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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CHILDREN'S SERVICES (AMENDMENT) BILL 1991

E X P L A N A T O R Y M E M O R A N D U M

(CIRCULATED BY AUTHORITY OF MR TERRY CONNOLLY, M.L.A.
MINISTER FOR HOUSING AND COMMUNITY SERVICES)

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CHILDREN'S SERVICES (AMENDMENT) BILL 1991

OUTLINE

This Bill makes amendments to the Children's Services Act 1986 to enable more smooth functioning of the Act, to greater protect the welfare of children and to bring the A.C.T. more into line with practices interstate, and in particular N.S.W., in the treatment and interstate transfer of young offenders.

FINANCIAL CONSIDERATIONS

The proposal for an Official Visitor will involve a nil or minimal cost (up to a maximum of \$4 000 per annum), given the scope for the appointment of a voluntary functionary and/or the sharing of the visitation role across areas eg adult corrections, mental health etc.

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CLAUSE NOTES

Short Title

Clause 1 provides that the short title of the proposed Act is the Children's Services (Amendment) Act 1991.

Principal Act

Clause 2 stipulates that "Principal Act" in this Act means the Children's Services Act 1986.

Interpretation

Clause 3 amends section 4 of the Principal Act by:

- revising the definition of "agreement" to include an agreement under section 69B;
- providing a new definition of "custody";
- substituting the term "custody" for "care" in the existing definition of "residential order";
- substituting a new definition of "Director";
- inserting a definition of "Official Visitor"; and
- expanding the definition of "supervision order" so as to include, within the categories of possible supervisor, such person as may be designated by the Director, from time to time.

Director of Family Services

Clause 4 amends section 7 of the Principal Act by substituting a new sub-section (1) : the effect of this is to retitle the office "Director of Welfare", "Director of Family Services", and to require the Director's appointment to be made in writing.

Childrens Services Council

Clause 5 amends section 13 of the Principal Act by:

- . providing for the Minister to appoint a member of the Children's Services Council to be the Chairperson
 - The Chairperson shall have appropriate status in the community, relevant previous experience and not be connected with a body concerned with children's welfare.
- . substituting "Chairperson" for "Chairman"; and
- . providing that a member other than the Chairperson, Director, Chief Magistrate (or nominated magistrate) or Youth Advocate may appoint a nominee to attend a meeting in his or her place. (Previously, reference had to be made to the person or body who originally nominated the member, to appoint a substitute for that member).

Functions of the Council

Clause 6 amends section 14 of the Principal Act by substituting alternative words for "money, or the furnishing of other assistance", making it clear that the Council is no longer to make recommendations concerning the granting of money. (A number of members of the Council represent service delivery agencies and, with a recommendatory role regarding money grants, the potential exists for conflicts of interest to arise).

Standing Committee of Council

Clause 7 amends section 16 of the Principal Act by:

- . substituting "Chairperson" for "Chairman"; and
- . providing that the Health or Police nominee can nominate a person to attend a meeting of the Standing Committee of the Council in his or her place. This amendment is consistent with that to subsection 13(12) above.

Insertion - Official Visitor

Clause 8 inserts after section 19 of the Principal Act sections providing for the appointment by the Minister of a person to the position of "Official Visitor" and that person's functions. The Official Visitor

- . must have appropriate qualifications or experience;
- . shall hold office for a period not exceeding 3 years and be eligible for reappointment;
- . may resign his or her office, or may have his or her appointment terminated for misbehaviour, incapacity, bankruptcy or conviction for a serious offence; and
- . shall be paid prescribed amounts or in accordance with Remuneration Tribunal determinations.

Duties

The duties of the Official Visitor are:

- . to visit and inspect shelters and institutions at least weekly;

- . to hear any complaints from children, either from the child personally or through a representative chosen by the child;
- . after investigating a complaint, or following an inspection, to make a report to the Minister and a recommendation to the Director; and
- . to furnish to the Minister an annual report (with the Minister being required to table the report before the Assembly).

Interpretation

Clause 9 amends section 29 of the Principal Act by stating that a child is not under restraint if the child is in the company of:

- . a police officer for the roadside investigation of a minor offence involving a motor vehicle; or for the purpose of a screening, breath or blood test under the Motor Traffic (Alcohol and Drugs) Act 1977; or
- . an inspector for the investigation of an offence (by a person other than the child) under the Liquor Act 1975.

This provides exemption from the section 30 limitation on the interviewing of a child by police.

The Section 30 restrictions on interviewing of a child by the police continue to apply:

- . in relation to a motor traffic offence, when the questioning is taking place otherwise than by the roadside or when the offence is a serious one; and
- . in relation to liquor offences, where the offence which has apparently been committed is by the child himself/herself, rather than by another person eg a bartender.

