

CHILDREN (CARE AND PROTECTION) ACT 1987 No. 54

NEW SOUTH WALES



Act No. 54, 1987

An Act with respect to the care and protection of children. [Assented to 29 May 1987]

Children (Care and Protection) 1987

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

PART 1
PRELIMINARY

Short title

1. This Act may be cited as the "Children (Care and Protection) Act 1987".

Commencement

2. (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 or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Aboriginal" has the same meaning as it has in the Aboriginal Land Rights Act 1983;

"abuse", in relation to a child, means assault (including sexually assault) or ill-treat the child or expose or subject the child to behaviour that psychologically harms the child, whether or not, in any case, with the consent of the child;

"adult" means a person who is of or above the age of 18 years;

"authorised justice" means—

(a) a Magistrate; or

(b) a justice employed in the Local Courts Administration, Attorney General's Department;

"authorised officer", in relation to any provision of this Act, means—

(a) an officer who is declared to be an authorised officer for the purposes of that provision; or

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(b) an officer who belongs to a class of officers who are declared to be authorised officers for the purposes of that provision,

by an order in force under subsection (3);

“authorised private fostering agency” means the holder of a private fostering agency authority;

“authorised supervisor”, in relation to a licence for a child care service or the holder of such a licence, means the person for the time being specified under section 32 (1) (c) in the licence for that service;

“child” means a person who is under the age of 18 years;

“child care service” means—

(a) any service that is provided by a person for the purpose of educating, minding or caring for (but without providing residential care for) one or more children (disregarding any children who are related to the person providing the service) and that is provided for fee, gain or reward;

(b) any service that is declared to be a child care service by an order in force under subsection (4); or

(c) the organising or arranging of the provision of any such service,

but does not include any such service, or the organising or arranging of the provision of any such service, if the service is or is to be—

(d) provided by a person at the premises at which the children for whom that person provides the service reside;

(e) provided at a licensed residential child care centre;

(f) provided at exempt premises; or

(g) provided by the holder of a fostering authority in accordance with the authority;

“Children’s Court” means the Children’s Court of New South Wales constituted by the Children’s Court Act 1987;

“children’s employment licence” means a licence in force under section 53;

“Community Welfare Appeals Tribunal” means the Community Welfare Appeals Tribunal established by section 103;

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“control order” means an order in force under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987 whereby the Children’s Court, or some other court exercising the functions of the Children’s Court under Division 4 of Part 3 of that Act, has committed a person to the control of the Minister administering the Children (Detention Centres) Act 1987;

“custody”, in relation to a child, means custody of the child to which a person is entitled by law;

“Department” means the Department of Youth and Community Services;

“Director-General” means the person for the time being holding office or acting as the Director-General of the Department;

“exempt premises” means—

(a) the premises of—

(i) a State school, a certified school, a special school or a certified special school, within the meaning of the Public Instruction (Amendment) Act 1916;

(ii) a private hospital or nursing home licensed under the Private Hospitals Act 1908;

(iii) an admission centre or a mental hospital within the meaning of the Mental Health Act 1958 or an authorised hospital within the meaning of the Mental Health Act 1958;

(iv) an incorporated hospital or a separate institution within the meaning of the Public Hospitals Act 1929, premises controlled by an associated organisation within the meaning of that Act or a hospital specified in the Fifth Schedule to that Act; or

(v) a hospital or other institution under the control of an area health service constituted under the Area Health Services Act 1986;

(b) any premises belonging to a class of premises prescribed by the regulations; or

(c) in relation to any provision of this Act, any premises declared to be exempt premises for the purposes of that provision by an order in force under subsection (5);

“facility” means any premises the subject of an order in force under section 5 (1);

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“fostering authority” means an authority that has been granted as a fostering authority under clause 3 of Schedule 1 and that is in force;

“licence” means a licence for a child care service or a residential child care centre that has been granted under clause 3 of Schedule 1 and that is in force;

