

Children and Young Persons (Care and Protection) Amendment Act 2005 No 93

[2005-93]



New South Wales

Status Information

Currency of version

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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 (Care and Protection) Amendment Act 2005 No 93



New South Wales

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Children and Young Persons (Care and Protection) Amendment Act 2005 No 93



New South Wales

An Act to amend the *Children and Young Persons (Care and Protection) Act 1998* with respect to the powers of the Children's Court to compel attendance and other powers of the Children's Court, Children's Magistrates and certain registrars; powers of arrest; and for other purposes.

1 Name of Act

This Act is the *Children and Young Persons (Care and Protection) Amendment Act 2005*.

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

The *Children's Court Act 1987* is amended as set out in Schedule 2.

Schedule 1 Amendment of *Children and Young Persons (Care and Protection) Act 1998*

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3:

Registrar means the following:

- (a) a Children's Registrar within the meaning of the *Children's Court Act 1987*,
- (b) a Registrar of the Children's Court referred to in section 11 of that Act,

(c) any authorised justice within the meaning of the *Bail Act 1978*.

rules means rules made under the *Children's Court Act 1987*.

[2] Section 48 Removal of child or young person pursuant to order of Children's Court

Omit "the premises or place specified" from section 48 (a).

Insert instead "any one or more premises or places specified or described".

[3] Section 48 (b)

Omit "the premises or place" where firstly occurring.

Insert instead "any premises or place so specified or described".

[4] Chapter 6, Part 1, heading

Insert after the heading to Chapter 6:

Part 1 **General**

[5] Section 96 Attendance of child or young person, parents and others

Omit section 96 (1). Insert instead:

- (1) In proceedings before it with respect to a child or young person, the Children's Court may, on its own initiative or at the request of any party to the proceedings, require the attendance at the court house where the proceedings are conducted:
 - (a) of the child or young person and of any parent of the child or young person, or
 - (b) of any other person who has, or has had, care responsibility for the child or young person, or
 - (c) if the whereabouts of the child or young person is unknown to the Children's Court—of any other person the Children's Court has reasonable cause to believe knows, or has information concerning, the whereabouts of the child or young person.

[6] Section 96 (3)

Insert "(except as provided by subsection (4))" after "required".

[7] Section 96 (4)-(6)

Insert after section 96 (3):

- (4) Despite subsection (3), the Children's Court may require a parent of the child or young person who is the subject of the proceedings who is himself or herself a child

or young person to give evidence in the Children's Court.

- (5) A person referred to in subsection (1) (c) may be required to give to the Children's Court such information that the person has about where the child or young person is or may be located.
- (6) If the Children's Court decides to require any person to attend a court house under subsection (1) it may issue to the person a notice in accordance with Part 2 requiring the person to attend as directed in the notice (a ***care proceedings attendance notice***).

Note—

Section 109B enables the Children's Court to issue a warrant for the arrest of a person who fails to attend as directed by a care proceedings attendance notice.

[8] Chapter 6, Part 2, Divisions 1-7

Omit section 109. Insert instead:

Part 2 Attendance of witnesses and others and production of documents

Division 1 Preliminary

109 Definitions

In this Part:

arrest warrant means a warrant to arrest a person issued in accordance with this Part.

care proceedings attendance notice means a care proceedings attendance notice issued under section 96.

correctional centre has the same meaning as it has in the [*Crimes \(Administration of Sentences\) Act 1999*](#).

detention centre has the same meaning as it has in the [*Children \(Detention Centres\) Act 1987*](#).

party means the Director-General, a child or young person or parent or any other party in proceedings to which this Chapter applies.

subpoena includes any of the following:

- (a) a subpoena to give evidence,
- (b) a subpoena for production,

(c) a subpoena both to give evidence and for production.

subpoena both to give evidence and for production means a written order requiring the person to whom the subpoena is addressed to attend as directed by the order as a witness to give evidence and to produce a document or thing.

subpoena for production means a written order requiring the person to whom the subpoena is addressed to attend as directed by the order and produce a document or thing.

subpoena to give evidence means a written order requiring the person to whom the subpoena is addressed to attend as directed by the order as a witness to give evidence.

warrant of commitment means a warrant to commit a person to a correctional centre, detention centre or other place of security issued under Division 5.

