

CLAUSE NOTES

Children, Young Persons and Their Families Act Amendment Bill 2009

Clause 1: Short Title

This clause provides that the Act is to be referred to as the *Children, Young Persons and Their Families Amendment Act 2009*.

Clause 2: Commencement

This clause provides that the Act commences on a day or days to be proclaimed.

Clause 3: Principal Act

This clause provides that the Principal Act amended by this Bill is the *Children, Young Persons and Their Families Act 1997*.

Clause 4: Section 3 amended (Interpretation)

This clause amends section 3 by inserting the following additional definitions:

“Community Based Intake Service” – which describes the single entry point to access community services;

“information sharing entity” – describes those individuals and organisations to whom the information sharing provisions of the Act potentially apply; and

“significant person” – describes persons considered significant in the life of a child for the purposes of sections 18 and 53B.

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

This clause amends section 13 to enable the Secretary to accept reports relating to ‘unborn’ children. As with current provisions relating to children, section 13

of the Principal Act is amended to place an onus on all adults to seek to prevent the actions of an expectant mother or other persons who will or are likely to reside with the mother from impacting upon the child, either in utero or after birth.

The clause also requires that the person providing the information to provide reasons for their belief or suspicion.

Clause 6: Section 14 amended (Informing of concern about abuse or neglect)

This clause provides that, in addition to matters already in the Act, a prescribed person who believes, suspects or knows that there is a reasonable likelihood that an 'unborn' child, may suffer abuse or neglect or be killed after birth, or may require medical or other intervention as a result of the behaviour of the mother or another person, that prescribed person must inform the Secretary or a Community Based Intake Service.

Clause 7: Section 15 substituted

This clause extends existing protections from civil and criminal liability to information provided regarding 'unborn' children.

Clause 8: Section 16 amended (Confidentiality or person informing of knowledge, belief or suspicion of abuse or neglect)

This clause extends the existing protections afforded to notifiers under section 16 to cover those persons making notifications about 'unborn' children. The clause ensures that the identity of parties who make notifications remains confidential.

Clause 9: Section 17 substituted

This clause replaces the existing section 17 and gives the Secretary and a Community Based Intake Service discretion not to take any action in relation to notifications in certain circumstances following initial inquiries.

Clause 10: Section 17A Inserted

This clause inserts a new section after section 17 of the Act which allows the Secretary to refer a notification to a Community Based Intake Service where the Secretary deems it appropriate, in the circumstances, to do so.

This will provide the capacity for family services to respond to reports which do not require a child protection response.

Clause 11: Section 18 amended (Assessment by Secretary)

This clause improves the Secretary's capacity to request information from any person as part of an assessment under section 18 of the Act. The clause extends the scope of the information which can be requested for the purposes of assessment to include parents or caregivers (e.g. step parents, grandparents etc) and information relating to the family circumstances more generally, as they impact upon the best interests of the child. This increased capacity will allow for a more holistic assessment to be made on the family situation as it relates to the child, resulting in better outcomes.

Such information may be provided orally (as well as in writing) to ensure timely information collection.

The clause enables the Secretary to require written confirmation of relevant information provided orally.

It contains a penalty for parties who do not comply with requests for information. The decision on whether a penalty is pursued is to rest with the Secretary.

Clause 12: Section 42 amended (Care and protection order)

Section 42 provides that a Court may make orders for a care and protection order for a child at risk.

This clause creates a distinction between care and protection orders made for a period of less than 12 months, and care and protection orders made until the child attains the age of 18.

The clause also amends section 42 of the Act to include criteria that the Court must satisfy itself of before granting long-term orders, including that all other avenues have been exhausted and that the wishes of relevant persons (including those of the child) have been duly considered.

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

This clause amends section 48 to limit the way in which applications for variation orders can be made in situations where a child is subject to a long-term guardianship order under section (42)(4)(d). The rationale of the amendment is to promote stability and permanency of placements where reunification with the birth family is not an option. The clause will prevent re-litigation of matters where long-term orders in the best interest of a child have been made.

Parties, other than the Secretary or the appointed guardian of the child, will only be able to apply to the Court to vary orders made where:

- there has been a change in circumstances since the order was made; and
- the Court has given leave to apply.

Clause 14: Section 49 amended (Effect of order granting custody or guardianship)

This clause amends section 49 of the Act to give effect to the amendments made to section 42.

Clause 15: Parts 5A and 5B inserted

This clause creates two new Parts within the Act to clarify information sharing requirements and establish Community Based Intake Services.

Part 5A (Information Sharing)

New sections 53A and 53B provide that the Secretary may share and / or request relevant information from identified information sharing entities. It also allows information sharing entities to share information with the Secretary and other entities.

Section 53B(4) provides protections for professionals sharing information with the Secretary in good faith.

Part 5B (Community Based Intake Service)

The new section 53D allows the Secretary to enter into an agreement with an organisation, so that it can carry out the functions of a Community Based Intake Service. Such intakes are intended to divert less serious cases from the statutory child protection system to family support services.

The functions of a Community Based Intake Service are set out in the new section 53E, and include the ability to:

- accept referrals from the Secretary and to make referrals to relevant agencies; and
- undertake preliminary inquiries to determine whether a child is at risk or need; and
- promote and facilitate collaborative working arrangements within local service networks.

Community Based Intake Services are also granted some information sharing power by the new section 53B, provided that the sharing of such information is necessary for the Community Based Intake Service to perform its functions and duties as described.

The new section 53F provides that the Secretary may issue guidelines for the administration, procedures and practices of a Community Based Intake Service.

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

This clause amends section 71 of the Act to accommodate the amendments made to section 42.

Clause 17: Section 79 amended (Functions of Commissioner)

This clause amends section 79 of the Act to allow the Commissioner for Children to advocate on behalf of young persons under the *Youth Justice Act 1997* who are detained at Ashley Youth Detention Centre.

This amendment will strengthen the role of the existing Residents' Advocate undertaken by the Office of the Commissioner for Children, with regard to Ashley Youth Detention Centre.

Clause 18: Section 110A inserted

This clause inserts a new section 110A to recognise the capacity for the Department to offer pre and post-natal services in the interests and welfare of born or unborn children

Clause 19: Sections 111A and 111B inserted

The new section 111A protects information provided by an information sharing entity from disclosure by the

Secretary or a Community Based Intake Service under the *Freedom of Information Act 1991*.

The new section 111B also recognises that the *Personal Information Protection Act 2004* applies to information received and provided under the Principal Act to the extent that it is not inconsistent with the provisions of the Principal Act. It also provides that a Community Based Intake Services is a personal information custodian for the purposes of the *Personal Information Protection Act 2004*.