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Dated 14 July 2022



TASMANIA

**CHILDREN, YOUNG PERSONS AND THEIR
FAMILIES (TRANSITIONAL AND SAVINGS
PROVISIONS) ACT 1998**

No. 3 of 1998

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**CHILDREN, YOUNG PERSONS AND THEIR
FAMILIES (TRANSITIONAL AND SAVINGS
PROVISIONS) ACT 1998**

No. 3 of 1998

An Act to provide for matters of a transitional and savings nature arising from the repeal of the *Child Protection Act 1974* and certain provisions of the *Child Welfare Act 1960* and the enactment of the *Children, Young Persons and Their Families Act 1997*, the *Youth Justice Act 1997* and the *Magistrates Court (Children's Division) Act 1998*

[Royal Assent 22 May 1998]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

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Savings Provisions) Act 1998*
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Part 1 – Preliminary

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Children, Young Persons and Their Families (Transitional and Savings Provisions) Act 1998*.

2. Commencement

This Act commences on the day on which the *Children, Young Persons and Their Families Act 1997* commences.

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**PART 2 – TRANSITIONAL PROVISIONS RELATING
TO THE *CHILD WELFARE ACT 1960***

Division 1 – Preliminary

3. Interpretation of Part 2

- (1) In this Part, unless the contrary intention appears –

commencement day means the day on which the *Children, Young Persons and Their Families Act 1997* commences;

Director means the Director for Community Welfare appointed under section 6 of the repealed Act and holding that office immediately before the commencement day;

employee of the Department has the same meaning as in the *Children, Young Persons and Their Families Act 1997*;

repealed Act means the *Child Welfare Act 1960* as in force immediately before the commencement day;

Secretary means the Secretary of the Department.

- (2) In this Part, unless the contrary intention appears, the following expressions have the same meaning as they had in the repealed Act immediately before the commencement day:

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- (a)
- (b) child;
- (c) child welfare officer;
- (d)
- (e) contribution order;
- (ea) institution;
- (f) interim order;
- (g)
- (h) supervision order;
- (i) ward of the State.

(3) In this Part, unless the contrary intention appears, the following expressions have the same meaning as they have in the *Youth Justice Act 1997*:

- (a) detention centre;
- (b)
- (c) offence;
- (d - f)

4. Interpretation of continuing document

(1) In this section –

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continuing document means any of the following documents if it is continued or has effect on or after the commencement day:

- (a) an application made under the repealed Act;
- (b) an order made under the repealed Act;
- (c) a provision of the repealed Act;
- (d) a complaint made in respect of matters under the repealed Act;
- (e) a summons issued under the repealed Act;
- (f) a warrant issued under the repealed Act;
- (g) a recognisance or surety entered into under an order made under the repealed Act;
- (h) a licence granted under the repealed Act;
- (i) a report made or provided under the repealed Act;
- (j) a requirement made under the repealed Act;

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- (k) any other document made, issued or provided under the repealed Act.
- (2) For the purpose of giving effect to a continuing document –
 - (a) a reference in the continuing document to the Director is taken to be a reference to the Secretary; and
 - (b) a reference in the continuing document to a child welfare officer is taken to be a reference to an employee of the Department; and
 - (c) a reference in the continuing document to an institution is taken to be a reference to a detention centre, within the meaning of the *Youth Justice Act 1997*; and
 - (d) a reference in the continuing document to a children's court is taken to be a reference to the Magistrates Court (Children's Division); and
 - (e) such modifications and adaptations to the continuing document as are necessary to give effect to it and are appropriate in the circumstances are taken to have been made.

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Division 2 – Abolition of certain offices, &c.

5. Abolition of office of Director

The appointment of the Director under the repealed Act is revoked.

6. Transfer of child welfare officers

A person appointed as a child welfare officer under section 7 of the repealed Act is taken to have been appointed subject to and in accordance with the *Tasmanian State Service Act 1984* for the purpose of the *Children, Young Persons and Their Families Act 1997*.

7. Abolition of children's court, special magistrates, &c.

- (1) Children's courts are abolished.
- (2) Any proceedings before a children's court immediately before the commencement day must be heard and determined as specified in this Act.
- (3) The appointment of each justice to the office of special magistrate is revoked.

Division 3 – Court proceedings

8. Publication of proceedings

On and after the commencement day –

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(a)

(b) section 103 of the *Children, Young Persons and Their Families Act 1997* and section 12 of the *Magistrates Court (Children's Division) Act 1998* apply in respect of any proceedings commenced under Division III of Part III of the repealed Act before the commencement day whether those proceedings are finally determined before, on or after that day.

