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**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

CHILDREN'S SERVICES (AMENDMENT) BILL 1994

Explanatory Memorandum

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Outline

The Children's Services (Amendment) Bill 1994 ("the Bill") amends the *Children's Services Act 1986* ("the Act") by transferring responsibility for certain functions, relating to the protection of children, from the Community Advocate to the Director of Family Services.

Children's Services Act 1986

The Act regulates the provision of services to children, and includes provisions for the protection of children who are at risk of abuse or are otherwise in need of care. Responsibility for the protection of children pursuant to the Act is primarily split between the Director of Family Services ("the Director"), whose office is established pursuant to section 7 of the Act and the Community Advocate (established pursuant to section 4 of the *Community Advocate Act 1991*).

Under Part V of the Act it is the Community Advocate who is required to be notified concerning children in need of care, and who is authorised to institute, or be heard in, proceedings relating to such children.

However, in practice, it is the Director who carries out investigations relating to such cases, provides continuing assessment of the cases, implements strategies for the protection of the children involved and otherwise manages such cases.

This has resulted in uncertainty among those working in the child protection field, concerning with whom they should deal in matters of child protection, with the result that the efficient delivery of child protection services has been impeded.

Children's Services (Amendment) Bill 1994

The Bill amends the Act to consolidate the responsibility for child protection in the office of the Director by amending the Act to the effect that it is the Director who is required to be notified in respect of children in need of care and who is authorised to institute, and be heard in, proceedings relating to such children.

The amendments should assist workers in the child care and protection field by eliminating confusion concerning which statutory office holder should be notified concerning children in need of care.

The amendments also ensure that the Community Advocate is notified concerning particular actions taken under the Act, including the making of applications in respect of children by either the Director or another person. This reflects the Community Advocate's continuing role in monitoring the provision of services for the protection of children.

The Bill includes savings and transitional provisions to enable actions which have been commenced by the Community Advocate, prior to the commencement of the amendments, to be continued by the Director.

Revenue implications

There are no revenue implications in the Bill.

Details of the Bill are included in the Attachment.

FORMAL PROVISIONS

Short title and commencement

Clause 1 and 2 are formal provisions relating to the short title and commencement of the Bill, respectively.

Interpretation

Clause 3 is an interpretation provision establishing what is meant by references, in the Bill, to "the Principal Act".

AMENDMENTS

Director to provide assistance

Clause 4 amends section 8 of the Act, which sets out duties of the Director, by expanding the description of the Director's duties to include promoting the protection and care of children.

Childrens Services Council

Clause 5 amends section 13 of the Act which provides for the constitution of the Childrens Services Council ("the Council").

The amendment to subsection 13(6) enables the Director or the Community Advocate, rather than only the Community Advocate, to convene meetings of the Council in the absence of the Chairperson of the Council.

The amendment to subsection 13(12) enables any member of the Council, other than the Chairperson, to nominate a person to attend a meeting of the Council, in the member's place, where the member is unable to attend.

Annual reports

Clause 6 amends section 15 of the Act, requiring the furnishing of an annual report to the Council, to the effect that it is the Director, rather than the Community Advocate, who must furnish such a report.

Standing Committee of Council

Clause 7 amends section 16 of the Act, dealing with the establishment of, membership and procedural matters in connection with, the Standing Committee of the Childrens Services Council ("the Standing Committee").

Paragraph 7(a) amends subsection 16(2) to the effect that any member of the Standing Committee may invite another person to attend a meeting of the Standing Committee.

Paragraph 7(b) amends subsection 16(3) of the Act to the effect that the Director, rather than the Community Advocate, shall be the Chairperson of the Standing Committee.

Paragraph 7(c) omits subsection 16(4) of the Act, relating to who may chair a meeting of the Standing Committee when the Chairperson is unable to do so, and substitutes a new subsection 16(4) to the effect that, where the Director is not present at a meeting of the Standing Committee, the person nominated by the Director to attend in his or her place, pursuant to new subsection 16(9), as inserted by *paragraph 7(e)*, shall chair the meeting.

