

CLAUSE NOTES

Children, Young Persons and Their Families Amendment Act Bill 2013

The Bill reflects the Government's response to the first stage recommendations of the 'Legislative Amendment Review Reference Committee' established by the Government to advise it on the Principal Act. The Committee provided a detailed report on the need for amendments to some 21 areas of the Act. The report provided detailed advice on the preferred policy direction to support the proposed amendments.

Clause 1	Short Title Provides that the Bill will be cited as the <i>Children, Young Persons and Their Families Amendment Act 2013</i>
Clause 2	Commencement Provides for the Bill to commence on a day or days to be proclaimed.
Clause 3	Principal Act Provides that, in the Bill, the <i>Children, Young Persons and Their Families Amendment Act 1997</i> is referred to as the Principal Act.
Clause 4	Section 3 amended (Interpretation) This clause amends section 3 of the Principal Act, which contains definitions of terms used in the Principal Act. Key amendments include inserting definitions for new terms introduced by the Bill: <ul style="list-style-type: none"> • 'supervision order', which will have the same meaning given by section 42A; and • 'family meetings'. This clause also removes the definition of 'advisory panel' as this term is no longer required due to the removal of the provisions of advisory panels under the Act, and makes statute law corrections to the definition of 'information-sharing entity'.
Clause 5	Sections 7, 8 and 9 substituted Clause 5 repeals section 7 (Object), section 8 (Principles to be observed when dealing with children) and section 9 (Principles relating to dealing with Aboriginal children). The clause substitutes these sections with: <ul style="list-style-type: none"> • Section 7 (Object) outlines that the object of the Act is to provide for the care and protection of children in a manner that addresses the stated objects, and also provides the Minister is to seek to further the object of this Act in partnership with the stated bodies.

	<ul style="list-style-type: none"> Section 8 (International conventions): this section clarifies that for the purposes of section 8B of the <i>Acts Interpretation Act 1931</i>, certain international conventions are relevant extrinsic materials for the interpretation of the Principle Act. Section 8B of that Act provides for when extrinsic materials to an Act can be used in the interpretation of that Act..
Clause 6	<p>Part 1A is inserted (Principles to be Observed in Dealing with Children)</p> <p>Clause 6 inserts a new Part 1A – Principles to be Observed in Dealing with Children. This comprises of new sections 10A, 10B, 10C, 10D, 10E, 10F and 10G. The new part provides for more detailed principles which must be observed when dealing with children, including:</p> <ul style="list-style-type: none"> 10A: Principles 10B: The responsibility of government 10C: Role of child's family 10D: Treating child with respect 10E: Best interest of child 10F: child participating 10G: Aboriginal children.
	<p>10A. Principles</p> <p>This section provides that a person exercising functions or powers under the Act are to uphold the principles in Part 1A as far as practicable, and have regard to any relevant national standards published by the Commonwealth Government</p>
	<p>10B. Responsibility of Government</p> <p>This section outlines that the Tasmanian Government has responsibility for promoting and safeguarding the wellbeing of children and assisting families in fulfilling their responsibilities for the care, upbringing and development of their children.</p>
	<p>10C. Role of child's family</p> <p>This section provides for the principles in respect of the role that the child's family plays as the primary caregiver of the child, providing the family is entitled to be treated with respect, and that the family is entitled to bring up the child in accordance with the families cultural and ethnic values. Contact with the family is to be encouraged so as to preserve the family relationship.</p>
	<p>10D. Treat child with respect</p> <p>This section provides for the important principles of treating all children with respect and ensuring that any decision affecting the child is done so promptly. Any decision must be done in a way that is consistent with cultural, ethnic and religious values relevant to the child and where possible with the participation of the child and family.</p>
	<p>10E. Best interests of child</p> <p>This section provides for the principle that, in performing functions or exercising</p>