9 - 10.

11. Uncontrolled child before children's court

(1) If proceedings have been commenced under section 33 of the repealed Act but not finally determined immediately before the commencement day, those proceedings are taken to be proceedings for a care and protection order under section 42 of the *Children, Young Persons and Their Families Act 1997*.

(2) For the purposes of giving effect to subsection (1) –

(a) an application is taken to have been made by the Secretary under section 42(2) of the *Children, Young Persons and Their Families Act 1997*; and

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- (b) the person who originally brought the child before the court is no longer the applicant.

12 - 13.

14. Supervision order in respect of neglected child, &c.

- (1) A supervision order under section 34(1)(b) of the repealed Act in force immediately before the commencement day has effect until the first of the following occurs:
 - (a) the term of the order, or the order as varied, expires;
 - (b) the period of 12 months commencing on the commencement day expires;
 - (c) the child reaches the age of 18 years.
- (2) For the purpose of giving effect to an order referred to in subsection (1) on and after the commencement day –
 - (a) section 37 of the repealed Act continues to apply in respect of the order; and
 - (b) a reference in section 37 of the repealed Act to such other order as could have been made at the time at which the supervision order was made is taken to be a reference to a care and protection order under section 42 of the *Children,*

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*Young Persons and Their Families Act
1997; and*

- (c) the Magistrates Court (Children's Division) has jurisdiction to hear an application made under section 37 of the repealed Act.

15. Order declaring child to be ward of State

An order declaring a child to be a ward of the State under section 23(1)(c), 28(1)(b) or 34(1)(a) of the repealed Act in force immediately before the commencement day is taken to be a care and protection order under section 42(4)(d) of the *Children, Young Persons and Their Families Act 1997* placing the child under the guardianship of the Secretary until the child reaches the age of 18 years and has effect until the first of the following occurs:

- (a) the child reaches the age of 18 years;
- (b) the order is revoked under the *Children, Young Persons and Their Families Act 1997*.

16 - 18.

18A. Compensation order

- (1) In this section,

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compensation order means an order of a children's court or court of summary jurisdiction that –

- (a) a person who has suffered loss or damage as a result of an offence committed by an offender as a child is to recover an amount of money due to that person from the offender or a sum of money by way of damages; or
 - (b) a person who has suffered injury, loss, destruction or damage as a result of an offence committed by an offender as a child is to be paid compensation by the offender for that injury, loss, destruction or damage.
- (2) A compensation order in force immediately before the commencement day is taken to be a compensation order made by the Magistrates Court (Youth Justice Division) under section 98 of the *Youth Justice Act 1997*.

19. Order granting custody to other parent

An order under section 34(5) of the repealed Act granting custody to a parent of a child in force immediately before the commencement day is taken to be an order by the Magistrates Court (Children's Division) made –

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- (a) if the order granted custody for a period not exceeding 12 months, under section 42(4)(b)(i) of the *Children, Young Persons and Their Families Act 1997* granting custody for the period specified in the order to the person specified in the order; or
- (b) if the order granted custody for a period exceeding 12 months, under section 42(4)(d) placing the child under the guardianship of the person to whom custody was granted until the child reaches the age of 18 years.

20. Temporary order giving custody of child to Director

An order under section 33A(1) of the repealed Act in force immediately before the commencement day is taken to be an interim care and protection order under section 46(2)(b)(iv) of the *Children, Young Persons and Their Families Act 1997* granting custody of the child to the Secretary.

21. Interim order

- (1) An interim order under section 39(1) of the repealed Act in force immediately before the commencement day is taken to be an interim care and protection order under section 46(2)(b)(iv) of the *Children, Young Persons and Their Families Act 1997* granting custody of the

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child to the Secretary and has effect for the period specified in section 39(1) of the repealed Act.

- (2) An application under section 39(2) of the repealed Act not finally determined before the commencement day is taken to be an application for the variation of an interim care and protection order under section 48 of the *Children, Young Persons and Their Families Act 1997*.
- (3) Section 39(6) of the repealed Act continues to apply in relation to an order referred to in subsection (1).

22.

23. Summons to bring child before children's court

- (1) A summons issued to a person under section 32(1)(a) of the repealed Act continues to have effect and is taken to be a summons issued under section 16 of the *Magistrates Court (Children's Division) Act 1998*.
- (2) For the purpose of giving effect to a summons referred to in subsection (1), the Secretary is taken to have applied for a care and protection order under the *Children, Young Persons and Their Families Act 1997*.