“licensed manager”, in relation to a licensed residential child care centre, means the person for the time being specified under section 36 (1) (c) in the licence for that centre;

“licensed residential child care centre” means premises specified under section 36 (1) (b) in a licence for a residential child care centre;

“maintenance” includes clothing, support, training and education;

“non-Government children’s home” means a home for the accommodation of children that is conducted by a non-Government organisation;

“non-Government organisation” means a corporation, society, association or other body of persons, not being the Crown, declared to be a non-Government organisation by an order in force under subsection (6);

“officer” means an officer or temporary employee, within the meaning of the Public Service Act 1979, employed in the Department;

“parent”, in relation to a child, includes—

(a) a guardian of the child; and

(b) a person who has the custody of the child,

but does not include the Minister or the Director-General, or the father or mother of the child if the father or mother, as the case may be, has neither guardianship nor custody of the child;

“person responsible”, in relation to a child, means—

(a) a parent of the child;

(b) a person (other than the Minister or the Director-General) who has the care of the child; or

(c) in the case of a child who is in the care of the Minister or the Director-General—a person who had the care of the child immediately before the child came to be in the care of the Minister or the Director-General, as the case may be;

“premises” includes any land, building, vehicle and vessel;

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“principal officer”, in relation to an authorised private fostering agency, means the person for the time being specified under section 41 (1) (b) in the private fostering agency authority held by that agency;

“private fostering agency” means a person who performs (whether or not for fee, gain or reward) private fostering services with respect to children (disregarding any children who are related to the person);

“private fostering agency authority” means an authority that has been granted as a private fostering agency authority under clause 3 of Schedule 1 and that is in force;

“private fostering service” means the activity of conducting negotiations or making arrangements with a view to the placement of children for fostering;

“proprietor”, in relation to premises, means—

- (a) if the premises are not leased—the owner or any joint owner of the premises; or
- (b) if the premises are leased—the lessee or any joint lessee who is entitled to immediate possession of the premises;

“protected person” means—

- (a) a child who is a ward of the Supreme Court and of whom the Minister or the Director-General has the custody or care pursuant to an order of the Supreme Court;
- (b) a child of whom the Minister or the Director-General has the custody or guardianship pursuant to an order in force under the Family Law Act 1975 of the Commonwealth;
- (c) a non-citizen child in respect of whom the Director-General exercises the functions of a guardian pursuant to the Immigration (Guardianship of Children) Act 1946 of the Commonwealth; or
- (d) a child who, having been a child referred to in paragraph (a), (b) or (c), is in the custody of a person referred to in section 91 (1) (d) (i) or (ii);

“regulation” means a regulation made under this Act;

“residential child care centre” means any premises—

- (a) at which 6 or more children (disregarding any children who are related to the person in charge of the premises) reside and are cared for for fee, gain or reward; or

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- (b) that are declared to be a residential child care centre by an order in force under subsection (7),

but does not include any premises that are exempt premises;

“Visitor” means a person appointed as a Visitor for a facility under section 6;

“ward” means—

- (a) a child declared to be a ward under this Act by an order in force under section 72 (1) (c) (iii);
- (b) a child declared to be a ward under this Act by a declaration under section 95 (4); or
- (c) a child declared to be a ward under this Act by an order in force under the Adoption of Children Act 1965.

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) For the purposes of the definition of “authorised officer” in subsection (1), the Minister may, by order published in the Gazette—

- (a) declare any officer to be an authorised officer; or
- (b) declare any class of officers to be authorised officers,

for the purposes of any provision of this Act.

(4) The Minister may, by order in writing served on a person by whom any service that would (but for the fact that it is being provided otherwise than for fee, gain or reward) be a child care service under paragraph (a) of the definition of “child care service” in subsection (1), declare the service to be a child care service.