	<p>powers under the Act, the best interests of the child must be the paramount consideration, and lists the matters that must be taken into account by the person dealing with decisions affecting the child.</p> <p>The matters that are to be taken into account will be significant for the Department in that it allows for proper and considered decision making with any decision to be in the best interests of the child.</p>
	<p>10F. Child Participation</p> <p>This section emphasises the need for children to participate in decisions that impact on them and allows for the child be fully informed of the decisions affecting them and must be done in such a way with regard to child's maturity and understanding of the issues affecting them.</p>
	<p>10G. Aboriginal Children</p> <p>Under the current legislation, Principles relating to Aboriginal children are referenced separately from other Principles. The amendments to the Act retain this important distinction that recognises the Aboriginal Community and that Aboriginal children have a distinct and unique cultural identity which requires special recognition. In addition, these have been amended to formally recognise the nationally adopted Aboriginal placement principle.</p> <p>Aboriginal families, kinship groups, Aboriginal communities and organisations representing the Aboriginal people have a major, self-determining role in promoting the wellbeing of Aboriginal children. A kinship group, Aboriginal community or organisation representing the Aboriginal people nominated by an Aboriginal child's family should be allowed to contribute to, although not necessarily as parties to proceedings, the making of a decision under this Act in relation to the child.</p>
Clause 7	<p>Section 11 amended (Voluntary care agreement)</p> <p>Clause 7 amends section 11 of the Principal Act to introduce longer initial and extension periods for voluntary care agreements where they relate to a child with disability or other special circumstances. New subsection (1A) clarifies the purpose of voluntary care agreements. New subsection (3) clarifies that the Secretary may not enter into the agreements where there is a risk to the child which cannot be remedied during the term of the agreement.</p> <p>These amendments are necessary to allow for increased flexibility for the Secretary in dealing with voluntary care agreements. The current Act does not allow for the flexibility required for efficient and timely handling of needs and issues that arise. This is particularly apparent in relation to dealing with young people with a disability and other special circumstances that may apply to the young person or their guardians. The amendments facilitate negotiated agreements between the Secretary and parents if the child has special needs arising from a disability, or special circumstances exists and it is in the best interest of the child.</p> <p>These provisions were drafted with reference to examples in corresponding West Australian and British Columbia legislation.</p>

Clause 8	<p>Section 12 amended (Termination of care agreement)</p> <p>Consequential to the changes in clause 7, clause 8 amends section 12(5) by removing ‘a period not exceeding 3 months’ and substituting it with ‘the period’ (given the maximum period as amended under clause 7 varies depending on the type of agreement).</p>
Clause 9	<p>Section 19 amended (Assistance by police officer)</p> <p>Clause 9 inserts subsection (3A) in section 19 which provides magistrates may issue a warrant for the purpose of subsection (3) if the magistrate is satisfied that:</p> <ul style="list-style-type: none"> (a) reasonable steps have been taken to obtain the consent of the occupier of the premises or place to the exercise of the powers referred to in that subsection and those steps have been unsuccessful; or (b) there are reasonable ground for concern for the safety of the child. <p>The current legislation remains silent in relation to when a magistrate may issue a warrant under subsection (3). This amendment will ensure the Court does not grant a warrant without first being satisfied that other less intrusive steps have been undertaken, unless there are reasonable grounds for concern for the safety of the child.</p>
Clause 10	<p>Section 22 amended (Assessment order)</p> <p>Clause 10 amends section 22 of the Act by omitting subsection (5) and substituting a new subsection that provides an assessment order may be extended (once only) for a maximum period of 8 weeks if the Court is satisfied the grounds are reasonable and in the best interests of the child.</p> <p>The current provisions of the Act allow for an Assessment Order to have effect for a period (specified in the order) not exceeding four weeks, and for an extension (once only) for a maximum period of 8 weeks if a Family Group Conference is to be held or a maximum period of 4 weeks in any other case.</p> <p>This amendment simplifies this approach by maintaining the current maximum extension period of 8 weeks in total, but also requiring the Court to exercise more discretion than is currently the case to ensure the extension is reasonable in the circumstances and in the best interest of the child.</p>
Clause 11	<p>Part 5, Division IAA inserted</p> <p>Division IAA – Family Meetings</p> <p>Clause 11 inserts a new Division IAA (Family Meetings), after part 5 of the Principal Act (Children in need of care and protection).</p> <p>The new Division establishes a procedure for ‘family meetings’. It precedes the more formal requirements in the following Division of Family Group Conferences, and is based part on similar legislative provisions, with appropriate adaptations.</p> <p>Family meetings will promote child and youth centred, and family focussed, proceedings, facilitating the objects of the administration and enforcement of the</p>