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24. Warrant to bring child before children's court

- (1) A warrant issued under section 32(1)(b) or (2) of the repealed Act continues to have effect.
- (2) For the purpose of giving effect to a warrant referred to in subsection (1) –
 - (a) when executing a warrant issued to a person who was a child welfare officer, that person as an employee of the Department has the powers of a police officer; and
 - (b) when executing a warrant issued to a police officer, the officer may be accompanied by an employee of the Department; and
 - (c) the Secretary is taken to have applied for a care and protection order under the *Children, Young Persons and Their Families Act 1997*.

25. Summons or warrant under section 40 of repealed Act

- (1) A summons or warrant issued under section 40(1) or (2) of the repealed Act continues to have effect.
- (2) For the purposes of giving effect to a summons or warrant issued under section 40(1) or (2) of the repealed Act –

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- (a) a reference in the summons or warrant to a children's court is taken to be a reference to the Magistrates Court (Children's Division); and
 - (b) a reference in the summons or warrant to a child welfare officer or a probation officer is taken to be a reference to an employee of the Department; and
 - (c) in executing a warrant issued to a person who was a child welfare officer or probation officer, that person as an employee of the Department has the powers of a police officer.
- (3) A person must not fail to comply, without reasonable excuse, with a summons issued under section 40(1) or (2) of the repealed Act.

26 - 27.

28. Summons or warrant issued in respect of guardian

- (1)
- (2) On and after the commencement day, a summons or warrant issued under section 16 of the repealed Act in proceedings under Division III of Part III of the repealed Act continues and is taken to be a summons or warrant issued under section 16 of the *Magistrates Court (Children's Division) Act 1998*.

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29. Report of child welfare officer

- (1)
- (2) If proceedings have been commenced under Division III of Part III of the repealed Act but have not been finally determined before the commencement day –
 - (a) a requirement made by the children’s court under section 15(2) of the repealed Act for the provision to that court of a report by a child welfare officer is taken to be an order made under section 61 of the *Children, Young Persons and Their Families Act 1997* by the Magistrates Court (Children’s Division) that the Secretary report to the Magistrates Court (Children’s Division) on matters relevant to the proceedings; and
 - (b) a report of a child welfare officer provided to the children’s court under section 15(2) of the repealed Act is taken to be a report provided to the Magistrates Court (Children’s Division) under an order made under section 61 of the *Children, Young Persons and Their Families Act 1997*.

30. Delivery of order to Director

If an order is made before the commencement day, but a copy of the order is not delivered to the Director as required by section 44(1) of the

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repealed Act before that day, the clerk of petty sessions or the Registrar of the Supreme Court, as the case requires, is to provide a certified copy of the order to the Secretary.

Division 4 – Detention

31 - 32.

Division 5 – Miscellaneous

33. Ward of State by consent

- (1) An application made under section 35 of the repealed Act and not finally determined before the commencement day is taken to be an application for a care agreement under section 11 of the *Children, Young Persons and Their Families Act 1997*.
- (2) If a child is a ward of the State by the admission of the Director under section 35 of the repealed Act, a care and protection order under section 42 of the *Children, Young Persons and Their Families Act 1997* placing the child under the guardianship of the Secretary until the child attains 18 years of age is taken to be in effect in respect of that child.

34. Continuance of offences under repealed Act

- (1) If a person has committed an offence against the repealed Act before the commencement day, the

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repealed Act continues to apply in respect of that offence unless this Act provides otherwise.

- (2) Despite subsection (1), a court is not entitled to make an order under section 67(3) or (4) of the repealed Act after the commencement day.

35. Transfer of child's pay held by Director, &c.

- (1) Any money held by the Director under section 49 of the repealed Act is vested in the Secretary subject to the same conditions on which the Director held the money.
- (2) A bank account maintained in the name of the Director in trust for a child under section 49 of the repealed Act is taken to be maintained in the name of the Secretary in trust for the child.
- (3) The Secretary, in his or her discretion, must use the money held in an account referred to in subsection (2) for the benefit of the child.
- (4) Any money held in an account referred to in subsection (2) vests in the child on his or her 18th birthday.

36. Child's property

If The Public Trustee is trustee of property immediately before the commencement day, by reason of section 50 of the repealed Act, that section continues to apply in relation to that property.

