

Children and Young Persons (Further Amendment) Bill

EXPLANATORY MEMORANDUM

Clause 1 states the purposes of the Bill.

Clause 2 provides that the Act is to come into operation on the day on which it receives the Royal Assent. Even though the provisions will be in operation on Royal Assent, particular professions will only be required to make notifications in accordance with new section 64 (1A) and (1B) when an order is made by the Governor in Council under new section 64 (1D) fixing the date on which that profession is bound to notify. In this way the Bill allows for the staged introduction of mandatory reporting.

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

Clause 4 inserts the following new provisions into section 64 of the Act regarding mandatory reporting:

New section 64 (1A) applies to certain persons who, whilst practising their professions or carrying out the duties of their office, position or employment, form a belief 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 that the child's parents have not protected, or are unlikely to protect, the child from such harm. Such persons must notify the Secretary of that belief and of the grounds for that belief.

In addition, when such a person has formed this belief, if he or she subsequently becomes aware of any further reasonable grounds for the belief he or she must again notify the Secretary of the belief and of the new reasonable grounds for it.

The notifications must be made as soon as is practicable. Failure to comply with these requirements is a summary offence.

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.

New section 64 (1B) provides that the grounds for a belief which must be reported (provided they are reasonable) are the matters of which the person has become aware, and any opinion based on those matters. That is, the basis of the belief must be reported to the Secretary, not simply the fact that the person believes that the child is in need of protection as described by section 63 (c) or (d) of the Act.

New section 64 (1C) lists the persons obliged to report under new section 64 (1A). These persons are described in paragraphs (a) to (f) of this sub-section. In particular—

Paragraph (d) refers to persons registered or provisionally registered as teachers under the **Education Act 1958** or who are permitted to teach under Parts III and IIIA of that Act. It therefore applies to all teachers lawfully teaching at state schools and non-government schools.

Paragraph (f) refers to persons with the relevant post-secondary qualifications who are employed in children's services centres to which Part XI A of the

Health Act 1958 applies, and to the proprietors and nominees of proprietors of such centres. Part XI^A of the **Health Act 1958** applies to children's services centres as defined in section 208A (1) of that Act, except to those premises or places described in section 203A (2). Kindergartens and pre-schools are children's services centres.

- Paragraph (g) refers to social workers, youth workers and welfare workers with the relevant post-secondary qualifications who are working in the areas of health, education or "community or welfare services". The reference to "community or welfare services" is not a specific reference to community services 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 whenever those services are approved or established under sections 57 and 58. Such services are provided by both the government and the non-government sectors.
- Paragraph (h) refers to officers or temporary employees under the **Public Sector Management Act 1992** who are youth and child care workers.
- Paragraph (j) refers to probation officers. Probation officers are defined in section 3 of the Act, and have specific functions under the Act (see sections 34 and 35).
- Paragraph (k) refers to youth parole officers. This term is defined in section 3 of the Act, and the functions of these persons are outlined in section 226 of the Act.

The persons or class of persons described in the paragraphs in this sub-section will only have to comply with new section 64 (1A) on and from "the relevant date" for each of the paragraphs. "The relevant date" is defined in new section 64 (1D).

New section 64 (1D) provides that "the relevant date" for each person or class of persons described in the paragraphs in new section 64 (1C) is the date applicable for each paragraph fixed by order of the Governor in Council. The order or orders are to be published in the Government Gazette.

New section 64 (1E) states that "the relevant date" for the different paragraphs of new section 64 (1C) may be different for any or all of the paragraphs. 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 or class of persons referred to in the separate paragraphs will be covered by the mandatory reporting requirements.

New section 64 (1F) defines the term "post-secondary qualification", which is used in new section 64 (1C) (f) and (g). This definition has two elements—

- a qualification from a post-secondary education institution or a technical and further education college or institution as defined in the **Post-Secondary Education Act 1978**; and
- a qualification from an institution or college outside Victoria that is approved by the Secretary and published in a notice in a Government Gazette. This approval can be given to courses offered interstate or overseas that have been completed

by persons who are working as described in new section 64 (1c) (f) and (g). Approval will only be given to courses that are equivalent to the Victorian post-secondary qualifications.

New section 64 (1G) provides a defence to a charge of failing to make notification under new section 64 (1A). The defence will be available when a person fails to make such a notification because he or she honestly and reasonably believed that all the reasonable grounds for his or her belief that the child was in need of protection under section 63 (c) or (d) had already been reported to the Secretary by someone else.

New section (1H) is a transitional provision. The requirement to report under new section 64 (1A) will apply to a belief referred to in that section which is formed on or after “the relevant date”. This transitional provision will apply to cases where a person described in new section 64 (1C) forms a belief on reasonable grounds that a child is in need of protection under section 63 (c) or (d) before the relevant date, but has that belief confirmed by further reasonable grounds after that date. In such a case the person will be obliged to notify the Secretary of his or her belief and of the further reasonable grounds for it.

Clause 5 amends section 82 of the Act to provide that an officer or employee of the Department may appear for the Secretary (or his or her delegate) whenever the Secretary or his or her delegate is a party to proceedings in the Family Division. This right of audience is only available to officers or employees who are authorised by the Secretary.

Clause 6 makes various consequential amendments.

The amendments in clause 6 (a), (d), (e), (f), (g) and (h) ensure that wherever provisions of the Act refer to a “notification” that they refer to a notification made under new section 64 (1A) (i.e. a compulsory notification) as well as to a voluntary notification under section 64 (1). For example, paragraph (d) of this clause makes an amendment to ensure that a person who make a notification under the mandatory reporting provisions has not committed a breach of professional ethics and cannot be subject to any liability for making the report.

The amendments in clause 6 (b) and (c) are consequential on the amendments contained in clause 5.