	<p>Act. The family meeting is less adversarial form of dispute resolution and will assist in building trust between Government and families engaged with the child protection system.</p> <p>The sections in the Division are summarised below.</p>
	<p>29A. Family meeting held in certain circumstances</p> <p>The Secretary may cause a family meeting to be convened in respect of a child if the Secretary is of the opinion that the child is at risk; and that a family meeting is appropriate in the circumstances.</p> <p>The Secretary must cause a family meeting to be convened if the Secretary is required under section 53 to convene a family meeting. Section 53 provides for when a court order requires it, the Secretary considers it desirable, or the Secretary has been requested by the child of the family to do so.</p>
	<p>29B. Purpose of family meeting</p> <p>The purpose of a family meeting convened under section 29A(1) is to provide an opportunity for a child's family and other persons attending the meeting –</p> <ul style="list-style-type: none"> (a) to make informed recommendations as to the arrangements for best securing the care and protection of the child; or (b) to review those arrangements and make further recommendations in respect of the arrangements from time to time. <p>The purpose of a family meeting convened under section 29A(2) (that is, required by section 53) is to provide an opportunity for a child's family and other persons attending the meeting to review the arrangements for care and protection of the child implemented under a care and protection order.</p>
	<p>29C. Convening family meeting</p> <p>This section outlines the process, the persons who must be consulted, and the persons who may attend a family conference, the use of a facilitator and their appointment and the issues that may be taken into account in convening a family meeting.</p>
	<p>29D. Constitution of and attendance at family meeting</p> <p>This section provides a family meeting consists of the facilitator; and those persons who attend the meeting in response to the invitation of the facilitator.</p>
	<p>29E. Procedure at family meeting</p> <p>This section outlines that the procedure to be followed at a family meeting is the procedure agreed to during the preliminary consultations or as agreed by the family meeting. This section also provides that the facilitator is to conduct a family meeting in an informal manner and if the facilitator considers it appropriate, they may adjourn the family meeting.</p>
	<p>29F. Finalising family meeting</p> <p>This section outlines the process for finalisation of family group meeting through a written report which must be signed by the persons named in the amendment. This includes a follow up process after the report has been finalised.</p>

	<p>29G. Action by Secretary after family meeting</p> <p>This section outlines what happens after a decision is made a family meeting which is convened under section 29A (1).</p> <p>Where there has been a decision, the Secretary may consider the arrangements suitable and approve the decision, or order that a meeting is reconvened, or take further action under Division 1 or 2 of the Act.</p> <p>Where there has been failure to make a decision, the Secretary can reconvene the meeting or take further Act under Division 1 or 2 of the Act.</p>
	<p>29H. Publication of discussion at, and reports on, family meeting</p> <p>This section restrict the publication of:</p> <ul style="list-style-type: none"> • any decision of a family meeting; • the final report of a family meeting; and • anything said or done in a family meeting. <p>This section also provides things said at family meetings are not admissible in proceedings, although the written record is admissible in proceedings under Division 2 for the purpose of establishing that a decision was or was not made.</p> <p>This section also provides that the <i>Right to information Act 2009</i> does not apply in relation to:</p> <ol style="list-style-type: none"> a. any report on a family meeting; or b. the written record of the decision of a family meeting; or c. the written report of a facilitator following the failure of a family meeting to reach a decision.
	<p>29I. Members of immediate family whose whereabouts are unknown</p> <p>This section provides that Division IAA does not apply in relation to a member of a child's immediate family whose whereabouts cannot, after reasonable inquiry, be ascertained.</p>
Clause 12	<p>Section 30 amended (Family group conference held in certain circumstances)</p> <p>Clause 12 amends section 30 of the Principal Act by omitting the reference in s.30(1)(c) to an 'advisory panel' and by omitting subsections (2) and (3).</p> <p>Subsection (2) is omitted because it refers to assessment panels – this subsection was unclear as it was originally intended to refer to advisory panels (assessment panels not being a concept otherwise used in the Act). The subsection is now redundant as clause 35 repeals provisions for advisory panels.</p> <p>New subsection (2) is similar to the existing subsection (3) of the Act, although it also now includes a reference to section 53 under which a child or family members can request a family group conference.</p>
Clause 13	<p>Section 31 amended (Purpose of family group conference)</p>