(5) For the purposes of paragraph (c) of the definition of “exempt premises” in subsection (1), the Minister may, by order published in the Gazette, declare any premises to be exempt premises for the purposes of any provision of this Act.

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(6) For the purposes of the definition of “non-Government organisation” in subsection (1), the Minister may, by order published in the Gazette, declare any corporation, society, association or other body of persons, not being the Crown, to be a non-Government organisation for the purposes of this Act.

(7) The Minister may, by order in writing served on the proprietor or occupier of premises (other than exempt premises) that would (but for the fact that any one or more of the children, disregarding any children who are related to the person in charge of the premises, residing at those premises are cared for otherwise than for fee, gain or reward) be a residential child care centre under paragraph (a) of the definition of “residential child care centre” in subsection (1), declare those premises to be a residential child care centre.

(8) In this Act—

- (a) a reference to a person who has the care of a child is a reference to a person who has the care of the child, whether or not the person has the custody of the child; and
- (b) a reference to a child who is or has been placed in the care of a person includes a reference to a child who is or has been placed in the custody of the person.

(9) In this Act, a reference to a child’s having been sexually assaulted is a reference to any of the following offences having been committed with or upon the child:

- (a) an offence under section 61B, 61C, 61D, 61E, 61F, 66A, 66B, 66C or 66D of the Crimes Act 1900;
- (b) an offence under section 67, 68, 71, 72, 73, 74, 78A or 78B of that Act, as in force before the commencement of Schedule 2 to the Crimes (Child Assault) Amendment Act 1985;
- (c) an offence under section 63, 65, 76 or 76A of that Act, as in force before the commencement of Schedule 1 to the Crimes (Sexual Assault) Amendment Act 1981.

(10) Except in so far as the context or subject-matter otherwise indicates or requires, a word or expression used in a Schedule has the same meaning as it has in the relevant provisions of this Act relating to the subject-matter of that Schedule.

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Related persons

4. For the purposes of this Act, a child is related to another person—
- (a) if the child is the child, step-child, grandchild, brother, sister, step-brother, step-sister, uncle, aunt, niece or nephew (whether by consanguinity or affinity) of the other person;
 - (b) if the other person is the guardian of the child; or
 - (c) if the child has been placed in the care or custody of the other person in accordance with the provisions of the Adoption of Children Act 1965.

Facilities

5. (1) The Minister may, by order published in the Gazette, declare any premises specified or described in the order to be a facility for the purposes of this Act.

(2) The Minister may, by the order by which any premises are declared to be a facility or by any subsequent order published in the Gazette, give a name to the facility.

(3) An order under subsection (1) may declare any premises specified or described in the order to be one or more kinds of facility.

(4) An order under subsection (1) shall not be made in relation to premises under the control of a person, other than the Crown or a person acting on behalf of the Crown, except with the consent in writing of the firstmentioned person.

(5) An order under subsection (1) shall not be made in relation to premises under the control of a Minister other than the Minister administering this Act except with the consent in writing of that other Minister.

(6) The Minister may establish and maintain, on any facility that comprises premises that are under the control of the Crown or a person acting on behalf of the Crown, such establishments as the Minister considers necessary for the purpose of carrying out or giving effect to this Act or any other Act administered by the Minister.

Visitors

6. (1) The Minister may appoint eligible persons to be Visitors for each facility.

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(2) A person is an eligible person for the purposes of subsection (1) if, in the opinion of the Minister, the person—

- (a) is expert in some branch of community welfare; and
- (b) demonstrates concern for persons in need of community welfare services,

but not if the person is an officer.

(3) A Visitor shall, unless sooner removed from office, hold office for 2 years and is, if otherwise qualified, eligible for reappointment.

(4) A Visitor may, in respect of the facility for which the Visitor is appointed—

- (a) enter and inspect the facility at any reasonable time;
- (b) confer privately with any person who is resident, employed or detained in the facility;
- (c) furnish to the Minister advice or reports on any matters relating to the conduct of the facility; and
- (d) exercise such other functions as may be prescribed by the regulations.

