

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

[1986-182]



New South Wales

## Status Information

### Currency of version

Current version for 1 March 2020 to date (accessed 21 May 2024 at 3:06)

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

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Editorial note**

The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-rules (em-dashes). Text of the legislation is not affected.

This version has been updated.

### Responsible Minister

- Attorney General

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### 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](#).

File last modified 1 March 2020

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



New South Wales

An Act to refer to the Parliament of the Commonwealth certain matters relating to family law.

## 1 Name of Act

This Act may be cited as the *Commonwealth Powers (Family Law—Children) Act 1986*.

## 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

## 3 Reference of certain matters relating to children

- (1) The following matters, to the extent to which they are not otherwise included in the legislative powers of the Parliament of the Commonwealth, are referred to the Parliament of the Commonwealth for a period commencing on the day on which this Act commences and ending on the day fixed, pursuant to section 4, as the day on which the reference under this section shall terminate, but no longer, namely—
  - (a) the maintenance of children and the payment of expenses in relation to children or child bearing,
  - (b) the custody and guardianship of, and access to, children,
  - (c) the determination of a child's parentage for the purposes of the law of the Commonwealth, whether or not the determination of the child's parentage is incidental to the determination of any other matter within the legislative powers of the Commonwealth.
- (2) Subject to subsection (2A), the matters referred by subsection (1) do not include the matter of the adoption of children or the matter of the taking, or the making of provision for or in relation to authorising the taking, of action that would prevent or interfere with—

- (a) a Minister of the Crown, an officer of the State, an officer of an adoption agency approved under a law of the State, or any other person or body, having or acquiring the custody, guardianship, care or control of children under a provision specified in Schedule 1,
- (b) (Repealed)
- (c) the jurisdiction of the Supreme Court to make orders in respect of children who are in such custody, guardianship, care or control, or
- (d) the jurisdiction of a court of the State, or other body, under a provision specified in Schedule 1, to make orders, or take any other action, in respect of—
  - (i) the custody, guardianship, care or control of children, or
  - (ii) access to children or the supervision of children.

(2A) The matters referred by subsection (1) include the matter of the taking, or the making of provision for or in relation to authorising the taking, of action that would prevent or interfere with a matter referred to in subsection (2)(a)–(d) if—

- (a) the Minister of the Crown responsible for the administration of the relevant provision specified in Schedule 1, or
- (b) a person authorised, in writing, by that Minister of the Crown to act on his or her behalf for the purposes of Part VII of the *Family Law Act 1975* of the Commonwealth, as amended and in force for the time being,

consents, in writing, to the taking of such action by way of instituting, or continuing, proceedings under that Act in a court having jurisdiction under that Act.

(3) In the preceding provisions of this section—

- (a) the references to children shall be read as references to persons under the age of 18 years,
- (b) the references to the maintenance of, and the payment of expenses in relation to, children shall be read as including references to the maintenance of, and the payment of expenses in relation to, persons who have attained that age and have special needs in respect of maintenance or expenses by reason of being engaged in a course of education or training or by reason of a physical or mental handicap, and
- (c) the references to a provision specified in Schedule 1 shall be read as references to the provision as amended and in force from time to time, and as including a reference to any provision or provisions replacing that provision and as amended and in force from time to time.

#### 4 Termination of reference

The Governor may, at any time, by proclamation published on the NSW legislation website, fix a day as the day on which the reference under this Act shall terminate.

### Schedule 1 Statutory provisions

(Section 3)

*Adoption Act 2000*: sections 23(1), (4) and (5), 50, 51, 75(1), (7) and (9), 77(2), 78, 84, 86, 92, 93, 95, 106, 107, 110, 111, 116 and 117.

*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, 245, 247 and 255.

*Community Services (Complaints, Reviews and Monitoring) Act 1993*: sections 47 and 48.

*Guardianship Act 1987*: sections 13, 14, 23(b), 25(5) and (6), 31 and 32–48.