	<p>This clause amends section 31(2) of the Principal Act by omitting reference to section 30(3) and substituting this with section 30 (2)(a), due to the renumbering in section 30 under clause 12.</p> <p>This clause also inserts subsection (3) which outlines that the purpose of a family group conference convened under section 30(2)(b), as introduced by clause 12, is to provide the opportunity for a child's family and other persons that have attended the meeting to review the arrangements for care and protection of the child implemented under the care and protection order.</p>
Clause 14	<p>Section 32 amended (Convening a family group conference)</p> <p>Clause 14 makes corrections and additions to the provision for convening a family group conference, to make it consistent with the new provision for family meetings.</p> <p>This section also allows for more flexibility regarding who should attend a family group conference and, in addition to the potential attendees listed, leaves further invitations to the facilitator's discretion.</p>
Clause 15	<p>Section 36 amended 9 (Finalising family group conference)</p> <p>This clause amends section 36(2) (d) by removing reference to section 30(3) and replacing this with section 30(2), due to the renumbering in section 30 under clause 12.</p>
Clause 16	<p>Section 41 amended (Members of immediate family whose whereabouts are unknown)</p> <p>Similarly to the provisions for family meetings, clause 16 amends section 41 by omitting the term 'Guardian' and replacing this with 'member of a child's immediate family'. The definition of immediate family includes guardians.</p>
Clause 17	<p>Section 42 amended (Care and protection order)</p> <p>These amendments assist to deliver a less adversarial and more contemporary child protection system for example, requiring that a family meeting or family group conference has been held in the first instance before a care and protection order can be made (unless the Secretary considers it in the best interest of the child for the application to be made without delay).</p> <p>The clause omits subsection (4)(a) which refers to the order which can require a child or guardian for a specified period to do or refrain from doing a specified thing. This kind of order is renamed as a 'supervision order' and clause 18 provides in more detail for that kind of order.</p> <p>This clause also removes reference to specified maximum periods for court orders to allow for more flexibility and to base all decisions regarding cases on their individual merits.</p> <p>The clause also inserts new subsection (4)(c)(iii) to allow guardianship orders to include both the Secretary and other guardians, which is not currently possible.</p>

	<p>The clause inserts new subsection (4A). This relates to the list of specific orders a Court can make which ends with a provision that the Court can make any order it considers appropriate. New subsection (4A) provides the opportunity for regulations to be made in future to give guidance to any specific matters that should be taken into account in making such orders.</p> <p>The clause omits subsection (6) (which only applied to guardianship orders made until the child turns 18) and replaces it with a new subsection which applies to all care and protection orders. The new subsection provides that the Court may not make a care and protection order unless satisfied that of the specified matters.</p> <p>For consistent language through the Act, this clause replaces a reference to 'living' with 'residing'.</p>
Clause 18	<p>Section 42A inserted (Supervision order)</p> <p>Clause 18 inserts section 42A. This provides in more detail for the kind of order, now known as a supervision order, which was previously described in s.42(4)(a) as an order which can require a child or guardian for a specified period to do or refrain from doing a specified thing.</p> <p>The section provides that a 'supervision order' is an order of the Court that, although not affecting the guardianship or custody of a child, provides that –</p> <ul style="list-style-type: none"> • the Secretary is responsible for supervising a child; and • provides for the child to be placed in the day-to-day care of one or more of the child's guardians. <p>This section provides for the different types of duties and responsibilities that must or may be required under the order. The section also outlines the length of time a supervision order can be in force which is 12 months (24 months in special circumstances) and outlines what process must be followed if a supervision order does exceed 12 months, which includes a review of the order and explains what should occur as part of this process (including automatic cessation of the order after 12 months in the specified circumstances).</p>
Clause 19	<p>Section 44 amended (Extension of care and protection order)</p> <p>Clause 17 amends section 44 to include a reference to family meeting as well as the existing reference to family group conference.</p> <p>This clause also omits subsection (2) and substitutes this with a new subsection (2) so that there is no longer a three year maximum period for a care and protection order. The new provision provides that a care and protection order may be extended for the period the Court considers appropriate in the best interest of the child.</p>
Clause 20	<p>Section 45 amended (Limited adjournment only)</p> <p>Clause 20 amends section 45 of the Act by removing 'exceptional circumstances' and replacing it with 'reasonable grounds to do so'. This reflects that in practice it</p>

