

FACT SHEET

Children, Young Persons and Their Families Amendment Bill 2013

These amendments will ensure that the child protection system in Tasmania is operating in line with contemporary best practice, is child and youth centred and family focused. The aim of these amendments is to introduce a less adversarial approach when dealing with parents engaged with the child protection system.

These amendments are based on recommendations made in the recent Legislative Amendment Review Reference Committee (LARRC) report, and will provide the first round of legislative changes required to achieve this.

Some of the proposed amendments include:

Revising the Object and Principles of the Act

- This amendment will strengthen the best interests of the child principle and recognise that a child's family is the preferred environment for the care and upbringing of that child. This amendment will also acknowledge that the responsibility for the protection of children rests primarily with a child's parents/family.
- We also seek to significantly reduce the amount of prescriptive text under the Object of the Act, and increase the flexibility for the Minister, in partnership with other Government and Non-Government Organisations, families and communities to further the Object of the Act.
- In addition, the proposed amendments to the Principles will better reflect:
 - the responsibility of Government;
 - the role of family;
 - the need to treat children with respect;
 - the best interests of the child principle, which will include the notion of 'stability'. The concept of 'stability' will replace the term 'permanency' throughout 'the Act' which will introduce a more contemporary use of language;
 - an increased focus on child participation;
 - that alternative care is to be in close proximity to the child's family and community; and
 - amendments will reflect the National Standards for Children in Out of Home Care, and to include a Charter of Rights for Children in Out-of-Home Care.
 - Amendments to the 'General Principles' section of the Act will also be made to the Principles relating to dealing with Aboriginal children. These will remain as a standalone section under the Act and will formally recognise the nationally adopted Aboriginal placement principles.

Amending Voluntary Care Agreement Provisions

- Amendments are proposed under section 11 of the Act (Voluntary Care Agreements) that will refocus the emphasis of this section, and will clarify the broad scope of agreements. These amendments will ensure that there is sufficient scope to accommodate those instances when an agreement is required to manage risks that the child would otherwise be subjected to, for example, drug dependency. Currently, this section allows for an agreement to be made, but it only implies what the purpose of the agreement is. These amendments also define the terms 'extension period' and 'initial period' including timeframes associated with these terms.

Assessment Orders

- Amendments will provide additional safeguards to ensure that extensions to assessment periods can only occur if the Court is satisfied that the Secretary is acting in the best interest of the child and confident that the family members have been adequately engaged throughout the period of the assessment.
- These safeguards will also prevent Assessment Orders exceeding 12 weeks.

Enhanced Provisions for Supervision Orders

- Clarification will be made regarding the term 'Supervision Orders' and the timeframes, conditions, powers and responsibility of the Secretary and the child's parents or guardians.

Guardianship Orders

- Increased clarity will be provided in relation to Guardianship Orders. The amendments will make it clear that these types of orders could be with the Secretary or shared between the Secretary and another person such as:
 - an order placing the child, for a specified period not exceeding 12 months, under the guardianship of:
 - the Secretary; and or
 - one or 2 other persons.
 - or an order placing the child, until the child attains 18 years of age, under the guardianship of:
 - the Secretary; and or one or 2 other persons
- In addition, these amendments mandate that a family meeting or family group conference must be held prior to the Secretary applying to the Court for a Care and Protection Order, unless the Secretary considers it in the best interest of the child for an application to be made.

Maximising Non-Adversarial Dispute Resolution Mechanisms

- These amendments will introduce additional flexibility prior to the use of family group conferences, and will enable responses that are more appropriate depending on the individual circumstances.
- It is envisaged that the introduction of less formal family meetings will provide a greater role for family problem solving earlier in the process. Family Group Conferences will be at the most formal end of the spectrum of family meeting options.
- These amendments will also prohibit discussion and information shared at all early stage family meetings being used in court processes (unless in exceptional circumstances).
- In addition, these amendments will make it a legislative requirement prior to commencement of care proceedings, to establish that a family group meeting was convened and if one wasn't convened, an explanation as to why.

Permanency Provisions

- We will be removing decision making timelines from the Act, Government should not be prescribing time frames for decision making.
- We will also be minimising Departmental involvement for families following a transfer of guardianship by replacing the current requirements with a provision that, after 12 months and subject to Secretary approval, no further review will take place (with the exception that further reviews can take place if either the family or child requests it).

Extending Care and Protection Orders

- The amendments will increase flexibility when extending care and protection orders. For example, the previous provisions were limited to 3 years. The new provisions will allow a care and protection order to be extended if the Court considers it appropriate and in the best interest of the child.

Warrants

- Amendments to the issuing of warrants will ensure that warrants are only granted if the Court has been satisfied that all other steps have been taken. The Court should not issue warrant until all other options have been considered / exhausted, unless there is reasonable concern for the immediate safety of the child. These amendments will allow parents to challenge a warrant.

Rules of Evidence

- These amendments differ from the LARRC recommendations, however, they reflect the approach adopted in the majority of jurisdictions so that:
 - Proceedings are to be conducted in an informal manner; and
 - The Court must proceed without regard to legal forms; and
 - The rules of evidence do not apply and the Court may inform itself on any matter in such manner as it thinks fit.