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37. Contributions towards child's maintenance

- (1) If a person is liable under section 51 of the repealed Act to make contribution towards the maintenance of a child for any period occurring before the commencement day, that person continues to be so liable in respect of that period.
- (2) Under section 74(1) of the *Children, Young Persons and Their Families Act 1997*, the Secretary may apply for, and the Magistrates Court (Youth Justice Division) may make, a contribution order in respect of a liability referred to in subsection (1).
- (3) An application made by the Director under section 52 of the repealed Act but not finally determined before the commencement day is taken to have been made by the Secretary under section 74(1) of the *Children, Young Persons and Their Families Act 1997*.
- (4) An order under section 52 of the repealed Act in force immediately before the commencement day is taken to be an order under section 74(1) of the *Children, Young Persons and Their Families Act 1997*.

38. Annual report

The Secretary must include in the annual report under section 33AB of the *Tasmanian State Service Act 1984* in respect of the financial year that includes the commencement day the

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information specified in section 8(2) of the repealed Act.

39. Reference in Act to *Child Welfare Act 1960*

- (1) A reference in any Act, subordinate legislation or other document to a provision of the repealed Act that is repealed by the *Children, Young Persons and Their Families (Consequential Repeals and Amendments) Act 1998* is taken to be a reference to the provision of the *Children, Young Persons and Their Families Act 1997* corresponding in nature and effect.
- (2) If a reference in any Act, subordinate legislation or document to the repealed Act in a context that indicates a provision or other segment of the repealed Act that is repealed by the *Children, Young Persons and Their Families (Consequential Repeals and Amendments) Act 1998* is relevant to that reference, that reference is taken to be a reference to the *Children, Young Persons and Their Families Act 1997*.

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**PART 3 – TRANSITIONAL PROVISIONS RELATING
TO THE *CHILD PROTECTION ACT 1974***

Division 1 – Preliminary

40. Interpretation of Part 3

- (1) In this Part, unless the contrary intention appears –

assessment order has the same meaning as in the *Children, Young Persons and Their Families Act 1997*;

commencement day means the day on which the *Children, Young Persons and Their Families Act 1997* commences;

employee of the Department has the same meaning as in the *Children, Young Persons and Their Families Act 1997*;

repealed Act means the *Child Protection Act 1974*;

Secretary means the Secretary of the Department.

- (2) In this Part, unless the contrary intention appears, the following expressions have the same meaning as they had in the repealed Act immediately before the commencement day:

(a) Board;

(b) child;

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- (c) child protection order;
- (d) maltreatment.

41. Interpretation of continuing document

(1) In this section –

continuing document means any of the following documents if it is continued or has effect on or after the commencement day:

- (a) a requirement made under the repealed Act;
- (b) an application made under the repealed Act;
- (c) an order made under the repealed Act;
- (d) a provision of the repealed Act;
- (e) any other document made, issued or provided under the repealed Act.

(2) For the purposes of giving effect to a continuing document –

- (a) a reference in the continuing document to the Board is taken to be a reference to the Secretary; and

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- (b) a reference in the continuing document to an authorized officer continues to be a reference to an authorized officer or is taken to be a reference to an employee of the Department, as the case requires; and
- (c) a reference in the continuing document, when made in respect of proceedings taken or to be taken under the repealed Act, to any court of petty sessions, magistrate or children's court is taken to be a reference to the Magistrates Court (Children's Division); and
- (d) a reference in the continuing document to a place of safety is taken to be a reference to a place approved by the Secretary for the purpose; and
- (e) such modifications and adaptations to the continuing document as are necessary to give effect to it and are appropriate in the circumstances are taken to have been made.

Division 2 – Abolition of Board, &c.

42. Abolition of Child Protection Board

- (1) The Child Protection Board is abolished.
- (2) The appointment of each member of the Child Protection Board is revoked.

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- (3) The appointment of each deputy of a member of the Child Protection Board is revoked.

43. Revocation of appointment of Secretary of Board

The appointment of the Secretary of the Board is revoked.

44. Revocation of appointment of authorized officer

The appointment of each authorized officer is revoked.

45. Abolition of committees

- (1) Each committee established under section 6A of the repealed Act is abolished.
- (2) The appointment of each member of a committee established under section 6A of the repealed Act is revoked.
- (3) Each sub-committee established under section 6A of the repealed Act is abolished.
- (4) The appointment of each member of a sub-committee established under section 6A of the repealed Act is revoked.

