

CHILDREN'S SERVICES LEGISLATION AMENDMENT BILL 1998

EXPLANATORY NOTES

GENERAL OUTLINE

OBJECTIVES OF THE LEGISLATION

The objective of the Children's Services Legislation Amendment Bill is to amend the *Children's Services Act 1965* and the *Children's Commission and Children's Services Appeals Tribunal Act 1996*.

REASONS FOR THE BILL

Amendments are required to both the *Children's Services Act 1965* and the *Children's Commission and Children's Services Appeals Tribunal Act 1996* to overcome difficulties in relation to the disclosure of information held under the *Children's Services Act 1965* to the Children's Commissioner. Inconsistencies between the two Acts have caused legal difficulties which have prevented the provision of information by the Department of Families, Youth and Community Care to the Children's Commissioner when the Commissioner is investigating complaints about the delivery of children's services under the *Children's Services Act 1965*.

The Bill also amends the *Children's Commission and Children's Services Appeals Tribunal Act 1996* to clarify that the Children's Commissioner may convene conferences between the parties when attempting to resolve disputes between the Department of Families, Youth and Community Care and its clients.

ESTIMATED COST FOR GOVERNMENT IMPLEMENTATION

The changes to the *Children's Services Act 1965* will add to the administrative workload of the Department of Families, Youth and Community Care in supplying information to the Children's Commissioner.

These additional costs will be met within current budget allocations.

The changes to the Children's Commission and Children's Services Appeals Tribunal Act 1996 may lead to the engagement of persons to act as facilitators of conferences on behalf of the Children's Commissioner. This is expected to be cost effective through the conferences resolving some matters which would otherwise have been the subject of tribunal hearings.

RESULTS OF CONSULTATION

The need for amendment to the legislation to allow the disclosure of information to the Children's Commissioner has been apparent for some time and complainants to the Children's Commissioner have voiced their displeasure that the Department of Families, Youth and Community Care has been legally prohibited from making case file information relating to them available to the Children's Commissioner. This has been most publicly illustrated by the Children's Commissioner's investigation into complaints arising from the experiences of children (now adults) who were past residents of the Neerkol orphanage. It is considered that public opinion supports the release of such files to the Children's Commissioner.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

The Bill does not breach any of the fundamental legislative provisions of the *Legislative Standards Act 1992*. The confidentiality provisions of the *Children's Commission and Children's Services Appeals Tribunal Act 1996* have been strengthened to ensure the privacy of individuals to whom information released to the Children's Commissioner relates.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 states that the short title of the Act is to be the *Children's*

Services Legislation Amendment Act 1998.

Clause 2 states that the Act will commence on a date to be fixed by proclamation.

PART 2—AMENDMENT OF *CHILDREN'S SERVICES ACT 1965*

Clause 3 sets out the purpose of part 2.

Clause 4 amends section 144 (Secrecy provisions) of the *Children's Services Act 1965* to:

- enable officers of the Department of Families, Youth and Community Care to disclose to the Children's Commissioner information gathered in the course of their duties under the Act;
- compel the Director-General to give information to the Children's Commissioner if requested by the Children's Commissioner.

Information which may be given to the Children's Commissioner relates to the Children's Commissioner's functions of assessing or investigating a complaint about the delivery of children's services under the *Children's Services Act 1965* and its predecessor Acts. This information will primarily consist of case file information relating to current and past clients of the Department of Families, Youth and Community Care including approved careproviders. The information may also relate to the licensing and monitoring of residential and other services for the care of children.

However sub-clause 4(1D) limits the information which the Director-General can give to the Children's Commission when the information identifies a person who has notified the Department of Families, Youth and Community Care or another public officer about suspected maltreatment of a child. The Director-General must not give information to the Children's Commissioner which identifies, or could lead to the identification of, a notifier unless:

- the Director -General has consulted with the notifier and the notifier has consented to their identifying information being

released; or

- reasonable steps have been taken, but it has not been possible to contact the relevant notifier.

In complying with sub-clause 4(1D) the Director-General must act with due regard to the safety and welfare of the notifier. For example, the Director-General, in seeking to consult with a notifier who is a member of a family of the child about whom the notification was made, must not take any action which would lead to the family becoming aware of the reason for the consultation.

The Bill allows for a regulation to be made. It is intended that this regulation will govern procedural steps to be taken in relation to consultation with notifiers, including the time frames within which consultation must take place.

PART 3—AMENDMENT OF *CHILDREN'S COMMISSIONER AND CHILDREN'S SERVICES APPEALS TRIBUNAL ACT 1996*

Clause 5 sets out the purpose of part 3.

Clause 6 omits the inaccurate reference to "schedule 2" inserting instead the words "the schedule".

Clause 7 amends section 24 of the *Children's Commission and Children's Services Appeals Tribunal Act 1996* to clarify that the Children's Commissioner can convene a conference between the parties as part of his investigation of a complaint. The purpose of such a conference would be to provide an opportunity for the direct exchange of information and to facilitate the resolution of the matters under dispute if possible.

Clause 8 amends section 76 (Confidentiality) of the *Children's Commission and Children's Services Appeals Tribunal Act 1996* so that confidentiality of personal information is strengthened.

Sub-clause 8(1) recognises that information within a case file document may often relate to more than one person. It ensures that the right to

confidentiality of each of the persons is maintained.

Sub-clause 8(2) inserts a provision which prohibits the publication of any identifying information given under to the Children's Commissioner under the *Children's Services Act 1965*. "Publication" means giving public access, for example through the media or other public forums. This clause specifically protects the privacy of all children mentioned in the information, notifiers, and other persons to whom the information relates, for example family members.

Clause 9 establishes that a document given to the Children's Commissioner under the *Children's Services Act 1965* cannot be made the subject of a Freedom of Information application made to the Children's Commission. Any Freedom of Information application would need to be made through the Department of Families, Youth and Community Care as the holders of the original file. This clause ensures that the resources of the Children's Commission will not have to be deployed in responding to applications under the *Freedom of Information Act* when the same material can be accessed through the Department of Families, Youth and Community Care.

Clause 10 amends the schedule (Dictionary) of the *Children's Commission and Children's Services Appeals Tribunal Act 1996* to add to the list of legislation under which children's services have been delivered. Acts which preceded current legislation have been listed to clarify the role of the Children's Commissioner in investigating complaints arising from the delivery of services in the past, under Acts which have since been repealed.