Children and Young Persons (Further Amendment) Bill

EXPLANATORY MEMORANDUM

Clause 1 states the purpose of the Bill.

Clause 2 provides that all of the Act except sections 33 (1) and (2) are to come into operation on a day or days to be proclaimed. Sections 33 (1) and (2) are to be deemed to have commenced on the day on which the Acts they amend received the Royal Assent.

Clause 3 provides that the Principal Act to be amended is the **Children and Young Persons Act 1989** ("the Act").

Clause 4 amends the definition section of the Act to clarify that access includes overnight access, and to amend the definition of the word "child" to clarify that in the Family Division a reference to a child includes a person who is under the age of 18 years where he or she is the subject of a protection order.

Clause 5 amends the provisions of the Act on legal representation. There are two main amendments. The first, is a clarification that section 21 operates subject to section 20. Second, section 20 (2) is to be amended to ensure that the Children's Court (the "Court") is only required to adjourn proceedings in the Family Division where the child is mature enough to give instructions.

Clause 6 amends section 24 of the Act to ensure that the **Magistrates' Court Act 1989** applies to procedures in the Children's Court and to the issue of process when the **Children and Young Persons Act 1989** does not provide for these matters.

Clause 7 amends the Act to insert provisions on the establishment of pre-hearing conferences in the Family Division of the court. When a protection application has been made a magistrate may order that a conference be held to assist the court in determining whether it is appropriate to make a finding that the child is in need of protection, and if such a finding is to be made, to assist the court in considering the appropriate order under section 85.

Under clause 37 of the Bill the amendments made by Clause 7 will cease to operate 12 months after they have been proclaimed. The provisions regarding pre-hearing conferences will only be in operation for a trial period.

Clause 8 (1) (*a*) and (2) inserts new provisions into section 64 to apply to certain persons who, whilst practising in certain professions or being employed for specified purposes, believe on reasonable grounds that a child is in need of protection because the child has suffered, or is likely to suffer significant harm as a result of physical injury or sexual abuse and the child's parents have not protected, or are unlikely to protect the child from such harm. In these situations the person must notify the Director-General of his or her belief and the matters that have led him or her to hold that belief.

This provision is additional to section 64 (1), which provides that any person who believes on reasonable grounds that a child is in need of protection may notify a protective intervener of that belief.

The mandatory reporting requirement will apply to the persons referred to in the paragraphs in new section 64 (1A) on the date or dates fixed by the Governor in Council which are to be published in the Government Gazette. The Governor in Council may make more than one order under this section, and the orders can apply to separate paragraphs of

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the section. New section 64 (1B) clarifies that different dates can be fixed for when the requirement to make a notification will apply to each of the persons referred to in the new section 64 (1A). This will give maximum flexibility to the implementation of this amendment as orders can be made at different times fixing different dates on which the persons referred to in the separate paragraphs will be obliged to comply with the mandatory reporting requirements.

New section 64 (1A) lists the persons obliged to report under new section 64 (1C). The reference in paragraph (*d*) to registered teachers under the **Education Act 1958** includes teachers registered under both Part III and Part IIIA of that Act, and therefore includes teachers at all non-government schools and state schools.

Paragraph (*f*) of new section 64 (1A) refers to persons with the relevant qualifications who are employed at children's services centres under the **Health Act 1958**, or who are the proprietor or nominee of the proprietor of such centres. Kindergartens and pre-schools fall within the definition of a children's services centre.

Paragraph (*g*) of new section 64 (1A) refers to appropriately qualified social workers and welfare workers who are working in the areas of health, education and "community or welfare services". The reference to "community or welfare services" is not a specific reference to a community service established or approved under sections 57 and 58 of the Act. In this new section the phrase has the broader meaning that it has in Acts such as the **Community Services Act 1970**, which is that it includes services such as those that provide social support, care and development, or assistance, regardless of whether those services are approved or established under sections 57 and 58. Such services are provided by both the government and the non-government sector.

Clauses 8 (1) (*b*) and (*c*), 9 and 10 amend the sections of the Act which govern the confidentiality of notifications that a child is in need of protection, and which regulate the use and disclosure of information obtained during the investigation of a notification.

Clause 11 revises the provisions in the Act regarding the action to be taken by a protective intervener when he or she believes on reasonable grounds that a child is in need of protection. The principal change is to ensure that a protective intervener will only take a child into safe custody where it is inappropriate to proceed by serving a notice to require the child to attend or be brought before the court. This is to facilitate the least intrusive action being taken which is consistent with ensuring the safety and well-being of a child.