Division 2 Compelling attendance at proceedings

109A Form and service of care proceedings attendance notice

- (1) A care proceedings attendance notice must be in writing and in the form prescribed by the rules.
- (2) A care proceedings attendance notice must:
 - (a) require the person to whom it is addressed to attend at the court house where the proceedings before the Children's Court are conducted at a specified date, time and place, and
 - (b) state that failure to attend may result in the arrest of the person and, in the case of the child, young person or parent to which the proceedings relate, the matter being dealt with in his or her absence.
- (3) Notice of the date, time and place set is to be given to each other party in the proceedings in accordance with the rules.
- (4) The rules may prescribe additional matters to be included in care proceedings attendance notices.
- (5) A care proceedings attendance notice is to be served in accordance with the rules.

109B Issue of arrest warrant to compel attendance at proceedings

- (1) The Children's Court may, in accordance with Division 4, issue a warrant to arrest a person if it is satisfied that there are substantial reasons to do so and that it is in the interests of the safety, welfare or well-being of a child or young

person with respect to whom proceedings before it are conducted to do so.

- (2) Without limiting the circumstances in which a warrant may be issued, it may be issued if:
 - (a) the person fails to attend as required by a care proceedings attendance notice, or
 - (b) the person is a child, young person or parent who absconds from any care proceedings with respect to the child or young person.
- (3) The police officer or other person executing the warrant is to bring the person before the Children's Court, or if this is not practicable before a Registrar, as soon as possible after the arrest.
- (4) The Children's Court or Registrar may:
 - (a) in the case of an adult—if bail is not dispensed with or granted, issue a warrant of commitment in accordance with Division 5 committing the person to a correctional centre or other place of security, or
 - (b) in the case of a young person—if bail is not dispensed with or granted, issue a warrant of commitment in accordance with Division 5 committing the young person to a detention centre or other place of security, or
 - (c) in the case of a child—place the child in the care responsibility of the Director-General at a place approved by the Minister for the purposes of this section,and order the adult, young person or child to be brought before the Children's Court at the date, time and place specified in the order.
- (5) Notice of the date, time and place set is to be given to each other party in the proceedings in accordance with the rules.

Division 3 Subpoenas for attendance of witnesses to give evidence and produce documents

109C Issue of subpoenas

- (1) The Children's Court, a Children's Magistrate or a Registrar, if requested to do so by a party to proceedings before it, may, subject to and in accordance with the rules, issue to a person named in the subpoena any of the following subpoenas:
 - (a) a subpoena to give evidence,
 - (b) a subpoena for production,

- (c) a subpoena both to give evidence and for production.
- (2) A subpoena to give evidence and a subpoena for production may be issued to the same person in the same proceedings.
- (3) A party may require a subpoena for production to be returnable:
 - (a) on any day on which the proceedings are listed before the Children's Court, or any day not more than 21 days before any such day, or
 - (b) with the leave of the Children's Court, on any other day.

109D Time for service of subpoenas

- (1) A subpoena must be served within a reasonable time and at least 5 days before the last day on which it must be complied with.
- (2) The Children's Court, a Children's Magistrate or a Registrar may, on application by the party concerned, permit a subpoena to be served later than the time permitted by subsection (1). The later time must be endorsed on the subpoena by the Children's Court, Children's Magistrate or Registrar.
- (3) A subpoena may be served by delivering it personally to the person to whom it is addressed or in any other manner prescribed by the rules.

109E Conduct money

A person to whom a subpoena issued at the request of a party is addressed is not required to attend the Children's Court, or to produce any document or thing on any day on which attendance is required, unless an amount sufficient to meet the reasonable expenses of complying with the subpoena in relation to that day is paid or tendered to the person at the time of service of the subpoena or not later than a reasonable time before that day.