Paragraph 7(d) amends subsection 16(6) of the Act to the effect that the Director, rather than the Community Advocate, may, and shall if requested by a member of the Standing Committee, convene a meeting of the Standing Committee.

Paragraph 7(e) repeals subsection 16(9) of the Act and inserts a new subsection 16(9) to the effect that any member of the Standing

Committee may nominate a person to attend a meeting of the Standing Committee in the member's place. This provision will enable the Standing Committee to be conducted at "officer level".

Functions of the Standing Committee

Clause 8 amends section 17 of the Act, setting out the functions of the Standing Committee, to the effect that it is the Director, rather than the Community Advocate, to whom the Standing Committee should make recommendations relating to whether or not an application, that a child is in need of care, should be made to the Court.

A definition of "the Court" may be found in subsection 4(1) of the Act.

Delegation

Clause 9 amends section 19 of the Act, dealing with the Director's powers of delegation.

Paragraph 19(1)(a) is removed from the Act as the exception to the power of delegation to which it relates is covered by the operation of sections 29A and 29B of the *Interpretation Act 1967*.

The provisions of paragraph 19(1)(b) are removed to the effect that the Director is no longer prohibited from delegating to a public servant the Director's powers under the Act which are exercisable by the Director in his or her capacity as a member of the Council or the Standing Committee.

Transfer of proceedings

Clause 10 amends subsection 26(1) of the Act to the effect that where the Court believes a child should be dealt with under Part V of the Act, both the Director and the Community Advocate, rather than solely the Community Advocate, should be furnished with the relevant papers or report, should the Court exercise its discretion to order that such documents be furnished.

Clause 10 also amends subsection 26(3) of the Act to the effect that where the Court adjourns a matter pursuant to subsection 26(2), in addition to the prosecutor, the child to whom the matter relates and the Community Advocate, the Director may request that the matter be set down again for hearing.

Power to apprehend under-age children

Clause 11 amends subsection 28(3) of the Act to the effect that where a child is apprehended by a police officer, pursuant to subsection 28(1), and it is not practicable to take the child to one of the child's parents, it is the Director, rather than the Community Advocate, who should be notified by the police officer concerning the placing of the child in the care of a suitable person.

Revocation and variation of certain orders

Clause 12 amends section 62 of the Act dealing with applications for the revocation of certain orders, such as conditional discharge orders, probation orders and attendance centre orders, made in relation to a child.

Paragraph 12(a) amends subsection 62(1) to the effect that it is the Director or any other person, rather than the Community Advocate or any other person, who may make application to the Court for the revocation or variation of an order to which the section relates, or for the substitution of another order for an order to which the section relates.

Paragraph 12(b) amends paragraph 62(2)(a) of the Act which requires a copy of an application, where the application is made by a person other than the Community Advocate, to be served on the Community Advocate. The amendment requires that -

- where the applicant is the Director a copy of the application must be served on the Community Advocate;
- where the applicant is the Community Advocate a copy of the application must be served on the Director; and

where the applicant is a person other than the Director or the Community Advocate, a copy of the application must be served on both the Director and the Community Advocate.

Children in need of care

Clause 13 amends subsection 71(2) of the Act by replacing the reference to the Community Advocate with a reference to the Director. This amendment is consequential on amendments to sections 73, 74, 75, 76 and 78 which provide for the Director, rather than the Community Advocate, to receive and record notifications in respect of children in need of care and to institute proceedings in relation to such children.

Where person apparently a child

Clause 14, similarly, amends section 72 of the Act consequentially on the amendments to sections 73, 74, 75, 76 and 78 of the Act.

Proceedings in respect of children in need of care

Clause 15 amends section 73 of the Act, dealing with procedures which may be followed where it appears to an authorised person that a child is in need of care.

Paragraph 15(a) amends subsection 73(3) to require that an authorised person notify both the Director and the Community Advocate, rather than only the Community Advocate, where a child is taken into custody pursuant to the section.

Paragraph 15(b) amends subsections 73(4) and (5) to the effect that it is the Director, rather than the Community Advocate, who is required to record particulars of notifications pursuant to subsection 73(3).