(5) A copy of any advice or report furnished to the Minister under subsection (4) (c) shall be forwarded to the Minister for Education if the advice or report relates to any part of an educational establishment that is under the control or direction of the Minister for Education.

Granting of care does not imply granting of custody

7. A power conferred by this Act to place a child in the care of a person does not, except in so far as the context or subject-matter otherwise indicates or requires, include the power to grant custody of the child to the person.

Care or custody does not imply guardianship

8. A person in whose care or custody a child is placed under this Act is not, merely because of that placement, the guardian of the child.

Duties of care equivalent to duties of custody

9. A person in whose care a child is placed under this Act has, until the person ceases under this or any other Act or law to have the care of the child, the same duties in respect of the child as if the person had the custody of the child.

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Children in need of care

10. (1) For the purposes of this Act, a child is in need of care if—

- (a) adequate provision is not being made, or is likely not to be made, for the child's care;
- (b) the child is being, or is likely to be, abused; or
- (c) there is a substantial and presently irretrievable breakdown in the relationship between the child and one or more of the child's parents.

(2) Without limiting the generality of subsection (1), a child who is residing in a non-Government children's home is in need of care—

- (a) if the child has been residing in the home for a period of 12 months or more; and
- (b) if there has been no substantial contact during that period between the child and—
 - (i) any of the child's parents; or
 - (ii) any person in whose care the child was immediately before the child began residing in the home.

Delegation

11. (1) In the exercise of the Minister's powers of delegation under section 5 of the Community Welfare Act 1987, the Minister may delegate to the Director-General, or to any other person, the exercise of—

- (a) any of the Minister's functions arising by virtue of the Minister's having the care or custody of a person; and
- (b) any of the Minister's functions (other than such functions as may be prescribed by the regulations) arising by virtue of the Minister's being the guardian of a ward or protected person.

(2) In the exercise of the Director-General's powers of delegation under section 5 of the Community Welfare Act 1987, the Director-General may delegate to any person the exercise of any of the Director-General's functions arising by virtue of the Director-General's having the care or custody of a person.

PART 2

CHILDREN'S WELFARE

DIVISION 1—*Provision of care***Objects of Part**

12. (1) The objects of this Part are—

- (a) to identify the special needs of children, whether or not under parental care, with respect to services necessary to promote their optimum development; and
- (b) to ensure the provision of any necessary services for, and assistance to, families so that, where necessary, the care available to children in the family environment can be enhanced to such a degree as to enable them to remain in or return to family care.

(2) With the object of ensuring the provision of any necessary welfare services aimed at complementing the care given to children by persons responsible for them, the Minister may—

- (a) disseminate information to the community with respect to welfare services for children and their families;
- (b) provide assistance and support for non-Government organisations and persons concerned in the establishment or development of welfare services for children and their families; and
- (c) furnish advice to non-Government organisations and persons concerned in the provision of welfare services for children and their families with respect to the quality of any such services and the equipment needed to provide them.

Provision of services for children in need of care

13. (1) The Director-General may provide any one or more of the following facilities or services for or with respect to a child who is, in the opinion of the Director-General, in need of care:

- (a) accommodation;
- (b) maintenance;
- (c) care;
- (d) advisory services;

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(e) any other facility or service prescribed by the regulations or any other facility or service belonging to a class of facilities or services so prescribed.

(2) Facilities or services shall not be provided under subsection (1) for or with respect to a particular child except on the application of—

- (a) in the case of a child who is under the age of 14 years—a person responsible for the child;
- (b) in the case of a child who is 14 or 15 years of age—either a person responsible for the child or the child; or
- (c) in the case of a child who is of or above the age of 16 years—the child.