109F Limits on obligations under subpoenas

The person to whom a subpoena is addressed is not required to produce any document or thing if:

- (a) it is not specified or sufficiently described in the subpoena, or
- (b) the person would not be required to produce the document or thing on a subpoena for production in the Supreme Court.

109G Production by non-party

- (1) If the person to whom a subpoena for production is addressed is not a party to the proceedings, the subpoena is, unless the Children's Court otherwise orders, to permit the person to produce the document or thing to the Court not later

than the day before the first day on which the person's attendance is required, instead of attending and producing the document or thing as required by the subpoena.

- (2) The rules may make provision for or with respect to the production of documents or things produced to the Children's Court under subsection (1), and the return of the document or thing, and any related matters.
- (3) Nothing in this Part affects the operation of Division 1 (Requests to produce documents or call witnesses) of Part 4.6 of Chapter 4 of the [Evidence Act 1995](#) to the extent (if any) that Division 1 is, under section 93, applicable in proceedings in the Children's Court.

109H Subpoena may be set aside

- (1) The Children's Court may, on application by the person to whom a subpoena is addressed, set aside the subpoena wholly or in part.
- (2) Notice of an application under this section is to be filed and served as prescribed by the rules on the party on whose request the subpoena was issued.

109I Inspection of subpoenaed documents and things

- (1) A party may, if the Children's Court so orders:
 - (a) inspect documents or things produced in compliance with a subpoena, and
 - (b) take copies of any documents so inspected.
- (2) Any such order may be made on such terms and conditions as the Children's Court thinks fit.
- (3) A Registrar may exercise the function of the Children's Court to make an order under this section with the consent of the parties to the proceeding.
- (4) Subsection (3) does not apply if any party, the person to whom the subpoena is addressed or a person claiming privilege in respect of the document has objected to a party inspecting the documents or things produced in compliance with the subpoena.

109J Action that may be taken if person does not comply with subpoena

- (1) A party who requested a subpoena may apply to the Children's Court for the issue of a warrant in accordance with Division 4 for the arrest of the person to whom the subpoena is addressed if the person has not complied with the subpoena.
- (2) The Children's Court may issue the warrant if satisfied that:

- (a) the subpoena was issued in accordance with this Division, and
 - (b) the person to whom the subpoena is addressed has failed, without reasonable excuse, to comply with the subpoena.
- (3) The police officer or other person executing the warrant is to bring the person before the Children's Court, a Children's Magistrate or a Registrar, as soon as possible after the arrest.
- (4) The Children's Court, Children's Magistrate or Registrar before whom a person who is a child or young person is brought on arrest on a warrant issued under this section may:
- (a) place the child or young person in the care responsibility of the Director-General at a place approved by the Minister for the purposes of this section, and
 - (b) order the child or young person to be brought before the Children's Court at the date, time and place specified in the order.
- (5) The Children's Court, Children's Magistrate or Registrar before whom a person who is an adult is brought on arrest on a warrant issued under this section may:
- (a) if bail is not dispensed with or granted, issue a warrant under Division 5 committing the person to a correctional centre or other place of security, and
 - (b) order the person to be brought before the Children's Court at the date, time and place specified in the order.
- (6) Notice of the date, time and place set is to be given to the party who requested the subpoena in accordance with the rules.

109K Action that may be taken if person refuses to give evidence

- (1) This section applies to a person who:
- (a) appears before the Children's Court on a subpoena to give evidence, or produce any document or thing, or both, or
 - (b) appears before the Children's Court on bail after being arrested under a warrant after failing to comply:
 - (i) with a subpoena to give evidence, or produce any document or thing, or both, or
 - (ii) with a care proceedings attendance notice, or
 - (c) is brought before the Children's Court under a warrant of commitment after being so arrested.