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Division 3 – Investigation of maltreatment

46. Information as to maltreatment of child

If a person has informed an authorized officer before the commencement day of a suspicion that a child has suffered maltreatment or that there is a risk of a child suffering maltreatment, that person is taken to have informed the Secretary under section 13 or 14 of the *Children, Young Persons and Their Families Act 1997*, as the case requires, of a belief, suspicion or knowledge that the child has been or is being abused or neglected or that there is a reasonable likelihood of the child being killed or abused or neglected.

47. Requirement or warrant to take child for assessment

- (1) A requirement under section 9(1)(a) of the repealed Act made but not complied with before the commencement day is taken to be a requirement under section 20(1) of the *Children, Young Persons and Their Families Act 1997* to take the child to a place which immediately before the commencement day was an assessment centre.
- (2) A request under section 9(2) of the repealed Act made but not granted before the commencement day is taken to be a request made under section 20(2)(a) of the *Children, Young Persons and Their Families Act 1997*.

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- (3) A warrant issued under section 9(3) of the repealed Act but not carried out before the commencement day is taken to be a warrant issued under Schedule 4 to the *Children, Young Persons and Their Families Act 1997* for the purposes of section 20(3) of that Act.

48. Child in place of safety

- (1) A child being detained immediately before the commencement day in a place of safety under section 9(4) of the repealed Act is taken to be in the custody of the Secretary under section 21 of the *Children, Young Persons and Their Families Act 1997*.
- (2) For the purposes of subsection (1), the period of the Secretary's custody of the child commences at the time the child arrived at the place of safety in accordance with the requirement made under section 9(1) of the repealed Act.

Division 4 – Court proceedings

49. Proceedings before magistrate

Except as otherwise provided in this Act, proceedings under the repealed Act commenced before a magistrate but not finally determined before the commencement day must be continued before the Magistrates Court (Children's Division).

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50. Appearance of Board in court

- (1) If immediately before the commencement day the Board is appearing before a court, the Board may elect –
 - (a) to continue that appearance; or
 - (b) to request the Secretary to appear before the court in its place; or
 - (c) to abandon its appearance before the court.
- (2) For the purposes of subsection (1) –
 - (a) the Board is taken to continue in effect for as long as is necessary; and
 - (b) section 3D of the repealed Act continues to apply; and
 - (c) an authorization given under section 3D(2) continues to have effect; and
 - (d) a reference in section 3D of the repealed Act to the Board is taken to be a reference to the Board or the Secretary, as the case requires, despite section 41(2)(a) of this Act.

51. Application for child protection order

- (1) An application under section 10(1) of the repealed Act for a child protection order made but not finally determined before the

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commencement day is taken to be an application under section 22(1) of the *Children, Young Persons and Their Families Act 1997* to the Magistrates Court (Children's Division) for an assessment order.

- (2) Proceedings in respect of an application referred to in subsection (1) are continued in the Magistrates Court (Children's Division).

52. Child protection order

- (1) A child protection order made under section 10(1) of the repealed Act is taken to be an assessment order granting custody of the child to the Secretary for the period specified in the order during which the child is to be held in a place of safety.
- (2) An order referred to in subsection (1) ceases to have effect when the term of the order, or the order as extended under section 10(2) of the repealed Act or section 22(5) of the *Children, Young Persons and Their Families Act 1997*, expires.

53. Application to revoke child protection order

- (1) An application under section 10(3) of the repealed Act to revoke a child protection order is taken to be an application by the Secretary under section 24 of the *Children, Young Persons and Their Families Act 1997* to have the order

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discharged and the person who originally made the application is no longer the applicant.

- (2) Proceedings in respect of an application referred to in subsection (1) are continued in the Magistrates Court (Children's Division).
- (3) Section 10(4) and (5) of the repealed Act continues to apply in respect of an application referred to in subsection (1).

54. Temporary child protection order

A temporary order made under section 10A of the repealed Act, whether or not extended, is taken to be an interim assessment order.

55. Powers under *Child Welfare Act 1960*

The relevant provisions of Part 2 of this Act apply in respect of an application or an order made under section 11(1) of the repealed Act.

Division 5 – Miscellaneous

56. Authorised absence of child from place of safety

- (1) If the Board under section 14 of the repealed Act has permitted a child to be absent from a place of safety, the Secretary is taken to have made arrangements under section 69 of the *Children, Young Persons and Their Families Act 1997*, as the case requires, in the same terms as the Board specified in that permission.

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- (2) A notice given under section 14(2) of the repealed Act continues to have effect and for that purpose –
- (a) the authorized officer remains an authorized officer; and
 - (b) section 14(3), (4) and (5) of the repealed Act continues to have effect.