For example, it would normally be appropriate to take a child into safe custody rather than to proceed by notice where the protective intervener believes on reasonable grounds that the desirability of allowing the child to remain with his or her parents is outweighed by the fact that this will create an unacceptable risk of harm to the child. The court can then determine whether an interim accommodation order should be made. It would also be appropriate to take a child into safe custody where there are reasonable grounds for believing that the child will not be produced before the court if a notice is issued. Other factors may also influence what is an appropriate course of action.

Clause 12 amends the provision on irreconcilable difference applications to provide that a certificate of conciliation counselling is only to be valid for 3 months, and to enable the Director-General to appear in such proceedings with the leave of the court.

Clause 13 makes a number of amendments to the provisions on interim accommodation orders. For example, the amendment in Clause 13 (2) clarifies that when the court makes an interim accommodation order that it may impose any conditions considered to be in the best interests of the child. At present it is arguable that the only conditions that can be imposed are conditions on the parent or the child, or conditions that relate to access. If the child is placed with a suitable person, or in a community service or a secure welfare service

the court may wish to impose other conditions on the person who is caring for the child or on the protective intervener.

A further amendment made by this clause is to clarify that proceedings for breach of an interim accommodation order may be initiated whenever the order itself is breached, and not just when conditions attached to the order are breached.

Clause 14 amends the provisions on applications for permanent care orders. At present the applicants for such an order must be the persons who are proposing to obtain permanent custody and guardianship of the child. The clause amends the Act by making the Director-General the applicant for the order rather than the proposed suitable persons.

Clause 15 amends section 121 of the Act. This section establishes a panel to review decisions relating to the recording of information in the central register established under section 65 (1) (*b*) (the "Children at Risk Register"). The panel is comprised of nominees of the Attorney-General, the Chief Commissioner of Police and of the Director-General. The amendment will enable alternate nominees to sit on this panel when the nominees are unavailable.

Clause 16 makes a number of amendments to section 129 to clarify the manner in which a child taken into custody is to be released on bail or remanded in custody. For example, sections 129 (5) and (6) have been read as giving police the power to bail children under section 10 of the **Bail Act 1977**. However, such a power is not referred to by section 129 (2). The amendments make clear that police are to have this power. This clause also clarifies that the **Bail Act 1977** only operates to the extent that it is consistent with section 129.

The effect of this clause is to ensure that if police decline to release on bail under section 10 of the **Bail Act 1977** that the member of the police force must bring the child before the court or a bail justice in accordance with section 129 (2), rather than only being required to bring the child before a bail justice under section 10 (2) of the **Bail Act 1977** if the child indicates that he or she wishes to apply for bail. However, the procedure for applying for a variation of bail conditions under section 10 (2) of the **Bail Act 1977** is still to be available as such a procedure is not inconsistent with section 129 of the Act.

This clause also deletes the reference to "under this Part" from section 129 (2) as that section should apply generally to children who have been taken into custody (including custody under the **Crimes Act 1958**) and not just to apprehensions under Part 4 of the Act for breach of sentencing orders.

Clause 17 amends the provisions of the Act regarding the preparation of a pre-sentence report when a child has been found guilty of committing an offence by the Criminal Division of the court, and where the matter has also been referred to the Director-General for consideration as to whether a protection application should be made. At present it is mandatory to prepare a pre-sentence report when sentencing has been deferred and a protection application has also been made. The amendment will give the court a discretion to determine whether such a report should be prepared.

Clauses 18 and 19 amends the sections regarding undertakings and good behaviour bonds. The amendment is to ensure that such sentencing orders can only apply until a child's eighteenth birthday. This upper limit is consistent with other sentencing orders.

Clause 20 revises the provisions regarding the payment of fines and the making of orders where a child defaults in payment of a fine. The main amendments are to:

substitute the power of the court to make a supervision order or a youth attendance order where a child has defaulted in the payment of a fine or an instalment order with the power to order that the child comply with a "community service order". New

sections outlining community service orders and procedures where such an order is breached are inserted into the Act;

provide that only a fine of one penalty unit can be imposed on a child under the age of 15 years who has been found guilty of committing one offence, and that a maximum of two penalty units can be imposed in respect of such a child found guilty of committing more than one offence;

provide that where a warrant to seize property ordered under section 155 (1) (*c*) is not satisfied that the court may make another default order;

enable the court to order that a child subject to a weekend detention order may serve the sentence as one extended period of detention rather than over a number of weekends where the court is satisfied that this is appropriate because of employment or special circumstances;

to clarify that service for breach of a default order can be by "post or otherwise" under section 155 and to enable a warrant to arrest to be issued when service cannot be effected. This is consistent with other sections of the Act on service;

to enable breach proceedings to be initiated and a further order to be made where a child fails to attend weekend detention.