- (2) The Children's Court may order that a warrant be issued for the committal of a person to whom this section applies to a correctional centre, detention centre or other place of security for a period not exceeding 7 days if the person refuses, without offering any just cause or reasonable excuse:
- (a) to be examined on oath, or
 - (b) to take an oath, or
 - (c) to answer, after having taken an oath, any questions that are put to the person concerning the subject-matter of the proceedings, or
 - (d) to produce the document or thing.

Note—

Division 5 sets out procedures for warrants of commitment generally.

- (3) However, the person is to be released before the expiration of those 7 days if the person:
- (a) consents to be examined on oath and to answer questions concerning the subject-matter of the proceedings, or
 - (b) produces the document or thing.
- (4) This Part applies in relation to a subpoena to the exclusion of section 194 (Witnesses failing to attend proceedings) of the [Evidence Act 1995](#).
- (5) In this section, a reference to a person who appears before the Children's Court on bail after being arrested under a warrant after failing to comply with a subpoena includes a reference to a person in respect of whom the requirement for bail has been dispensed with after being so arrested.

Division 4 Arrest warrants

109L When arrest warrants may be issued

A warrant to arrest a person may be issued on any day of the week.

109M Form of arrest warrant

- (1) A warrant to arrest a person must be in the form prescribed by the rules.
- (2) Without limiting subsection (1), the warrant must be directed to a person permitted by section 109O to execute the warrant and must do the following things:
- (a) name or describe the person to be arrested,

- (b) briefly state the reason for the arrest,
 - (c) order that the person be arrested and brought before the Children's Court to be dealt with according to law or to give evidence or produce documents or things, as appropriate.
- (3) A warrant to arrest a person must be signed by the person issuing it and sealed with the seal of the Children's Court.

109N Duration of arrest warrants

- (1) A warrant to arrest a person must be returnable at a stated date, time and place.
- (2) The warrant to arrest a person may be returned and cancelled, and a further warrant may be obtained, if the person is not arrested before the warrant must be returned.

109O Persons who may execute arrest warrant

- (1) A warrant to arrest a person must be directed to:
 - (a) a named police officer, or
 - (b) a person authorised by law to execute a warrant to arrest, or
 - (c) the senior police officer of the area where the court is located, or
 - (d) the senior police officer and all other police officers, or
 - (e) generally all police officers.
- (2) A warrant to arrest a person may be executed by arresting the person at any place in New South Wales.

109P Procedure after arrest

A person who is arrested under a warrant must be brought before the Children's Court, a Children's Magistrate or a Registrar as soon as practicable.

109Q Revocation of warrants

- (1) Any party to proceedings before the Children's Court may apply to the Court to revoke a warrant for the arrest of a person issued by the Court in relation to the proceedings.
- (2) The Children's Court may, on the application of a person under subsection (1) or on its own motion, revoke any warrant to arrest a person issued by it if the Children's Court considers it to be appropriate to do so.

Division 5 Warrants of commitment

109R Form of warrants of commitment

- (1) A warrant to commit a person must be in the form prescribed by the rules.
- (2) Without limiting subsection (1), the warrant must be directed to a police officer and must do the following things:
 - (a) name or describe the person to be committed,
 - (b) direct and authorise the police officer to take and safely convey the named person to a correctional centre, detention centre or other place of security,
 - (c) direct the police officer to deliver the named person to the officer in charge of the place,
 - (d) direct and authorise the officer in charge of the place to receive the named person in custody and to keep the named person in custody for the period specified, or in the circumstances specified, or until the named person is otherwise lawfully released from custody.

Note—

A warrant of commitment must not require a person to be kept in custody for more than 7 days—see section 109K (2).

109S Procedure for taking person to correctional centre, detention centre or other place of security

- (1) The police officer to whom a warrant of commitment is issued must take the named person to the correctional centre, detention centre or other place of security specified in the warrant and deliver the named person to the person in charge of the place.
- (2) The police officer must obtain a receipt for the delivery of the named person setting out the condition of the named person when delivered into the custody of the person in charge.