57. Unlawful absence of child

If a child immediately before the commencement day is absent from a place of safety without permission under the repealed Act, the child is taken to be absent without lawful authority from the place in which the Secretary placed the child under his or her powers under section 69 of the *Children, Young Persons and Their Families Act 1997*.

58. Continuance of offences under repealed Act

If a person committed an offence against the repealed Act before the commencement day, the repealed Act continues to apply in respect of that offence unless this Act provides otherwise.

59. Legal proceedings by or against Board

- (1) Any legal proceedings which –
- (a) are not otherwise specifically referred to in this Part; and

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(b) have been instituted by or against the Board; and

(c) are pending immediately before the commencement day –

may be continued by or against the Crown.

(2) Legal proceedings which are not otherwise specifically referred to in this Part and which could have been commenced by or against the Board immediately before the commencement day may be commenced by or against the Crown.

(3) A judgment or order of a court which is not otherwise specifically referred to in this Part that was obtained by or against the Board may be enforced by or against the Crown.

(4) A contract made or entered into by the Board but not performed or discharged before the commencement day is taken to be a contract made or entered into by the Crown and is not otherwise affected by the commencement of the *Children, Young Persons and Their Families (Consequential Repeals and Amendments) Act 1998*.

60. Service of document on Board

A document addressed to the Board may be served on the Crown by serving it on the Secretary.

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61. Annual report

- (1) The Board is continued for the purpose of completing a report in respect of that part of the year commencing on the last preceding 1 July before the commencement day.
- (2) The report is to be prepared –
 - (a) within 60 days after the commencement day; and
 - (b) as if it were an annual report under section 5A of the repealed Act.
- (3) The report is to be provided to the Secretary at the end of the period specified in subsection (2)(a).
- (4) The Secretary must include the report in the annual report under section 33AB of the *Tasmanian State Service Act 1984* in respect of the financial year that includes the commencement day.

62. References to repealed Act

- (1) A reference in any Act, subordinate legislation or document to the *Child Protection Act 1974* is taken to be a reference to the *Children, Young Persons and Their Families Act 1997*.
- (2) A reference in any Act, subordinate legislation or document to a provision of the *Child Protection Act 1974* is taken to be a reference to the provision of the *Children, Young Persons*

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and Their Families Act 1997 corresponding in
nature and effect.

63. References to Board

- (1) A reference in any Act or subordinate legislation to the Board is taken to be a reference to the Secretary or the Secretary and the Board, as the case requires.
- (2) A reference in any document, other than an Act or subordinate legislation, to the Board is taken, as the case requires, to be a reference to –
 - (a) the Secretary; or
 - (b) the Secretary and the Board; or
 - (c) the Board.

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**PART 4 – TRANSITIONAL PROVISIONS RELATING
TO THE ADOPTION ACT 1988**

64. Interpretation of Part 4

In this Part, unless the contrary intention appears –

assessment order has the same meaning as in the *Children, Young Persons and Their Families Act 1997*;

commencement day means the day on which the *Children, Young Persons and Their Families Act 1997* commences;

court has the same meaning as it had in the Principal Act immediately before the commencement day;

Director has the same meaning as it had in the Principal Act immediately before the commencement day;

Principal Act means the *Adoption Act 1988*;

Secretary means the Secretary of the Department.

65. Interpretation of continuing document

(1) In this section –

continuing document means any of the following documents if it is in effect

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immediately before the commencement
day:

- (a) an application made by the
Director under the Principal Act;
 - (b) an order made under the Principal
Act;
 - (c) a recommendation, report,
request, acceptance, approval,
certificate, delegation or
authorization made by or on
behalf of the Director;
 - (d) an authorization under section
39(1) of the Principal Act for the
exercise of rights of custody by
the Director;
 - (e) a document evidencing, or
relating to, the provision of a
grant or financial assistance by
the Director;
 - (f) any other document made, issued
or provided under the Principal
Act.
- (2) For the purposes of giving effect to a continuing
document –
- (a) a reference in the continuing document to
the Director is taken to be a reference to
the Secretary; and

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- (b) a reference in the continuing document to the Secretary may be taken, where appropriate, to include a reference to the Director; and
- (c) a reference in the continuing document, when made in respect of proceedings taken or to be taken under the Principal Act, to the court is taken to be a reference to the Magistrates Court (Children's Division); and
- (d) such modifications and adaptations to the continuing document as are necessary to give effect to it and are appropriate in the circumstances are taken to have been made.

66. Reference to Director

Where appropriate, a reference in the Principal Act to the Secretary includes a reference to the Director.

