

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a)** to amend the Children and Young Persons (Care and Protection) Act 1998:
- (i)** to enable the Director-General of the Department of Community Services (the Director-General) and the primary care-givers for a child or young person to enter into an agreement (a parent responsibility contract) that contains provisions aimed at improving the parenting skills of the primary care-givers and encouraging them to accept greater responsibility for the child or young person, and
- (ii)** to clarify the circumstances in which the Children's Court may make orders for the purpose of giving effect to a care plan without the need for a care application under Part 2 of Chapter 5 of that Act, and
- (iii)** to enable the Children's Court to accept undertakings from certain persons in respect of a child or young person in need of care and protection even if they are not parents of the child or young person, and

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(iv) to expand the power of the Children's Court to make orders with respect to attendance by the parents of a child or young person at a therapeutic or treatment program, and

(b) to make a consequential amendment to the Children's Court Rule 2000.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Children and Young Persons (Care and Protection) Act 1998 set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendment to the Children's Court Rule 2000 set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Children and Young

Persons (Care and Protection) Act 1998

Parent responsibility contracts

Schedule 1 [2], [4], [5] and [10] insert Part and Division headings in Chapter 4 of the Children and Young Persons (Care and Protection) Act 1998 (the Act) to facilitate the insertion of a discrete Division in that Chapter containing provisions relating to parent responsibility contracts.

Schedule 1 [1] amends section 3 of the Act to insert definitions of certain expressions used in the new provisions relating to parent responsibility contracts. In particular, primary care-giver, in relation to a child or young person, is defined to mean each person who is primarily responsible for the care and control, including the day-to-day care and control, of the child or young person (whether or not that person is the person with parental responsibility or care responsibility for the child or young person). Schedule 1 [13] makes an amendment to section 71 consequential on the insertion of this definition in the Act.

Schedule 1 [9] inserts a new Division in proposed Part 3 of Chapter 4 dealing with parent responsibility contracts. The new Division contains the following provisions:

Proposed section 38A authorises the Director-General and one or more primary care-givers for a child or young person to enter into a parent responsibility contract.

The proposed section also provides:

(a) for the kinds of terms that must be included in such a contract (along with terms that may not be included), and

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(b) that a parent responsibility contract does not have effect until it is registered.

Proposed section 38B enables the Director-General, with the agreement of the other parties to a parent responsibility contract, to vary the terms of the contract (but not so as to alter its duration).

Proposed section 38C enables the Director-General to terminate a parent responsibility contract by:

(a) filing a contract breach notice with the Children's Court under proposed section 38E, or

(b) causing a notice terminating the contract to be served on each other party to the contract.

Proposed section 38D provides that:

(a) a parent responsibility contract may be used as evidence of an attempt to resolve a matter concerning a child's or young person's need for care and protection without bringing a care application in accordance with Part 2 of Chapter 5 of the Act, and

(b) a refusal by a primary care-giver for a child or young person to enter into a parent responsibility contract may also be used as evidence of an attempt to resolve a matter concerning the child's or young person's need for care and protection without bringing a care application in accordance with that Part.

The proposed section also provides that a parent responsibility contract will be a legally enforceable agreement only to the extent that the Act expressly provides.

Proposed section 38E enables the Director-General to file a contract breach notice (containing information specified in the proposed section) with the Children's Court in relation to a parent responsibility contract if:

(a) a primary care-giver for a child or young person who is a party to the contract has breached a term of the contract, and

(b) the contract authorises the Director-General to file a contract breach notice with the Children's Court for breaches of the kind committed by the primary care-giver.

The effect of duly filing a contract breach notice with the Children's Court will be:

(a) to terminate the parent responsibility contract that has been breached, and

(b) to commence a care application under Part 2 of Chapter 5 of the Act in respect of the child or young person for whom the party breaching the contract is a primary care-giver (see proposed section 61A to be inserted by Schedule 1 [11]), and

(c) to require it to be presumed for the purposes of determining the care application that the child or young person is in need of care and protection unless the presumption is rebutted by a party to the proceedings (other than the Director-General).

