

TASMANIA

CHILDREN, YOUNG PERSONS AND THEIR FAMILIES AMENDMENT BILL 2009

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**CHILDREN, YOUNG PERSONS AND THEIR
FAMILIES AMENDMENT BILL 2009**

*(Brought in by the Minister for Health, the Honourable
Larissa Tahireh Giddings)*

A BILL FOR

**An Act to amend the *Children, Young Persons and Their
Families Act 1997***

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:

1. Short title

This Act may be cited as the *Children, Young
Persons and Their Families Amendment Act
2009*.

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

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3. Principal Act

In this Act, the *Children, Young Persons and Their Families Act 1997** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “committee”:

“Community-Based Intake Service”
means an organisation that has entered into an agreement with the Secretary under section 53D;

- (b) by inserting the following definition after the definition of “interim care and protection order”:

“information-sharing entity”
means –

- (a) a prescribed person within the meaning of section 14(1); or
- (b) a State Service officer or State Service employee employed in or for the

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purposes of the Department or another department, within the meaning of the *Administrative Arrangements Act 1990*; or

- (c) a manager of a private medical establishment, within the meaning of the *Hospitals Act 1918*; or
- (d) a controlling authority of an approved hospital, assessment centre or secure mental health unit, within the meaning of the *Mental Health Act 1996*; or
- (e) the person in charge of an organisation that is a service provider within the meaning of the *Disability Services Act 1992* that receives funding under a funding agreement within the meaning of that Act to provide disability services to a child; or
- (f) the person in charge of an organisation that receives

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funding from the Secretary under a funding agreement to provide drug or alcohol treatment services; or

(g) the person in charge of an organisation that receives a referral from the Secretary or a Community-Based Intake Service; or

(h) any other person or organisation prescribed in the regulations;

(c) by inserting the following definition after the definition of “Secretary”:

“significant person” means a person who is considered significant in the life of a child by –

(a) the Secretary or his or her nominee; or

(b) the guardian of the child;

5. Section 13 amended (Responsibility to prevent abuse or neglect or certain behaviour)

Section 13 of the Principal Act is amended as follows:

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(a) by inserting the following subsection after subsection (1):

(1A) If, while a woman is pregnant, an adult knows, or believes or suspects on reasonable grounds, that the child of that pregnancy once born –

(a) is reasonably likely to suffer abuse or neglect; or

(b) is reasonably likely to require medical treatment or other intervention as a result of the behaviour of the woman, or another person with whom the woman resides or is likely to reside, before the birth of the child –

that adult has a responsibility to take steps to prevent the occurrence of that abuse or neglect or that behaviour.

(b) by omitting subsection (2) and substituting the following subsection:

(2) One step the adult may take to prevent the occurrence of abuse or neglect of a child, or behaviour referred to in subsection (1A)(b), is to inform the Secretary or a

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Community-Based Intake Service
of –

- (a) his or her knowledge, belief or suspicion; and
- (b) the basis of that knowledge, belief or suspicion.

6. Section 14 amended (Informing of concern about abuse or neglect or certain behaviour)

Section 14 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(b) “resides –” and substituting “resides; or”;
- (b) by inserting the following paragraph after paragraph (b) in subsection (2):
 - (c) while a woman is pregnant, that there is a reasonable likelihood that after the birth of the child –
 - (i) the child will suffer abuse or neglect, or may be killed by a person with whom the child is likely to reside; or
 - (ii) the child will require medical treatment or other intervention as a result of

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the behaviour of the woman, or another person with whom the woman resides or is likely to reside, before the birth of the child –

- (c) by inserting in subsection (2) “or a Community-Based Intake Service” after “Secretary”;
- (d) by inserting in subsection (3) “or a Community-Based Intake Service” after “Secretary”;
- (e) by inserting in subsection (4) “or a Community-Based Intake Service” after “inform the Secretary”;
- (f) by inserting in subsection (5) “or a Community-Based Intake Service” after “Secretary”;
- (g) by inserting in subsection (6)(a) “or a Community-Based Intake Service” after “Secretary”.