67. Reckoning of time

The commencement and end of a period of time is not affected by the commencement of the *Children, Young Persons and Their Families (Consequential Repeals and Amendments) Act 1998*.

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68. Guardianship, &c., of Director

A child in the custody, or under the guardianship, of the Director under the Principal Act immediately before the commencement day is under the guardianship of the Secretary under that Act and, where appropriate, is taken to have been under the guardianship of the Secretary from the time when the child came under the guardianship of the Director.

69. Financial assistance

A grant made or financial assistance provided by the Director and in effect immediately before the commencement day is taken to have been made or provided by the Secretary.

70. Memorandum of adoption order, &c.

If an adoption order, or an order for the discharge of an adoption order, is made and the magistrate constituting the court which made the order has not complied with section 62 of the Principal Act before the commencement day, that section continues to apply in relation to that order.

71. Requirements for adoption

If an application for an order for the adoption of a child is made but not determined before the commencement day, the reference in section 6(1)(b) or (2)(c) of the Principal Act to the

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Secretary is taken, on and after the commencement day, to include a reference to the Director.

72. Arrangements for adoption

Arrangements or negotiations made by, or on behalf of, the Director under section 9(1) of the Principal Act before the commencement day are taken to have been made by, or on behalf of, the Secretary.

73. Actions by court

- (1) Where appropriate, any act done or omitted by the court before the commencement day is taken to have been done or omitted by the Magistrates Court (Children's Division).
- (2) Where appropriate, any act done or omitted in relation to the court before the commencement day is taken to have been done or omitted in relation to the Magistrates Court (Children's Division).
- (3) Without limiting what may constitute an act for the purposes of subsection (1) or (2), an act may be constituted by any one or more of the following:
 - (a) making an order;
 - (b) giving a direction;
 - (c) giving permission;

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- (d) postponing a determination;
- (e) giving an approval or authority;
- (f) forming an opinion;
- (g) making an application;
- (h) providing to, or filing in, the court a document.

74. Court documents

Documents in the possession of, or under the control of, the court immediately before the commencement day are taken to be in the possession of, or under the control of, the Magistrates Court (Children's Division).

75. Order

For the purposes of determining an application before the Magistrates Court (Children's Division), an order made before the commencement day under the Principal Act is taken to be an order made by the Magistrates Court (Children's Division).

75A. Delegation

A delegation made by the Director in the administration of the Principal Act that is in effect immediately before the commencement day is taken to have been made by the Secretary.

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Part 5 – General and miscellaneous transitional provisions

**PART 5 – GENERAL AND MISCELLANEOUS
TRANSITIONAL PROVISIONS**

Division 1 – Preliminary

76. Interpretation of Part 5

In this Part, unless the contrary intention appears –

Board means the Child Protection Board in existence under the *Child Protection Act 1974* immediately before the commencement day;

commencement day means the day on which the *Children, Young Persons and Their Families Act 1997* commences;

Director has the same meaning as it had in the *Child Welfare Act 1960* immediately before the commencement day;

Secretary means the Secretary of the Department.

***Division 2 – General transitional provisions arising from
abolition of office of Director***

77. Actions by and in relation to Director

- (1) Where appropriate, any act done or omitted by or on behalf of the Director before the commencement day is taken to have been done or omitted by or on behalf of the Secretary.

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- (2) Where appropriate, any act done or omitted in relation to the Director before the commencement day is taken to have been done or omitted in relation to the Secretary.
- (3) Without limiting what may constitute an act for the purposes of subsection (1) or (2), an act may be constituted by any one or more of the following:
- (a) giving, making, filing, issuing, granting or providing an application, complaint, summons, warrant, licence, authorisation, approval, exemption, requirement, recommendation or report;
 - (b) making a payment;
 - (c) making a grant or providing financial assistance;
 - (d) forming an opinion;
 - (e) making an arrangement;
 - (f) participating in a negotiation.

78. Documents held by Director

Documents in the possession of, or under the control of, the Director or the Board immediately before the commencement day are taken to be in the possession of, or under the control of, the Secretary.

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79. Service

- (1) Where appropriate, a document served on, given to or otherwise provided to the Director before the commencement day is taken to have been served on, given to or otherwise provided to the Secretary.
- (2) Where appropriate, a document served, given or otherwise provided by the Director before the commencement day is taken to have been served, given or otherwise provided by the Secretary.
- (3) Where appropriate, a document filed with or otherwise provided to the children's court before the commencement day is taken to have been filed with or otherwise provided to the Magistrates Court (Children's Division).
- (4) Where appropriate, a document served, given or otherwise provided before the commencement day by the children's court or as required by the court or the magistrate constituting the court is taken to have been served, given or otherwise provided by the Magistrates Court (Children's Division).
- (5) A document addressed to the Director may be served on or provided to the Secretary.