	is not exceptional to have to adjourn proceedings for sufficient periods to have assessment and other matters attended to.
Clause 21	<p>Section 46 amended (Interim care and protection order on adjournment)</p> <p>As with a preceding amendment, this clause replaces the term ‘living’ with ‘residing’, for consistency through the Act.</p>
Clause 22	<p>Section 48 amended (Variation, revocation, suspension and end of care and protection order or interim care and protection order)</p> <p>Clause 22 amends section 48 of the Act by removing subsection (2) and replacing it with a similar provision, with two differences:</p> <ul style="list-style-type: none"> • a care and protection order granting guardianship of a child to a person until the child attains 18 years of age will now cease to have effect on the making of a parenting order, rather than the application for the order, under Part VII of the <i>Family Law Act 1975</i> of the Commonwealth in respect of the child. This is to avoid a lapse in protective arrangements between the application for the parenting order and the time that it is made. • it omits the current reference to registration of parenting plans under the Commonwealth Act, as the Commonwealth Act no longer provides for that process.
Clause 23	<p>Section 49 amended (Effect of and limitations on care and protection order or interim care and protection order)</p> <p>Clause 23 amends section 49 (5) of the Principle Act by omitting ‘settled and permanent’ and substituting it with ‘stable’ which better reflects the objects of care and protection orders. This clause also omits ‘section 42(4)(d)’ and replaces this with ‘section 42(4)(c)’, as 42(4)(d) has been repealed by an earlier clause. Section 42(4)(c) has been amended so it can serve both its original purpose and the orders that are currently made under (d).</p>
Clause 24	<p>Section 53 amended (Review of arrangements for care and protection of child)</p> <p>This clause amends section 53 of the Principle Act by including references to family meetings.</p>
Clause 25	<p>Section 54 amended (Matters Court must consider)</p> <p>This clause amends section 54 (b) of the Principle Act by removing sections 8 and 9 and replacing these with ‘Part 1A’, as Part 1A now provides for the principles rather than those sections.</p>
Clause 26	<p>Section 55 repealed</p> <p>This clause repeals section 55, as the amendment in clause 25 to section 54 now refers the court to the expanded principles in the Act, including the best interest</p>

	test. Section 55 is therefore redundant and is repealed by the Bill.
Clause 27	<p>Section 57 amended (How views of child are expressed)</p> <p>This clause replaces the term ‘wishes’ with ‘views’. Similar to other references to ‘views’ in the Bill, this amendment is to provide more contemporary and consistent language in the legislation.</p>
Clause 28	<p>Section 58 amended (Children not required to express views)</p> <p>Similarly to clause 27, this clause replaces the term ‘wishes’ with ‘views’.</p>
Clause 29	<p>Section 63 substituted (Evidence)</p> <p>This clause repeals section 63 and substitutes it with a new section 63 (Evidence). The current section 63(1) provides the Court is bound by the rules of evidence except where the Court determines otherwise.</p> <p>This new section removes the need for the Court to make that determination, provides that in any proceedings under this Act, the Court –</p> <ul style="list-style-type: none"> (a) is to conduct proceedings before it in an informal manner; and (b) is not bound by the rules of evidence; and (c) is to consider evidence on the balance of probabilities; and (d) may inform itself in any way it considers appropriate. <p>These amendments reflect a similar approach to the majority of other jurisdictions across Australia.</p>
Clause 30	<p>Section 69 amended (Powers and duties of Secretary in relation to children under guardianship or in custody of Secretary generally)</p> <p>Similarly to other provisions in the Bill, this clause omits references to ‘settled and permanent’ and substitutes this with ‘stable’ and updates references to sections 8 and 9 to Part 1A.</p> <p>The reference to ‘stable’ makes the language of the Act align with current practices. It is more important for a young person to have ‘stable’ care than ‘settled and permanent’ care.</p>
Clause 31	<p>Section 70 amended (Power of Secretary to consent to adoption of child)</p> <p>Similarly to other provisions in the Bill, this clause omits references to ‘settled and permanent’ and substitutes this with ‘stable’, updates references to sections 8 and 9 to Part 1A, and updates the reference to s.42(4)(d) to s.42(4)(c).</p>
Clause 32	<p>Section 71 amended (Review of circumstances of child under long-term guardianship of Secretary)</p> <p>Clause 32 amends section 71 of the Principal Act by removing subsection (1) and replacing it with a new subsection (1). Section 71(1) currently provides for reviews of s.42(4)(d) orders, which place the child in a guardianship arrangement until they</p>

