in accordance with the provisions of Part 5 of that Act, may be dealt with by the Children’s

Court in any manner in which the Children’s Court may, under that Part, deal with a child who it is satisfied is in need of care” from section 86 (1).

Insert instead “the child is taken to be a child in respect of whom grounds exist under section 71 of the *Children and Young Persons (Care and Protection) Act 1998* for the making of a care order and, on application made to the Children’s Court in accordance with the provisions of Chapter 5 of that Act, may be dealt with by the Children’s Court in any manner in which the Children’s Court may deal with a child in accordance with that Chapter”.

2.17 Inclosed Lands Protection Act 1901 No 33

Section 3 Definitions

Omit paragraph (b) of the definition of **child care service** in section 3 (1).

Insert instead:

- (b) out-of-home care provided by a designated agency or an authorised carer within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*.

2.18 Justices Act 1902 No 27

Section 132A Appeals where powers referred to in sec 84A exercised

Omit “a person responsible, within the meaning of the *Children (Care and Protection) Act 1987*, for the child” from section 132A (2).

Insert instead “a person having parental responsibility for the child, within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*,”.

2.19 Land Tax Management Act 1956 No 26

Section 10 Land exempted from tax

Omit section 10 (1) (g) (ii). Insert instead:

- (ii) the provision of a children’s service the subject of a licence under the *Children and Young Persons (Care and Protection) Act 1998* or a school registered under the *Education Act 1990*,

2.20 Local Courts Act 1982 No 164

[1] Section 4 Definitions

Omit paragraph (d) of the definition of **Designated Magistrate** from section 4 (1).

[2] Section 19 Seniority of Magistrates within the same class

Insert after section 19 (4):

(4A) The Senior Children’s Magistrate (who, under section 8 (4) of the *Children’s Court Act 1987*, is taken to be a Deputy Chief Magistrate appointed under section 15 (1) of this Act) is senior to another Deputy Chief Magistrate if the appointment of the Senior Children’s Magistrate as Senior Children’s Magistrate took effect before the appointment of the other Deputy Chief Magistrate as a Deputy Chief Magistrate.

2.21 Medical Practice Act 1992 No 94

Section 36 Meaning of “unsatisfactory professional conduct”

Omit “section 20B of the *Children (Care and Protection) Act 1987*”.

Insert instead “section 175 of the *Children and Young Persons (Care and Protection) Act 1998*”.

2.22 Navigation Act 1901 No 60

Section 158A Record of employees under 16 years on ships

Omit “Part 4 to the *Children (Care and Protection) Act 1987*” from the note to section 158A.

Insert instead “Chapter 13 of the *Children and Young Persons (Care and Protection) Act 1998*”.

2.23 Ombudsman Act 1974 No 68

Section 25A Definitions (as inserted by the Ombudsman Amendment (Child Protection and Community Services) Act 1998)

Omit paragraph (b) of the definition of **designated non-government agency** in section 25A (1).

Insert instead:

(b) a designated agency within the meaning of the *Children and Young Persons (Care and Protection) Act 1998* (not being a department referred to in paragraph (a) of the definition of **designated government agency** in this subsection) or a licensed children’s service within the meaning of that Act,

2.24 Public Health Act 1991 No 10

Section 42A Definitions

Omit paragraph (a) of the definition of **child care facility**.

Insert instead:

(a) a children's service to which Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* applies, or

2.25 Search Warrants Act 1985 No 37

Section 10 Definitions

Omit the matter relating to the *Children (Care and Protection) Act 1987* from the definition of **search warrant**.

Insert instead:

section 233 of the *Children and Young Persons (Care and Protection) Act 1998*,

2.26 Young Offenders Act 1997 No 54

Section 68 Interventions not to be disclosed as criminal history

Omit "a provider of child care services under Part 3 of the *Children (Care and Protection) Act 1987*" from section 68 (2) (a).

Insert instead "a provider of a children's service under Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998*".

2.27 Youth and Community Services Act 1973 No 90

Section 27 Removal of certain handicapped persons

Omit "a child in need of care within the meaning of the *Children (Care and Protection) Act 1987* and may be dealt with in accordance with Part 5 of that Act" from section 27 (b).

Insert instead "a child in respect of whom grounds exist under section 71 of the *Children and Young Persons (Care and Protection) Act 1998* for the making of a care order and may be dealt with in accordance with Chapter 5 of that Act".