7. Section 15 substituted

Section 15 of the Principal Act is repealed and the following section is substituted:

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15. Protection from liability for voluntary or mandatory information

- (1) This section applies to a person who voluntarily, or as required by section 14 or section 18(3), informs the Secretary or a Community-Based Intake Service –
- (a) that he or she knows, or believes or suspects on reasonable grounds, that a child has been or is being abused or neglected or that there is a reasonable likelihood of a child being killed or abused or neglected; or
 - (b) while a woman is pregnant, that he or she knows, or believes or suspects on reasonable grounds, that there is a reasonable likelihood that after the birth of the child –
 - (i) the child will suffer abuse or neglect, or will be killed by a person with whom the child is likely to reside; or
 - (ii) the child will require medical treatment or other intervention as a result of the behaviour of the woman, or another person with whom the woman

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resides, before the birth of
the child; or

- (c) of any further information in respect of such knowledge, belief or suspicion.

(2) A person –

- (a) cannot, by virtue of informing the Secretary or a Community-Based Intake Service as specified in subsection (1), be held to have breached any code of professional etiquette or ethics, to have departed from any accepted standards of professional conduct or to have contravened any Act; and
- (b) to the extent that he or she has acted in good faith, incurs no civil or criminal liability in respect of informing the Secretary or a Community-Based Intake Service as specified in subsection (1).

8. Section 16 amended (Confidentiality of person informing of knowledge, belief or suspicion of abuse or neglect or certain behaviour)

Section 16(1) of the Principal Act is amended as follows:

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- (a) by omitting the definition of “notification” and substituting the following definition:

“notification” means information as specified in section 15(1) from a person to whom section 15 applies;

- (b) by inserting “or a Community-Based Intake Service” after “Secretary” in the definition of “notifier”.

9. Section 17 substituted

Section 17 of the Principal Act is repealed and the following section is substituted:

17. Secretary not obliged to take action in certain circumstances

- (1) In this section –

“notification” means information as specified in section 15(1) from a person to whom section 15 applies.

- (2) Nothing in this Act requires the Secretary or a Community-Based Intake Service to take or initiate any action under this Act in respect of a notification if the Secretary or a Community-Based Intake Service is satisfied –

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- (a) that the information or observations on which the notification was based were not sufficient to constitute reasonable grounds for the belief or suspicion contained in the notification; or
- (b) that, while there are reasonable grounds for the notification, proper arrangements exist for the care and protection of the child, and the matter of the apparent abuse or neglect or the likelihood of the child being killed or abused or neglected has been or is being adequately dealt with; or
- (c) that no further action is required in respect of the notification.

10. Section 17A inserted

After section 17 of the Principal Act, the following section is inserted in Part 3:

17A. Secretary may refer notification

The Secretary may refer a notification received by the Secretary to a Community-Based Intake Service if satisfied that the Community-Based Intake Service is an appropriate

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organisation to take action in respect of
the notification.

11. Section 18 amended (Assessment by Secretary)

Section 18 of the Principal Act is amended by inserting after subsection (2) the following subsections:

- (3) For the purposes of an assessment, the Secretary may require, by written notice, any person the Secretary considers may have information relevant to the safety, welfare or wellbeing of the child to provide the Secretary with a report on one or more of the following:
 - (a) the child;
 - (b) the child's guardian;
 - (c) a significant person in the child's life;
 - (d) another person with whom the child resides.
- (4) For the purposes of subsection (3), information relevant to the safety, welfare or wellbeing of the child may include, but is not limited to –
 - (a) medical information on the child, the child's guardian, a significant person in the child's life or

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another person with whom the
child resides; or

- (b) information relating to the family
circumstances of the child in the
past or present, or as proposed or
anticipated for the future.
- (5) If a person provides an oral report to the
Secretary under subsection (3), the
Secretary may require the person to
provide the Secretary with a written
version of the report as soon as
practicable after the oral report is
provided.
- (6) A person must comply with a
requirement under subsection (3) or (5).

Penalty: Fine not exceeding 5 penalty
units.

12. Section 42 amended (Care and protection order)

Section 42 of the Principal Act is amended as
follows:

- (a) by omitting paragraphs (c) and (d) from
subsection (4) and substituting the
following paragraphs:
 - (c) an order placing the child, for a
specified period not exceeding 12
months, under the guardianship
of –

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- (i) the Secretary; or
 - (ii) one or 2 other persons;
 - (d) an order placing the child, until the child attains 18 years of age, under the guardianship of –
 - (i) the Secretary; or
 - (ii) one or 2 other persons;
- (b) by inserting the following subsection after subsection (5):
 - (6) The Court may not make an order under subsection (4)(d) unless satisfied that –
 - (a) all reasonable steps have been taken to provide the services required to enable the child's protection and care needs to be met within the home of a parent or other existing guardian of the child; and
 - (b) the person proposed as guardian –
 - (i) is suitable to have guardianship of the child, having regard to any

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- prescribed
matters; and
- (ii) is willing and able
to assume
guardianship of
the child; and
- (c) the wishes and feelings of
the child have been duly
considered, having regard
to the age, understanding
and maturity of the child;
and
- (d) the wishes of the parents
in respect of any
prescribed matters
referred to in
paragraph (b)(i) have
been duly considered; and
- (e) no other order, apart from
the order considered,
would be in the best
interests of the child.