109T Defects in warrants of commitment

A warrant of commitment may not be held void because of any defect in the warrant if the warrant states that:

- (a) the person has been ordered to do any act or thing required to be done, and
- (b) there is a good and valid order to sustain the warrant.

Division 6 Bail

109U Application of [Bail Act 1978](#)

- (1) The [Bail Act 1978](#) (other than Part 6) applies to a person who is brought before the Children's Court, a Children's Magistrate or a Registrar after being arrested on a warrant issued under this Part in relation to proceedings before the Children's Court in the same way as it applies to an accused person, and for that purpose, bail may be granted to the person with respect to the period between the person's being brought before the Children's Court, a Children's Magistrate or a Registrar and his or her attendance at those proceedings.
- (2) For the purposes of subsection (1):
 - (a) the Children's Court, a Children's Magistrate and a Registrar may grant bail in accordance with the [Bail Act 1978](#) to a person who is brought before the Court, Children's Magistrate or Registrar, and
 - (b) a reference in Part 4 (other than section 22A and Divisions 3-7), 5 or 7 of the [Bail Act 1978](#) to a court is to be read as a reference to the Children's Court, and
 - (c) a reference to an authorised justice includes a reference to a Registrar.
- (3) A power to issue a warrant of commitment under this Part is subject to the provisions of the [Bail Act 1978](#), as applied by this section.
- (4) Without limiting section 9, in taking any action or making any decision under the [Bail Act 1978](#) as applied by this section concerning a particular child or young person, the safety, welfare and well-being of the child or young person must be the paramount consideration.

109V Review of bail decisions

- (1) The District Court may review any decision made by the Children's Court or a Children's Magistrate in relation to bail under this Division.
- (2) The Children's Court may review any decision made by a Registrar in relation to bail under this Division.
- (3) The power to review a decision under this section:
 - (a) may be exercised only at the request of the child, young person, parent or other person held in custody or the Director-General, and
 - (b) includes the power to affirm or vary the decision or to substitute another decision.

- (4) A decision as varied or substituted must be in conformity with the [Bail Act 1978](#) as applied by section 109U.
- (5) The review of a decision is to be by way of rehearing, and evidence or information in addition to, or in substitution for, the evidence or information obtained on the making of the decision may be given or obtained on the review.
- (6) If, on review of a decision under this Division, the Children's Court or District Court varies the decision or substitutes another decision, section 38 of the [Bail Act 1978](#) applies to and in relation to the decision as varied or substituted as if originally made by the court.
- (7) If, on review of a decision under this Division, bail for a parent or other person in custody is revoked, the Children's Court or other reviewing body may:
 - (a) if the person is an adult—issue a warrant in accordance with Division 5 committing the person to a correctional centre or other place of security, or
 - (b) if the person is a child or young person—issue a warrant in accordance with Division 5 committing the person to a detention centre,and order the person to be brought before the Children's Court at the date, time and place specified in the warrant.
- (8) The Children's Court or other reviewing body may refuse a request to review a decision under this Division if it is satisfied that the request is frivolous or vexatious.
- (9) The regulations may make provision for or with requests for reviews, and reviews, under this Division.
- (10) Nothing in this section limits the rights of a person held in custody under this Part to apply for bail, and the person may so apply for bail even if the power to review a decision already made in relation to bail to the person has not been, or has not been sought to be, exercised under this section.

Division 7 General

109W Warrants

- (1) A printed representation of a seal or signature on a warrant issued under this Part is sufficient to comply with a requirement under this Act that a warrant be sealed or signed.
- (2) A copy of a warrant issued under this Act (being a copy produced by means of a photographic or electronic process or facsimile transmission):
 - (a) is as valid and effectual as the original warrant, and

- (b) confers the same functions as the original warrant.

109X Rules relating to subpoenas

Without limiting section 23 of the *Children's Court Act 1987*, rules may be made for or with respect to the following matters:

- (a) the form of subpoenas,
- (b) the production and inspection of documents or things in accordance with subpoenas and the return or destruction of such documents or things,
- (c) the return of subpoenas to parties,
- (d) conduct money,
- (e) hearing of objections to subpoenas,
- (f) allowances for witnesses.