Limitations in respect of criminal proceedings against children

Clause 10 amends section 33 of the Principal Act to exempt a police officer from having to obtain the consent of an authorised officer in order to institute a prosecution against a child who is licenced to drive a motor vehicle and who has apparently committed an offence arising out of the use of a motor vehicle.

(The rationale for removing existing protections here is that a child, having been granted a licence to drive, has effectively conferred upon himself or herself the privilege of adulthood and should be treated as such in terms of procedures for instituting a prosecution for what amounts to a breach of that privilege. The very fact of licencing is the distinguishing factor.)

Criteria for Bail

Clause 11 amends section 37 of the Principal Act by substituting the more appropriate term "detention", for "custody".

Insertion - Private Property

Clause 12 inserts after section 38 of the Principal Act provision for the person in charge of an institution or shelter to take possession of any or all of a child's property until the child is discharged or transferred from the institution or shelter. The person in charge of an institution or shelter is required to keep a record of all property surrendered by a child and sent on to another institution or shelter.

This provision will protect the right to personal property of children detained. Such provisions are included in similar legislation in other States, and ensure that children whose property needs to be surrendered for security and other reasons are legally entitled to its return.

Arrested children: bringing before Court

Clause 13 amends section 39 of the Principal Act by substituting the more appropriate term "detention", for "custody".

Remission of matter by Supreme Court

Clause 14 amends section 46 of the Principal Act by substituting the more appropriate term "detention", for "custody".

Disposition of young offenders

Clause 15 amends section 47(1)(k) of the Principal Act to increase the maximum committal period from 6 months to 2 years.

This will enable detainees to remain in the A.C.T. in appropriate cases (that is, where the seriousness of the offence warrants a custodial sentence in excess of 6 months) rather than requiring them to be committed to an interstate institution.

Insertion - Early release

Clause 16 inserts after section 47 of the Principal Act provision for slightly earlier release from detention of a child whose period of detention expires on a Saturday, Sunday or public holiday.

This will ensure the child's better access to a range of important support services such as social security and accommodation, upon release.

Probation orders: entry and inspection by supervisor

Clause 17 amends section 56 of the Principal Act by substituting the more appropriate term "custody", for "care, custody and control".

Attendance centre orders

Clause 18 amends section 57 by:

- . inserting a provision requiring the court to specify the total number of hours the child will be required to attend in compliance with an attendance centre order, such number being 8 or a multiple of 8 (not exceeding 104). The maximum period during which the attendance is required must be specified and cannot be more than 1 year.
- . substituting "temporary control" for "custody".

Insertion

Clause 19 inserts the following after Part IV of the Principal Act:

PART IVA - INTERSTATE TRANSFER OF OFFENDERS

Division 1 - Interstate transfer generally

Interpretation

Section 69A deals with interpretation. A number of expressions are defined, including "person responsible" and "young offender". In general terms, "young offender" is a person who is subject to an interstate or local court order because of having committed an offence while under the age of 18. Under the Part, arrangements may be made for the interstate transfer of a young offender where this will meet his or her family, educational, employment, medical or other needs. A "person responsible" may apply for the transfer.

Minister may enter into general agreements

Section 69B provides for general agreements between the Minister for Housing and Community Services and the interstate Minister or authorised person, for the interstate transfer of young offenders where the other State has enacted legislation dealing with the interstate transfer of young offenders.

Director may make arrangements

Section 69C provides that, where an agreement is in force, the Director may make arrangements with specified persons for the interstate transfer (into the Territory or out of the Territory) of a particular offender or for rectifying any error in such an arrangement.

Arrangement for transfer from the Territory

Section 69D stipulates the pre-requisites for a transfer of a young offender from the Territory. Such transfer shall not be made unless:

- . the young offender or a person responsible for the young offender applies for the transfer;
- . the Director considers that the transfer is appropriate, considering factors such as the place of residence of relatives and the present and future needs of the young offender;
- . the young offender has been given independent legal advice of the effect of the arrangement;
- . the young offender consents to the arrangement or the Director determines that the particular circumstances indicate the arrangement should be made without such consent; and
- . the Director is satisfied there is no appeal pending against an order of a court to which the young offender is subject.

The Director may ask the young offender, or a person responsible for the young offender, for any necessary information and may refuse to make an arrangement if information is not supplied within a time specified by the Director.

Arrangements not to be made if facilities not adequate

Section 69E states that an arrangement for the transfer of a young offender to the Territory shall not be made unless the Director is satisfied that adequate facilities exist in the Territory.