13. Section 48 amended (Variation, revocation, suspension and end of care and protection order or interim care and protection order)

Section 48(1) of the Principal Act is amended as follows:

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- (a) by omitting from paragraph (a) “a person who was a party to the application for the order” and substituting “the Secretary or a person granted guardianship or custody by the order”;
- (b) by inserting the following paragraph after paragraph (a):
 - (ab) may be varied or revoked by the Court on the application of a former guardian of the child or a person who was party to the application for the order, other than a person referred to in paragraph (a), if –
 - (i) circumstances have changed since the order was made; and
 - (ii) the application is made with the leave of the Court; and

14. Section 49 amended (Effect of and limitations on care and protection order or interim care and protection order)

Section 49 of the Principal Act is amended as follows:

- (a) by omitting subsection (4);

- (b) by omitting from subsection (5) “subsection (4)” and substituting “section 42(6)”.

15. Parts 5A and 5B inserted

After section 53 of the Principal Act, the following Parts are inserted:

PART 5A – INFORMATION SHARING

53A. Interpretation

In this Part –

“**relevant person**” means a person in respect of whom –

- (a) the Secretary or a Community-Based Intake Service has received information under this Act; or
- (b) an assessment order is in force; or
- (c) a care and protection order is in force.

53B. Secretary and information-sharing entities may provide information

- (1) The Secretary may do either or both of the following:

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- (a) provide an information-sharing entity with information relating to the safety, welfare or wellbeing of a relevant person;
 - (b) require an information-sharing entity to provide, to the Secretary, information relating to the safety, welfare or wellbeing of a relevant person.
 - (2) An information-sharing entity required to provide information to the Secretary under subsection (1)(b) must, within the period specified by the Secretary –
 - (a) provide the information; or
 - (b) if the information-sharing entity does not have the information, provide the Secretary with written notice that it cannot provide the information for that reason.
- Penalty: Fine not exceeding 5 penalty units.
- (3) An information-sharing entity may do either or both of the following if satisfied that information in its possession relates to the safety, welfare or wellbeing of a relevant person:
 - (a) provide the Secretary with the information, whether or not the

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Secretary has required the information to be provided;

- (b) provide another information-sharing entity with the information if that entity is involved with, or is likely to be involved with, the relevant person or a significant person to the relevant person.
- (4) A person providing information under this section –
- (a) cannot, by virtue of providing the information, be held to have breached any code of professional etiquette or ethics, to have departed from any accepted standards of professional conduct or to have contravened any Act; and
 - (b) to the extent that he or she has acted in good faith, incurs no civil or criminal liability in respect of providing the information.

PART 5B – COMMUNITY-BASED INTAKE SERVICE

53C. Interpretation

In this Part –

“**CBIS guidelines**” means guidelines issued by the Secretary under section 53F.

53D. Community-Based Intake Service

- (1) The Secretary may enter into an agreement with an organisation for the carrying out of the functions of a Community-Based Intake Service.
- (2) The agreement is to specify –
 - (a) the terms of the agreement; and
 - (b) any functions to be provided by the organisation under the agreement that are in addition to the functions set out in section 53E(1); and
 - (c) that the Community-Based Intake Service must comply with the CBIS guidelines; and
 - (d) any other matter considered by the Secretary to be appropriate.

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- (3) The Secretary may revoke the agreement if satisfied that the Community-Based Intake Service is not –
 - (a) complying with the agreement; or
 - (b) adequately performing the functions of a Community-Based Intake Service set out in section 53E(1); or
 - (c) complying with the CBIS guidelines.
- (4) Except as otherwise specified in the agreement, the agreement does not limit –
 - (a) the services that may be provided by the Community-Based Intake Service; or
 - (b) other functions and powers that the Community-Based Intake Service may perform and exercise.