[9] Section 149AA

Insert after section 149:

149AA Care plan and other relevant information to be presented before order made under section 149

- (1) The authorised carer applying for an order under section 149 awarding sole parental responsibility to the carer must present the following to the Children's Court before the order is made:
 - (a) a care plan prepared, in accordance with this section, by the authorised carer or the principal officer of the designated agency that supervised the placement of the child or young person with the authorised carer,
 - (b) a copy of any report on the health, educational or social well-being of the child or young person that is available to the authorised carer and that is relevant to the care plan.
- (2) Without limiting the information that must be contained in a care plan, it must contain information about the following:
 - (a) the residence of the child or young person,
 - (b) if the Children's Court has made any contact order under section 86 in relation to contact of the child or young person with his or her parents, relatives, friends or other persons—the arrangements for contact,
 - (c) the education and training of the child or young person,

- (d) the religious upbringing of the child or young person,
 - (e) the health care of the child or young person,
 - (f) the resources required to provide any services that need to be provided to the child or young person and the availability of those resources,
 - (g) any views the child or young person has expressed about any aspect of the care plan.
- (3) The care plan is to be made as far as possible with the agreement of the parents of the child or young person concerned.
- (4) The care plan is only enforceable to the extent to which its provisions are embodied in or approved by orders of the Children's Court.
- (5) Other requirements and the form of a care plan under this section may be prescribed by the regulations.

[10] Section 175 Special medical treatment

Omit paragraph (b) of the definition of ***special medical treatment*** in section 175 (5).

Insert instead:

- (b) any medical treatment for the purpose of contraception or menstrual regulation declared by the regulations to be a special medical treatment for the purposes of this section, or

[11] Section 176 Special medical examinations

Omit the section.

[12] Section 218A

Insert after section 218:

218A Application of [State Records Act 1998](#) to certain children's services

- (1) The [State Records Act 1998](#) does not apply to an excluded children's service and such a service is not a public office for the purposes of that Act.
- (2) In this section:

excluded children's service means a person or body providing a children's service to the community, being a person or body other than:
 - (a) a department, office, commission, board, corporation, agency, service or

instrumentality exercising any function of any branch of the Government of the State, or

(b) a council or county council under the [Local Government Act 1993](#).

[13] Section 220 Regulations

Insert after section 220 (p):

Centre based children's services

(q) exempting specified centre based children's services, or centre based children's services of a specified class, from the requirement that they be licensed, and regulating the services so exempted (including, without limitation, establishing standards to be met by those services).

[14] Section 233 Power of search for and removal of children and young persons in need of care and protection

Omit "in need of care and protection" from section 233 (1) (a).

Insert instead "at risk of serious harm".

[15] Section 233 (2) (a)

Omit "at immediate risk of serious harm".

Insert instead "at risk of serious harm".

[16] Section 233 (4)

Omit "It".

Insert instead "An application for a warrant or warrant may specify one or more addresses or other descriptions of premises. However, it".

[17] Section 264 Regulations

Insert after section 264 (2):

(3) The regulations may apply, adopt or incorporate, wholly or in part and with or without modifications, any standard, rule, code, specification or other document prescribed or published by any person or body (whether of New South Wales or elsewhere) and as in force at a particular time or from time to time.

[18] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Children and Young Persons (Care and Protection) Amendment Act 2005

[19] Schedule 3

Insert after clause 1:

2 Provision consequent on enactment of *Children and Young Persons (Care and Protection) Amendment Act 2005*

Section 233, as in force immediately before the commencement of this clause, continues to apply to and in respect of a search warrant applied for under that section as in force before that commencement.

Schedule 2 Amendment of *Children's Court Act 1987*

(Section 4)

Section 23 Rules

Insert "or the *Children and Young Persons (Care and Protection) Act 1998*" after "this Act" wherever occurring in section 23 (1).