Provisions to be contained in each arrangement

Section 69F stipulates the provisions to be contained in an arrangement for the transfer of a young offender from or to the Territory. In particular it shall:

- . be in writing;
- . specify each court order of the sending State to which the young offender is subject;
- . state how each order shall operate;
- . state the maximum time of operation;
- . state any entitlement to a reduction in detention and how that entitlement would operate; and
- . state the equivalent a non-parole period, where appropriate.

The operation of the arrangement in the receiving State shall be as similar as possible to how it would have operated in the sending State.

Transfer order

Section 69G requires the Director to make a written transfer order to provide for delivery of the young offender to the escort and to authorise the escort for the purpose of the transfer.

Transfer to the Territory in the temporary control of an escort

Section 69H gives an escort of a young offender being transferred to the Territory authority to deal with the young offender, while in the Territory, for purposes of the arrangement.

Escape from temporary control of young offender being transferred from the Territory

Section 69J provides for a penalty for a young offender (the subject of an existing order committing him or her to an institution) who escapes or attempts to escape from temporary control, while being transferred from the Territory to the receiving State through another jurisdiction.

Division 2 - Transfer of sentence or order

Transfer from the Territory of sentence or order

Section 69K cancels any previous sentence or order imposed by a court of the Territory on the young offender who has been transferred from the Territory to a State under an arrangement, with effect from the time the young offender arrives in that State, with specified exceptions (such as for the purpose of enabling the exercise of any right of appeal to a Territory court).

Transfer to the Territory of sentence or order

Section 69L provides for the operative transfer of any sentence, order or direction imposed on the young offender by a court of the sending State and specified in the arrangement, to the Territory, from the time the young offender arrives in the Territory.

Division 3 - Transit through the Territory

Lawful custody for transit through the Territory

Section 69M provides that the Director may authorise the superintendent of an institution to receive a young offender being transferred through the Territory from one State to another under an agreement. A superintendent so authorised may detain the young offender for such time as the escort requests, upon receiving from the escort written authority for the transfer.

The section also authorises the escort of such a young offender to take and keep temporary control of the young offender while in the Territory.

Escape from temporary control

Section 69N provides for the apprehension, detention in temporary control at an institution and the subsequent deliverance of the young offender to the temporary control of an escort ("escort" being given an extended meaning here by subsection 69N(6)) in situations where the young offender has escaped and is apprehended, or has attempted to escape, while being transferred through the Territory from one State to another.

Search warrants

Section 69P provides for:

- the application for a search warrant by an escort, a police officer or any officer;
- a magistrate to issue a search warrant authorising the escort, a Police Officer or an officer to inspect specified premises for evidence of the young offender who has escaped and to apprehend the young offender at the premises; and
- a Police Officer, who may accompany the escort or officer executing the search warrant, to take reasonable steps to assist in the apprehension of the young offender.

DIVISION 4 - Revocation of transfer orders

Revocation of transfer order on escape from temporary control

Section 69Q provides that the Children's Court may revoke a transfer order on application by the Director that the young offender, while being transferred, has escaped or attempted to escape or committed any other offence.

Revocation of transfer order by Director

Section 69R deals with revocation of a transfer order by the Director: the Director may revoke a transfer order at any time before the young offender is delivered in the receiving State into the temporary control specified in the arrangement. The Director may make a further arrangement with the receiving State for the return of the young offender to the Territory.

Reports

Section 69S provides that the Director may consider reports from any person responsible for a young offender or any person who has the custody, temporary control, care or supervision of a young offender in the Territory or in a State. Any such reports relating to a Territory young offender may be sent interstate to a Minister of a State with whom there is an agreement or to an authorised person.

Children in need of care

Clause 20 amends paragraph 71(1)(c) of the Principal Act, dealing with the "care" ground of health impairment or psychological damage, by inserting references to the circumstances in which the child "has lived" or "is reasonably likely to live".

This amended provision will enable the court to make protective orders for children whose future living circumstances are reasonably likely to place them "at risk", or to prevent children from being returned to an "at risk" situation even though they are in a safe environment (eg having been removed from home to temporary foster care) at the time the application to court is made.

Direction for release of child

Clause 21 amends section 75 of the Principal Act by substituting "76" for "80" in subsection (6).

This corrects an error made in the original drafting of section 75(6). Section 75(6) deals with the release of a child from detention at the direction of the Youth Advocate or a magistrate or the expiration of 72 hours, and should include a reference to section 76 which deals with applications to Court for continued detention orders.

Application for declaration that a child is in need of care

Clause 22 amends section 78 of the Principal Act to allow the Youth Advocate to consult the Standing Committee by telephone.