53E. Functions of a Community-Based Intake Service

- (1) A Community-Based Intake Service has the following functions:
 - (a) providing a referral service for children and their families that –

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- (i) is readily accessible; and
 - (ii) enables early intervention in support of families;
- (b) receiving referrals from the Secretary under section 17A;
- (c) undertaking preliminary inquiries, in accordance with the CBIS guidelines, to determine –
 - (i) whether a child is at risk or in need; and
 - (ii) whether a child, once born, is likely to be at risk or in need; and
 - (iii) the most appropriate person or organisation to receive a referral from the Community-Based Intake Service;
- (d) making referrals to other persons and organisations who provide services relevant to children and their families;
- (e) providing the Secretary, in accordance with the CBIS guidelines, with a record of each determination of risk or need made under paragraph (c)(i) or

- (ii) and each referral made under paragraph (d);
 - (f) cooperating with other persons and organisations providing services to a child;
 - (g) any other prescribed function.
- (2) A Community-Based Intake Service may have any other additional function specified in the agreement referred to in section 53D.

53F. CBIS guidelines

- (1) The Secretary may issue guidelines in respect of the administration, procedures and practices of a Community-Based Intake Service.
- (2) The guidelines may –
 - (a) authorise any matter to be from time to time determined, applied or regulated by any person specified in the guidelines; and
 - (b) adopt, apply or incorporate, either wholly or in part and with or without modification, and either specifically or by reference, any document as in force from time to time, whether or not the document is published or issued

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before or after the guidelines take effect.

- (3) The Secretary may amend or revoke any guidelines issued under this section and is to notify the Community-Based Intake Service of the amendment or revocation within 10 days after the amendment or revocation is made.
- (4) An amendment or revocation of guidelines under subsection (3) is to take effect –
 - (a) on the date specified by the Secretary in the amendment or revocation; or
 - (b) if no date is so specified, 10 days after the amendment or revocation is made.
- (5) The Secretary must ensure that the guidelines are made available to a Community-Based Intake Service on its request.
- (6) Guidelines issued under this section –
 - (a) are not statutory rules for the purposes of the *Rules Publication Act 1953*; and
 - (b) are not subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

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- (7) The *Acts Interpretation Act 1931* applies to the interpretation of the guidelines as if the guidelines were by-laws.

16. Section 71 amended (Review of circumstances of child under long-term guardianship of Secretary)

Section 71 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “placing the child under the guardianship of the Secretary until the child reaches 18 years of age”;
- (b) by inserting in subsection (1)(b) “or other person named as guardian in the order” after “Secretary”;
- (c) by omitting paragraph (c) from subsection (3) and substituting the following paragraph:
 - (c) each person who was a guardian of the child immediately before the order to which the determination relates was made; and
- (d) by inserting the following paragraph after paragraph (d) in subsection (3):
 - (da) any person the Secretary considers appropriate; and

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17. Section 79 amended (Functions of Commissioner)

Section 79(1) of the Principal Act is amended by inserting after paragraph (f) the following paragraphs:

- (fa) on the Commissioner's own initiative or on the request of the Minister, to act as an advocate for a detainee under the *Youth Justice Act 1997*;
- (fb) to advise the Minister on any matter relating to the health, welfare, education, care, protection and development of detainees under the *Youth Justice Act 1997*;

18. Section 110A inserted

After section 110 of the Principal Act, the following section is inserted in Division 2:

110A. Department may provide support

The Department may offer, arrange, promote or facilitate education programs, support services and referrals that are in the interests and welfare of children whether born or unborn.

19. Sections 111A and 111B inserted

After section 111 of the Principal Act, the following sections are inserted in Division 2:

111A. Access to information under *Freedom of Information Act 1991*

- (1) The Secretary or Community-Based Intake Service must not provide information under the *Freedom of Information Act 1991* if the information has been provided under this Act to the Secretary or Community-Based Intake Service by an information-sharing entity.
- (2) Nothing in this section prevents a person from requesting, under the *Freedom of Information Act 1991*, an information-sharing entity that has provided information to the Secretary or a Community-Based Intake Service to provide that information to the person.

111B. Application of *Personal Information Protection Act 2004*

- (1) The *Personal Information Protection Act 2004* applies to information received and provided under this Act to the extent that it is not inconsistent with the provisions of this Act.
- (2) A Community-Based Intake Service is a personal information custodian for the

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purposes of the *Personal Information
Protection Act 2004*.