Temporary care arrangements

14. (1) The Director-General may, on the application of—

- (a) in the case of a child who is under the age of 14 years—a person responsible for the child; or
- (b) in the case of a child who is of or above the age of 14 years—the child,

make a temporary care arrangement in respect of the child if the child is, in the opinion of the Director-General, in need of care.

(2) In deciding whether or not to make a temporary care arrangement in respect of a child, the Director-General shall have regard to—

- (a) the views of the persons responsible for the child;
- (b) in the case of a child who is of or above the age of 12 years—the views of the child; and
- (c) the question of whether or not it would be more appropriate for provision to be made with respect to the child under section 13.

(3) A temporary care arrangement shall not be made in respect of a child on an application made by a person other than a parent of the child unless the Director-General has, not less than 21 days before making the arrangement, informed such of the parents of the child as can reasonably be located that an application for such an arrangement has been made.

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(4) If the Director-General has made a temporary care arrangement in respect of a child on an application made by a person other than a parent of the child, the Director-General shall inform such of the parents of the child as can reasonably be located that the Director-General has made a temporary care arrangement in respect of the child.

(5) A temporary care arrangement ceases to be in force—

(a) upon the receipt by an officer of a request for the termination of the arrangement made by the person by whom the application for the making of the arrangement was made;

(b) upon the child the subject of the arrangement attaining the age of 18 years;

(c) upon the expiration of the period of—

(i) except as provided by subparagraph (ii)—3 months; or

(ii) if the Director-General has renewed the arrangement pursuant to subsection (6)—6 months,

after the making of the arrangement; or

(d) upon its termination by the Director-General under subsection (8), whichever first occurs.

(6) At the expiration of 3 months after the making of a temporary care arrangement in respect of a child, the Director-General may, if of the opinion that the child is still in need of care, renew the arrangement for a further period of 3 months.

(7) A temporary care arrangement shall not be made or renewed in respect of a child if the child has, during the previous 12 months, been the subject of a temporary care arrangement or a temporary custody order for a period, or for periods in the aggregate, exceeding 6 months.

(8) The Director-General may, whether on the application of the child or a person responsible for the child or on the Director-General's own motion, at any time terminate a temporary care arrangement in respect of a child if, after consultation with the person by whom the application for the making of the order was made, the Director-General is of the opinion that the child is no longer in need of care.

(9) An application for the review of a temporary care arrangement may, in accordance with the regulations, be made to the Children's Court—

(a) by or on behalf of the child the subject of the arrangement; or

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(b) by a person responsible for the child.

(10) The decision of the Children's Court in respect of an application for a review shall be given effect to as if it were the decision of the Director-General with respect to the making of a temporary care arrangement under subsection (1).

(11) The provisions of Division 3 of Part 5 apply to and in respect of the hearing of an application for a review in the same way as they apply to and in respect of the hearing of a care application under that Division.

Temporary custody orders

15. (1) The Director-General may make a temporary custody order in respect of a child the subject of a control order if—

- (a) the child is under the age of 16 years; and
- (b) the child would, upon ceasing to be subject to the control order by virtue of the making of the temporary custody order, be, in the opinion of the Director-General, in need of care.

(2) In deciding whether or not to make a temporary custody order in respect of a child, the Director-General shall have regard to—

- (a) the views of the persons responsible for the child; and
- (b) in the case of a child who is of or above the age of 12 years—the views of the child.

(3) A temporary custody order shall not be made in respect of a child unless the Director-General has, not less than 21 days before making the order, informed such of the persons responsible for the child as can reasonably be located that the Director-General proposes to make such an order.

(4) Upon the making of a temporary custody order in respect of a child, the control order to which the child was subject immediately before the making of the temporary custody order shall cease to have effect.

(5) A temporary custody order ceases to be in force—

- (a) upon the expiration of the period for which the relevant control order would have been in force had the temporary custody order not been made;
- (b) upon the expiration of the period of—
 - (i) except as provided by subparagraph (ii)—3 months; or