Adjournment of hearing

Clause 23 amends section 81 of the Principal Act by substituting the more appropriate term "custody", for "care".

Child care conference

Clause 24 amends section 82 of the Principal Act to enable persons who attend a conference under this section to discuss matters arising from the conference in the course of their official duties. Disclosure otherwise than in accordance with the section is prohibited.

Care orders

Clause 25 amends section 83 of the Principal Act by:

- omitting provision for an order committing a child to an interstate institution; and
- substituting the more appropriate term "custody", for "care".

Residential orders and supervision orders: entry and inspection by Director etc.

Clause 26 amends section 85 of the Principal Act by substituting the more appropriate term "custody", for "care, custody and control".

Order to resolve disagreements

Clause 27 amends section 92 of the Principal Act by substituting the more appropriate term "custody", for "care".

Child care agreements

Clause 28 amends section 94 of the Principal Act by substituting the more appropriate term "custody", for "care", and omitting other references to "care".

Procedures where child voluntarily enters a place of safety

Clause 29 amends section 102 of the Principal Act to require the person in charge of a place of safety to notify a police officer or the Youth Advocate within 12 hours of a child entering the place of safety. This applies to children of 8 years or over (or apparently of that age) who do not wish their parents to be notified of their whereabouts. (Existing subsection 102(5) requires the Youth Advocate, once he has been notified under the section, to inform the child's parent that the child is in a place of safety).

The amendment will enable earlier advice as to the whereabouts of a child and alleviate the concerns of parents or guardians as to the whereabouts of their (older) children.

Notification of children in need of care and of child abuse

Clause 30 amends section 103 of the Principal Act to clarify the circumstances under which a person may make a notification.

Incidents of wardship

Clause 31 amends section 109 of the Principal Act by substituting the more appropriate term "custody", for "care".

Placements in homes etc.

Clause 32 amends section 110 of the Principal Act by:

- . substituting the more appropriate term "custody", for "care"; and
- . omitting unnecessary references to custodial rights of the person with whom the Director has placed a ward.

Visits to wards

Clause 33 amends section 112 of the Principal Act by substituting the more appropriate term "custody", for "care".

Wards from outside the Territory

Clause 34 amends section 116 of the Principal Act, dealing with interstate movements of wards, to:

- . refer to the subsistence of the legal status of interstate wards rather than the custody and control of interstate wards; and
- . make provision for Territory wards arising from court orders.

This corrects deficiencies in the original section 116 and gives effect to the policy that, where a ward moves between the Territory and another jurisdiction, wardship should be able to be shared by the Directors of Family Services in both jurisdictions - although the actual physical custody and control over the ward will be exercised only by the Director of the jurisdiction of residence.

Interpretation

Clause 35 amends section 117 of the Principal Act to reflect the fact that children in the Territory generally commence school at 5 years rather than 6 years. In the calculation of numbers of children who may be cared for by unlicensed child carers, 5 year-olds who have commenced school (not preschool) will not be included in the subparagraph 117(2)(b)(i) maximum of 4 children (although they will of course be included in the subparagraph 117(2)(b)(ii) upper limit of 8 children).

Neglect etc. of children

Clause 36 amends section 139 of the Principal Act by inserting "temporary" before "control", to achieve more uniform terminology throughout the Act.

Unauthorised removal of children

Clause 37 amends section 140 of the Principal Act by adding references to "temporary control" and "detention". The amendment ensures that the offence of "unauthorised removal" applies also to those unlawfully removing a child from a person under whose temporary control the child has been placed or by whom the child is detained.

Medical examinations and surgical operations

Clause 38 amends section 158 of the Principal Act to:

- . include hospitals as one of the places in which a child may have been placed, in order to attract the operation of the section; and
- . extend the powers of the Director of Welfare to act in the face of parental objection or without parental consent, to circumstances where a child needs to be medically examined (the Director already has the power to consent to medical treatment)

- this is essential to ensure that evidence of abuse, injury etc may be legally obtained so as to justify early protective intervention.

Restrictions on publication of reports of proceedings

Clause 39 amends section 170 of the Principal Act, by substituting a new subsection 170(1), so as to extend restrictions on publication of reports to cover not only local proceedings but also proceedings under other States' or Territories' welfare laws.

This will greater ensure the rights to privacy of children and their families who have been the subject of interstate proceedings.

Preservation of appointment

Clause 40 overcomes the necessity for the person holding office as Director of Welfare, prior to the commencement of this Act, to be reappointed "Director of Family Services" consequent upon the change in title of the office. Sub-clause (2), in its cross-reference to provisions of the Interpretation Act 1967, ensures the Minister's continued powers to do such things as varying the Director's appointment or removing the Director from office.