

## **Children's Services Bill**

### **EXPLANATORY MEMORANDUM**

The Act provides for the licensing and regulation of the children's services industry.

- Clause 1 sets out the purpose of the Act.
- Clause 2 provides for clause 1 and clause 2 to come into operation on the day on which the Act receives Royal Assent and for the remaining provisions of the Act to come into operation on a day to be proclaimed.
- Clause 3 is a definition section.
- Clause 4 provides that the Act is to bind the Crown.
- Clause 5 provides circumstances in which the Act does not apply.
- Clause 6 gives the Minister the power to exempt a children's service or class of children's service from the provisions of the Act.
- Clause 7 makes it an offence to carry on an unlicensed children's service.
- Clause 8 makes it an offence to advertise an unlicensed children's service.
- Clause 9 provides for a process of approval in principle of children's services. A person who wishes to apply to be licensed in relation to a children's service must first seek approval in principle.
- Clause 10 sets out the criteria for a grant of approval in principle.
- Clause 11 sets out the criteria for determining whether or not a person is a fit and proper person. An applicant for approval in principle must satisfy the Secretary that a person who is to be the proprietor of the service is a fit and proper person.
- Clause 12 gives the Secretary the power to grant or refuse an application for approval in principle.
- Clause 13 provides that if the Secretary grants approval in principle, the Secretary must issue a certificate of approval in principle.
- Clause 14 gives the Secretary the power to revoke an approval in principle.
- Clause 15 sets out the term of an approval in principle.

- Clause 16 provides that a person who has obtained approval in principle to operate a service may apply to the Secretary to obtain a licence to operate a service.
- Clause 17 provides matters to be determined by the Secretary when considering an application for a licence.
- Clause 18 gives the Secretary the power to grant or refuse to grant a licence. It also provides for conditions which all licences are subject to and gives the Secretary the power to impose any other conditions on a licence.
- Clause 19 provides for the Secretary to provide a copy of the licence to the licensee and prescribes what is to be stated on the licence.
- Clause 20 provides for a licence to remain in force for a period not exceeding 3 years.
- Clause 21 provides that a licensee may apply to the Secretary for the renewal of a licence.
- Clause 22 provides that the Secretary may renew or refuse to renew a licence. On renewing a licence the Secretary may vary any of the conditions or restrictions attaching to the licence or impose new conditions or restrictions on the licence.
- Clause 23 provides that the Secretary may at any time vary or revoke a condition or restriction of a licence or impose a new condition or restriction.
- Clause 24 permits the transfer of a licence, upon the approval of the Secretary.
- Clause 25 sets out the criteria for transfer, renewal or variation of a licence.
- Clause 26 makes it an offence to fail to take every precaution to protect a child from a hazard likely to cause injury.
- Clause 27 makes it an offence to not adequately supervise children using a children's service.
- Clause 28 makes it an offence to inappropriately discipline a child using a children's service.
- Clause 29 makes it an offence to fail to keep the premises and grounds from which a children's service operates in safe, clean and hygienic condition and in good repair.
- Clause 30 makes it an offence if the licensee or a nominee is not present at all times a children's service is operating.

- Clause 31 makes it an offence to contravene a condition or restriction to which a licence is subject.
- Clause 32 makes it an offence to fail to notify the Secretary of a change of director in a body corporate which is a licensee.
- Clause 33 makes it an offence to not conspicuously display a licence at the entrance to the children's service.
- Clause 34 makes it an offence to fail to notify parents and guardians of changes to the licence of a children's service.
- Clause 35 allows the Secretary to appoint authorised officers for the purposes of the Act.
- Clause 36 gives powers of entry and inspection to an authorised officer in relation to a licensed children's service.
- Clause 37 provides that an authorised officer may apply to a magistrate for the issue of a search warrant in relation to premises the authorised officer suspects an unlicensed children's service is being provided from.
- Clause 38 gives an authorised officer the power to enter and search licensed premises and seize any thing on the premises where the authorised officer believes that the thing may be used as evidence of the commission of an offence under the Act.
- Clause 39 Provides for the return of seized things. A seized thing must be returned within 60 days from the date of the seizure unless a prosecution has been commenced or a court has extended the period the thing can be retained.
- Clause 40 provides that where a person has consented to premises being searched that person must be given a copy of the consent.
- Clause 41 provides that an authorised officer may not exercise any powers if the authorised officer fails to produce his or her identity card upon request.
- Clause 42 provides a protection against self-incrimination for persons questioned by an authorised officer.
- Clause 43 provides that where the Secretary believes that a children's service is not operating in accordance with the Act the Secretary may, by notice in writing, direct the proprietor to take the steps specified in the notice. If the proprietor does not comply with the notice then the Secretary may suspend the licence or order the proprietor to cease operating the children's service. It is an offence to contravene an order made under this clause.

- Clause 44 allows the Secretary to cause the removal of children from a children's service in an emergency situation.
- Clause 45 provides the Secretary with the power to cancel a licence. It also sets out the procedure for cancellation of a licence.
- Clause 46 makes it an offence to obstruct an authorised officer.
- Clause 47 provides that a charge for an offence under this Act may be filed by an authorised officer or a member of the police force.
- Clause 48 provides that where an offence has been committed by a body corporate then any person who is concerned in the management of the body corporate and who knowingly authorised or permitted the offence is also guilty of an offence.
- Clause 49 provides for the service of documents.
- Clause 50 gives the Secretary the power to fund children's services on terms and conditions that the Secretary considers appropriate.
- Clause 51 provides the Secretary with the power to make guidelines about the establishment, management and operation of children's services.
- Clause 52 provides that the Minister cannot delegate the power to exempt a children's service or class of children's service from the operation of the Act.
- Clause 53 requires that the Secretary keep a register of children's services licensed under the Act and allows for the register to be inspected and extracts taken for a prescribed fee.
- Clause 54 provides an immunity for persons who provide information where that person believes on reasonable grounds that the provisions of the Act have been contravened. It also provides that a notifier cannot be identified in legal proceedings without the leave of the court or the consent of the notifier.
- Clause 55 provides that certain decisions may be reviewed by the Administrative Appeals Tribunal.
- Clause 56 sets out regulation making powers in relation to children's services.
- Clause 57 repeals Part XIA of the **Health Act 1958**.
- Clause 58 makes consequential amendments to the **Children and Young Persons Act 1989**.
- Clause 59 makes consequential amendments to the **Community Services Act 1970**.

Clause 60 makes consequential amendments to the **Prostitution Control Act 1994**.

Clause 61 contains transitional and savings provisions.

