

CLAUSE NOTES

Children, Young Persons and Their Families Amendment Bill 2011

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| Clause 1 | Short Title |
| Clause 2 | Commencement Provides that the Act commences on the day on which the Act receives Royal Assent. |
| Clause 3 | Principal Act Provides that the <i>Children, Young Persons and Their Families Act 1997</i> is referred to as the Principal Act. |
| Clause 4 | Section 3 amended Amends section 3(1) of the Principal Act by inserting a definition for 'risk notification'. The definition provides that 'risk notification' means: <ul style="list-style-type: none">• information voluntarily provided to the Secretary or a Community Based Intake Service under section 13(2), or any similar voluntary notification. Section 13(2) provides for a means to discharge the responsibility of adults who are aware of risks to children, to prevent the occurrence of abuse or neglect of a child.• information provided under section 14(2). Section 14(2) provides for mandatory notifications by prescribed persons such as doctors and teachers in relation to risks to children.• reports provided to the Secretary under section 18(3) or (5). Section 18(3) and (5) relate to the Secretary's power to require oral and written reports from any person the Secretary considers may have information relevant to the safety, welfare or wellbeing of the child This definition is inserted as a consequence of the repeal of section 15, as section 15(1) currently refers to such information and reports. |
| Clause 5 | Section 15 repealed Section 15 of the Principal Act is repealed. See clauses 11 and 12 which amend the Principal Act to consolidate the provisions in section 15 and section 101 which currently overlap. |

Clause 6**Section 16 amended**

Amends section 16 as a consequence of insertion of a definition of 'risk notification' in section 3, and the repeal of section 15. The amendment omits the definition of notification from section 16(1) which currently refers to section 15. The amendment also inserts the word 'risk' before 'notification' in subsection (1), (2) and (7).

Clause 7**Section 17 amended**

Amends section 17 as a consequence of insertion of a definition of 'risk notification' in section 3, and the repeal of section 15. The amendment omits subsection (1) which currently refers to section 15. The amendment also inserts the word 'risk' before 'notification' in subsection (2) where it first appears. Subsequent references to notification in subsection (2) are therefore references to risk notifications.

Clause 8**Section 17A amended**

Amends section 17A as a consequence of insertion of a definition of 'risk notification' in section 3. The amendment inserts the word 'risk' before 'notification'.

Clause 9**Section 18 amended**

Amends section 18 by omitting subsection (6). This subsection currently provides for a penalty not exceeding 5 penalty units for a person who does not comply with a requirement of the Secretary under subsection (3) or (5). This penalty is smaller than the general penalty in section 101 which would apply to non-compliance with the similar requirement of the Secretary in subsection (2).

The omission of section 18(6) means that the general penalty in section 101 will apply consistently to all mandatory requirements in section 18.

Clause 10**Section 69 amended**

Amends section 69(1)(b) by inserting "or any body of persons, corporate or unincorporate," after "person".

Section 69(1)(b) currently provides for one of the ways for the Secretary to provide for the care of a child, by placing the child in the care of any person the Secretary considers suitable.

Under the *Acts Interpretation Act 1931*, a reference to 'person' includes any body of persons, corporate or unincorporate, other

than the Crown. Despite this, the general meaning of ‘person’ could be read as limited to natural persons in the Principal Act. Therefore, the amendment provides that the Secretary’s power to place a child in the care of a suitable person includes placing a child in the care of a suitable body of persons, corporate or unincorporated. For example, a residential care provider is typically a body corporate.

Clause 11

Section 101 amended

Amends section 101 by inserting “or information” after “report” in subsection (1) and (2), and by omitting subsection (3).

The amendments to subsection (1) and (2) clarify that the general penalty applies to a person who fails to provide information if required under the Act. For example, if required under subsection 18.

The omission of subsection (3) is due to clause 12, which inserts a new section expanding the provision currently in subsection (3).

Clause 12

Section 101A inserted

Inserts a new section 101A entitled ‘Legal and professional immunity for disclosures, &c., made in good faith.’

Section 101A(1) provides that the section applies to a person who answers a question or provides a report or information as required under certain orders or otherwise under this Act, or who provides a voluntary risk notification. Section 101A(3) provides that ‘voluntary risk notification’ means a notification referred to in paragraph (a) of the definition of ‘risk notification’ in section 3(1).

Section 101A(2) provides that a person to who provides such answer, report, information or voluntary risk notification in good faith:

- does not incur any civil or criminal liability; and
- cannot be held to have breached any code of professional etiquette or ethics, or have departed from any accepted standard of professional conduct, or to have contravened any Act.

For example, a person will not breach a confidentiality provision in another Act if making a notification to which section 101A applies.

The new section 101A consolidates the current provisions in section 15 and section 101(3) into a consistent provision to apply

to all relevant answers, reports, and notifications made under the Act.

Clause 13

Repeal of Act

Provides that this Act is repealed on the ninetieth day from commencement.

This is a standard provision for an automatic expiry date to avoid the need for periodic repeal of spent legislation. The amendments made by the Act will not be affected by the repeal due to section 16 of the *Acts Interpretation Act 1931*.