Children in hospital

Clause 16, similarly, amends section 74 of the Act, dealing with procedures which may be followed where it appears to an authorised person that a

child who is in hospital is in need of care and a direction relating to the child is given, by the authorised person, for the detention of the child.

Paragraph 16(a) amends subsection 74(3) to require that an authorised person notify both the Director and the Community Advocate, rather than only the Community Advocate, where such a direction is given.

Paragraph 16(b) amends subsections 74(4) and (5) to the effect that it is the Director, rather than the Community Advocate, who is required to record particulars of notifications pursuant to subsection 74(3).

Direction for release of child

Clause 17 amends section 75 of the Act, dealing with directions for the release of a child in respect of whom a notification has been made pursuant to section 73 or 74 of the Act.

Paragraph 17(a) amends subsection 75(1) to the effect that it is the Director, rather than the Community Advocate, who may direct that a child, in respect of whom he or she has received a notification pursuant to section 73 or 74, as amended by this Bill, be released.

Paragraph 17(b) further amends subsection 75(1) to the effect that where the Director does not direct that a child in respect of whom such a notification has been received, be released, the Director shall notify, in addition to a magistrate - the Community Advocate, of certain particulars and circumstances relating to the child. The amendment requires that notification be made "as soon as practicable", rather than "forthwith".

Paragraph 17(c) inserts new subsection (1A) into section 75, requiring that where the Director decides, before the expiry of a period of 48 hours from the taking into care of a child or the ordering of the detention of a child in hospital, to release the child, the Director must not direct that the child be released until the Director has notified the Community Advocate.

Paragraph 17(d) amends subsection 75(4) which permits a magistrate to act under subsection 75(3), on information provided to the magistrate by the Community Advocate, to the effect that the magistrate may act under subsection 75(3) based on information provided by the Director, rather than the Community Advocate.

Paragraph 17(e) inserts new subsection 75(4A) which requires that before the Director provides information to a magistrate for the purposes of subsection 75(3) the Director must notify the Community Advocate of his or her intention to do so.

Paragraph 17(f) amends subsection 75(5) to require that where a child, a parent or person who has custody of the child applies to a magistrate to be heard, the magistrate must hear the Director, as well as the Community Advocate and the applicant.

Paragraph 17(g) amends subsection 75(6) consequentially upon the amendment effected to subsection 75(1) by *paragraph 17(a)*.

Application to Court for detention order

Clause 18 amends section 76 of the Act, requiring the making of enquires into the welfare of a child, and enabling the making of an application for an order in respect of a child, detained on the authorisation of a magistrate.

Paragraphs 18(b), (c) and (d) amend the section to the effect that it is the Director, rather than the Community Advocate, who must make such enquires and may make application to the Court for an order, under the section.

Paragraphs 18(a) and (e) amend the section to require that before the Director makes an application pursuant to the section the Director must notify the Community Advocate of his or intention to do so.

Application for a declaration that a child is in need of care

Clause 19 amends section 78 of the Act which enables application to be made to the Court for a declaration that a child is in need of care. The amendment is to the effect that it is the Director, rather than the Community Advocate, who may make such an application.

Child care conference

Clause 20 amends section 82 of the Act, which enables the Court to direct that a conference be convened to consider the welfare of a child, and includes certain provisions relating to the conduct of such a conference.

Paragraph 20(a) amends subsection 82(1) to the effect that it is the Director, rather than the Community Advocate, who the Court may direct to convene a conference.

Paragraph 20(b) inserts new subsection 82(1A) which requires that where the Court directs the Director to convene such a conference the Court must notify the Community Advocate of that fact.

Paragraph 20(c) amends subsection 82(2) to the effect that the Director, rather than the Community Advocate, shall attend and preside at such a conference.

Paragraph 20(d) inserts new subsections (2A), (2B) and (2C).

New subsection 82(2A) provides that where the Community Advocate is notified of a conference, pursuant to new subsection (1A), the Community Advocate is entitled to attend the conference to which the notification relates.

New subsection 82(2B) enables the Director to request the Community Advocate to convene a conference to consider the welfare of a child, notwithstanding that the Court may have ordered the Director to convene such a conference.