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Schedule 1 [9] also inserts another Division in proposed Part 3 dealing with the registration of care plans and parent responsibility contracts. Proposed section 38F in

that Division provides that a care plan or parent responsibility contract is taken to be registered with the Children's Court when it is filed with the registry of the Court without the need for any order or other further action by the Court. Proposed section 38G provides that registration does not make care plans and parent responsibility contracts court documents of the Children's Court.

Schedule 1 [11] inserts a new section 61A in the Act, which provides that the filing of a contract breach notice with the Children's Court operates as a care application by the Director-General under Part 2 of Chapter 5 of the Act. The new section makes it clear that if a care application is made by filing such a notice, references to a parent in the provisions of Part 2 of Chapter 5 relating to the making and determination of a care application in respect of a child or young person are to be read as including a reference to a primary care-giver who is a party to the parent responsibility contract concerned even if he or she is not a parent of the child or young person. The new section also provides that sections 63 (Evidence of prior alternative action) and 64 (Notification of care applications) of the Act do not apply to a care application that is made by filing a contract breach notice.

Schedule 1 [3], [6], [7] and [12] make consequential amendments.

Orders to give effect to care plans only by consent

Schedule 1 [8] replaces section 38 (3) of the Act with a new subsection that clarifies the circumstances in which the Children's Court may make orders to give effect to a care plan without the need for a care application under Part 2 of Chapter 5 of the Act. The new subsection makes it clear that such an order may be made by consent if the order is of the same kind as the Court could make in a care application that is duly made under Part 2 of Chapter 5.

Undertakings by persons other than parents

Schedule 1 [14] and [15] amend section 73 of the Act to enable the Children's Court to accept undertakings by responsible persons for a child or young person that the Court determines is in need of care and protection. A responsible person for a child or young person is defined to mean any of the following persons (other than the Director-General or the Minister):

- (a) a person having parental responsibility or care responsibility for the child or young person,
- (b) a person who is the birth mother or birth father of the child or young person (whether or not the person has parental responsibility or care responsibility for the child or young person),
- (c) a person who is a primary care-giver for the child or young person (whether or not the person has parental responsibility or care responsibility for the child or young person).

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Currently, the power to accept undertakings that is conferred by section 73 of the Act is limited to undertakings from parents. Section 3 of the Act defines a parent to be a person having parental responsibility for the child or young person. The term parental responsibility is itself defined by section 3 to mean all the duties, powers, responsibilities and authority which, by law, parents have in relation to their children.

Orders requiring attendance at therapeutic or treatment programs

Schedule 1 [16] amends section 75 of the Act to enable the Children's Court to order the parent of a child or young person to attend a therapeutic program relating to sexually abusive behaviours or any other kind of therapeutic or treatment program.

Currently, section 75 is limited to the making of orders concerning the attendance of a child or young person at a therapeutic program relating to sexually abusive behaviours.

Schedule 1 [17] and [18] make consequential amendments to section 75.

Savings and transitional provisions

Schedule 1 [19] amends clause 1 of Schedule 3 to the Act to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [20] inserts a new Part in Schedule 3 to the Act containing savings and transitional provisions consequent on the enactment of the proposed Act. In particular, the new Part provides that the amendment made to section 38 of the Act by Schedule 1 [8] to the proposed Act extends to proceedings before the Children's Court that were pending (but not finally determined) immediately before the commencement of the amendment. The new Part also provides that a care plan that was duly registered immediately before the commencement of proposed section 38F (as inserted by the proposed Act) is taken to have been duly registered for the purposes of that section.

Schedule 2 Consequential amendment of Children's Court Rule 2000

Schedule 2 makes a consequential amendment to clause 20 of the Children's Court Rule 2000. Clause 20 requires care applications to be in a particular form. The amendment will ensure that

compliance with this form is not necessary if the care application is made by means of filing a contract breach notice.