Clause 21 includes amendments to make conditions of youth attendance orders and proceedings for breach of such orders consistent with the provisions on youth supervision orders and probation orders.

Clause 22 amends the Act to require the court to consider a pre-sentence report before imposing a sentence of detention in a youth training centre or in a youth residential centre.

Clause 23 amends section 188 to require the court to record its reasons in writing for ordering a sentence of detention in a youth training centre and to provide a copy of those reasons to the parents and child. This is currently required under section 186 in relation to orders for detention in a youth residential centre.

Clause 24 amends a drafting error in section 190. This clause also provides that when a court defers sentencing that preparation of a pre-sentence report will be discretionary rather than mandatory.

Clause 25 makes the procedure for suspension of a youth supervision order under section 196 consistent with the procedure for suspension of a youth attendance order under section 178.

Clause 26 inserts entitlements for persons detained in youth training centres established under the Act and for children detained in youth residential centres and remand centres established under the Act.

Under section 130 of the Act and the regulations when a child is remanded in custody in some country areas he or she may be remanded at certain police stations or at another suitable place for up to two working days. These police stations are police gaols under the **Corrections Act 1986**. This clause also inserts entitlements for children remanded in police gaols.

Clause 27 amends section 256 to substitute a reference to "an offender" with a reference to "a person". This section authorises temporary leave from custody for a person in a remand centre, youth training centre or a youth residential centre. As persons on remand are not convicted the reference to "an offender" is inappropriate.

Clause 28 changes the heading of Division 2 of Part 5 to refer to persons detained rather than persons "sentenced" as the Division also applies to persons on remand.

Clause 29 provides a penalty for the offence of escape from a youth training centre or a youth residential centre whilst serving a sentence of weekend detention and clarifies that section 458 of the **Crimes Act 1958** applies to all escapes from those centres and from remand centres.

Clause 30 inserts provisions relating to the following powers and obligations in corrective services and remand facilities:

search for and seizure of dangerous articles—a power to search persons detained in youth training centres and children detained in remand centres and youth residential centres and to seize dangerous articles found is included in new section 256A. The reference to "search and examination of the person" in new section 256A (2) (*b*) is the same as the power to search in the **Corrections Act 1986** and is taken to authorise what is commonly described as a "frisk" search and also a search of the exterior of the body, with the removal of clothing where necessary;

prohibited actions—a number of actions are prohibited in relation to persons detained in youth training centres and children detained in youth residential centres, remand centres and police gaols in new section 256B; and

isolation—new section 256C outlines when a person detained in a youth training centre and when a child detained in a remand centre or a youth residential centre can be placed in isolation to ensure the safety of the person or child or of others, or to prevent damage to property. This is a separate power to that referred to in new section 256C (7), which is the power to lock persons or children in their rooms to ensure that the security of the centre is maintained. This may be a routine procedure at night or may be used in an emergency.

Clause 31 amends the Act and the **Community Services Act 1970** to enable the Director-General to delegate his or her functions under these Acts to temporary employees of the Department of Community Services. At present such functions can only be delegated to "officers" of the Department (that is, permanent public servants).

Clause 32 inserts a definition of "custody" into the **Community Services Act 1970**. This definition was mistakenly inserted into the **Community Services Act 1987** rather than the 1970 Act by section 283 of the **Children and Young Persons Act 1989**.

Clause 33 makes amendments to the **Community Services Act 1970**, the **Community Services Act 1987**, the **Children and Young Persons Act 1989** and the **Children and Young Persons (Amendment) Act 1990** with respect to child care agreements.

Clause 34 amends the **Adoption Act 1984**.

Clause 35 enables warrants to detain to be issued under the **Magistrates' Court Act 1989** when a person has been sentenced to detention under the **Children and Young Persons Act 1989**.

Clause 36 amends the **Mental Health Act 1986**. That Act was amended in 1990 to enable a hospital order to be made to transfer a person detained in a youth training centre, youth residential centre or remand centre established under the **Children and Young Persons Act 1989** to a psychiatric in-patient service. Not all of the necessary consequential changes

were made to the **Mental Health Act 1986** at that time. This clause makes those further amendments.

Clause 37 is a statute law revision amendment.

Clause 38 is a sunset clause that applies to the amendments in Clause 7 which establish pre-hearing conferences in protection applications. Those amendments are to cease to operate 12 months after they are proclaimed.

By Authority L. V. North, Government Printer Melbourne