New subsection 82(2C) provides that the persons who may attend such a conference include the child, if the Court so orders, a parent of the child, a person who may be concerned with the welfare of the child and, with the leave of the Court, a barrister or solicitor acting for one of the foregoing.

Paragraph 20(e) amends subsection 82(3), consequentially on the amendments effected by *paragraphs 20(a) and (c)*.

Applications by other persons

Clause 21 amends section 87 of the Act enabling persons, other than the Community Advocate, to seek leave to make an application, under section 78, with respect to a child.

The amendments effected by *paragraphs 21(a), (b) and (e)* are consistent with the amendments to section 78, to the effect that it is the Director, rather than the Community Advocate, who may apply to the Court for a declaration that a child is in need of care.

The amendments require that a potential applicant consult with the Director, rather than the Community Advocate, prior to seeking leave to make an application and that the Court must hear the Director, rather than the Community Advocate in relation to such an application.

The amendments effected by *paragraphs 21(c) and (d)* require that where a person makes an application under section 78, pursuant to section 87, both the Director and the Community Advocate must be served with a copy of the application and each may be heard in relation to the application.

Review of orders on application

Clause 22 amends section 88 of the Act, providing for an application to be made for a review of an order made under section 80, to the effect that it is the Director or any other person, rather than the Community Advocate or any other person, who may make such application.

Service of applications for review

Clause 23 amends section 90 of the Act to the effect that where an application is made pursuant to section 88 or section 89 for a review of an order of the Court, the Director must be served with a copy of the application.

The purpose of this amendment is to ensure that where an application is made by a person other than the Director, pursuant to section 88, or an application is made by the Community Advocate, pursuant to section 89, the Director is made aware of the application.

Procedure at hearing

Clause 24 amends section 93 of the Act, dealing with procedures at hearings under Part V of the Act.

The amendments are to the effect that the Court may hear submissions from, in addition to those persons already listed in the subsection - the Director, and that the Director may be represented by a barrister or solicitor.

Procedure where child voluntarily enters a place of safety

Clause 25 amends provisions of section 102 of the Act, requiring the notification of particular persons where a child enters a place of safety, to the effect that it is the Director, rather than the Community Advocate, who must be notified that a child has entered a place of safety and it is the Director, rather than the Community Advocate, who must make enquires concerning the welfare of such a child and who must notify a parent of the child that the child is in a place of safety.

Notification of children in need of care and of child abuse

Clause 26 amends section 103 of the Act dealing with notifications concerning children in need of care and children suspected to be the victims of child abuse.

Subsections 103(1) and (2) are amended to the effect that such notifications should be made to the Director, rather than the Community Advocate.

Record of notifications

Clause 27 amends section 104 of the Act, requiring the maintenance of records of notifications pursuant to section 103, consequentially on the amendments to section 103 effected by *clause 26*.

Protection of persons making notifications

Clause 28 amends section 105 of the Act, which protects persons who make notifications pursuant to section 103, consequentially upon the amendments to section 103 effected by *clause 26*.

Court may direct Minister to make certain determinations

Clause 29 amends section 161 of the Act which enables the Court to direct the Minister to make certain determinations, to the effect that it is the Director, rather than the Community Advocate, who may apply to the Court for an order directing the Minister to make such a determination.

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation

Clause 30 is an interpretation provision which defines the term "commencement day", as the day on which the substantive provisions of the Bill commence, for the purposes of Part III of the Bill, comprising savings and transitional provisions.

Recommendations of Standing Committee

Clause 31 is a provision which treats a recommendation to the Community Advocate made pursuant to section 17 of the Act, before the commencement day, as if it is a recommendation made to the Director pursuant to section 17, as amended by the Bill.

Applications pending

Clause 32 enables an application made by the Community Advocate, before commencement day, to be treated as if it were an application made by the Director, under the Act, as amended.

Orders and directions

Clause 33 enables a reference to the Community Advocate, in an order or direction made by the Court, before commencement day, to be read as a reference to the Director. This will permit the Director to carry out, or otherwise comply with, such orders or directions.