	are 18. The new subsection provides for reviews of similar orders, although they may no be any orders longer than 12 months, and provide for a less intrusive and less frequent review regime; unless more frequent reviews are requested by the child or guardian.
Clause 33	Section 77O amended (Service of application) Similarly to other amendments in the Bill, this clause amends section 77O(b) of the Principal Act by removing the word ‘living’ and replacing this with ‘residing’.
Clause 34	Part 9: Heading amended Clause 34 amends the heading in part 9 of the Principal Act by removing “ COMMISSIONER FOR CHILDREN, ADVISORY PANELS AND FACILITATORS ” and replacing this with “ COMMISSIONER FOR CHILDREN AND FACILITATORS ”. This amendment is required because clause 35 repeals the Act’s provisions for advisory panels.
Clause 35	Part 9, Division 2 repealed Clause 35 repeals Division 2 of Part 9 of the Principal Act, which provides for advisory panels. In practice, this mechanism wasn’t utilised and has become redundant.
Clause 36	Section 87 amended (Functions of facilitator) This clause amends section 87(a) of the Principal Act by including a reference to family meetings.
Clause 37	Section 88 amended (Guidelines for facilitator) Clause 31 amends section 88(1) of the Principal Act by including a reference to family meetings.
Clause 38	Section 97 amended (Circumstances in which child may be taken into safe custody) Similarly to an earlier amendment in the Bill, section 97 is amended to ensure that the Court does not grant a warrant without first being satisfied that other least intrusive steps have been exhausted, unless there are reasonable grounds for concern for the safety of the child.
Clause 39	Section 103 amended (Duty to maintain confidentiality) Clause 33 amends section 103(2) of the Principal Act by including references to family meetings.
Clause 40	Section 104 substituted Similarly to an earlier amendment in the Bill, section 104 is amended to ensure that the Court does not grant a warrant without first being satisfied that other least intrusive steps have been exhausted, unless there are reasonable grounds for concern for the safety of the child.

Clause 41	<p>Section 111A amended (Access to information under <i>Right to Information Act 2009</i>)</p> <p>This clause amends section 111A of the Principal Act by removing ‘<i>Freedom of Information Act 1991</i>’ and replacing this with ‘<i>Right to Information Act 2009</i>’.</p> <p>This amendment is required as the <i>Right to Information Act 2009</i> has replaced the <i>Freedom of Information Act 1991</i>. The reference to the former Act was introduced to the Principal Act at approximately the same time the later Act became law, and the reference was intended to be corrected at that time.</p>
Clause 42	<p>Schedule 3 repealed</p> <p>This clause repeals Schedule 3 to the Principal Act, which is no longer required as it relates to advisory panels which had become redundant.</p>
Clause 43	<p>Schedule 4 amended (Warrants)</p> <p>Clause 43 amends Schedule 4 of the Act by inserting clause 3A after clause 3, this new clause is titled ‘Revocation of warrant before execution’ and provides for applications for the revocation of warrants issued under section 97 and 104 in certain circumstances. This is designed to accommodate scenarios such as where a warrant is issued but not yet executed, and a guardian wishes to bring new information before the Court so that the warrant may be revoked. Where a warrant is executed, a guardian can use the existing provisions of the Act to seek appropriate orders in relation to the child.</p>
Clause 44	<p>Repeal of Act</p> <p>This clause repeals the amending Act on the three hundred and sixty fifth day from the day on which all of the provisions commence, as the amendments will be incorporated into the Principal Act.</p>