80. Property

- (1) All property, rights and interests in property and management and control of property that were

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vested in or belonged to the Director immediately before the commencement day vest in and belong to the Secretary on and subject to the same terms that they were so vested in or belonged to the Director.

- (2) All the liabilities and obligations of the Director immediately before the commencement day become the liabilities and obligations of the Secretary on and subject to the same terms as they so belonged to the Director.

81.

82. Reference to Director

- (1) A reference in any Act or subordinate legislation to the Director is taken to be a reference to the Secretary or the Secretary and the Director, as the case requires.
- (2) A reference in any document, other than an Act or subordinate legislation, to the Director is taken, as the case requires, to be a reference to –
- (a) the Secretary; or
 - (b) the Secretary and the Director; or
 - (c) the Director.

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Division 3 – Miscellaneous

83. Transitional and savings regulations

- (1) The Governor may make regulations of a savings or transitional nature consequent on the enactment of –
 - (a) the *Children, Young Persons and Their Families Act 1997*; and
 - (b)
 - (c) the *Magistrates Court (Children’s Division) Act 1998*; and
 - (d) the *Children, Young Persons and Their Families (Consequential Repeals and Amendments) Act 1998*; and
 - (e) this Act.
- (2) Regulations made under this section may take effect on the commencement day or a later day as specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.
- (3) Regulations made under this section may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (4) Regulations made under this section may authorise any matter to be from time to time

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determined, applied or regulated by a court, a district registrar or the Secretary.

84. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Community and Health Services; and
- (b) the Department responsible to the Minister for Community and Health Services in relation to the administration of this Act is the Department of Community and Health Services.

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NOTES

The foregoing text of the *Children, Young Persons and Their Families (Transitional and Savings Provisions) Act 1998* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 July 2000 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Children, Young Persons and Their Families and Youth Justice (Transitional and Savings Provisions) Act 1998</i>	No. 3 of 1998	1.7.2000
<i>Children, Young Persons and Their Families and Youth Justice (Transitional and Savings Provisions) Amendment Act 1999</i>	No. 15 of 1999	1.7.2000
<i>Children, Young Persons and Their Families and Youth Justice (Transitional and Savings Provisions) Amendment Act (No. 2) 1999</i>	No. 62 of 1999	1.7.2000

TABLE OF AMENDMENTS

Provision affected	How affected
Section 1	Amended by No. 62 of 1999, s. 4
Section 3	Amended by No. 62 of 1999, s. 5
Section 4	Amended by No. 62 of 1999, s. 6
Section 6	Amended by No. 62 of 1999, s. 7
Section 8	Amended by No. 62 of 1999, s. 8
Section 9	Repealed by No. 62 of 1999, s. 9
Section 10	Repealed by No. 62 of 1999, s. 9
Section 12	Repealed by No. 62 of 1999, s. 10
Section 13	Repealed by No. 62 of 1999, s. 10
Section 16	Substituted by No. 15 of 1999, s. 4
	Repealed by No. 62 of 1999, s. 11
Section 17	Repealed by No. 62 of 1999, s. 11

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Provision affected	How affected
Section 18	Substituted by No. 15 of 1999, s. 6 Repealed by No. 62 of 1999, s. 11
Section 18A	Inserted by No. 15 of 1999, s. 5
Section 22	Repealed by No. 62 of 1999, s. 12
Section 26	Repealed by No. 62 of 1999, s. 13
Section 27	Repealed by No. 62 of 1999, s. 13
Section 28	Amended by No. 62 of 1999, s. 14
Section 29	Amended by No. 62 of 1999, s. 15
Section 31	Repealed by No. 62 of 1999, s. 16
Section 32	Repealed by No. 62 of 1999, s. 16
Section 39	Amended by No. 62 of 1999, Sched. 1
Section 59	Amended by No. 62 of 1999, Sched. 1
Section 67	Amended by No. 62 of 1999, Sched. 1
Section 75A	Inserted by No. 62 of 1999, s. 18
Section 79	Amended by No. 62 of 1999, s. 19
Section 81	Repealed by No. 62 of 1999, s. 20
Section 83	Amended by No. 62 of 1999, Sched. 1
