

CHILDREN AND YOUNG PERSONS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Children and Young Persons Act 1974.

Clause 2: Subclause (1) enables the Police member of a Children's Board to be appointed by a commissioned officer of Police. At present that member must be appointed by the Commissioner of Police.

Subclause (2) enables an honorary Community Officer to be appointed by the Secretary for Maori Affairs to be a member of a Children's Board. At present the member appointed by the Secretary for Maori Affairs must be an officer of the State services.

Subclause (3) enables an honorary Community Officer to receive fees and allowances for his work on a Children's Board.

Clause 3 amends, as from the commencement of the principal Act, the description of Maori Welfare Officers. They are now described as Community Officers.

Clause 4 inserts a new section 19A which prohibits publication of any report of proceedings at any meeting of a Children's Board except by leave of the Board.

Clause 5 amends section 25 of the principal Act. The amendment allows a child of or over the age of 10 years to be charged with murder or manslaughter. Any such charge is to be dealt with as if the charge were being brought against a young person. This means, among other things, that the preliminary hearing of the charge will take place before a Children and Young Persons Court.

Clause 6 substitutes a new section 26 in the principal Act. The existing section requires, in most cases, that consultation between a member of the Police and a Social Worker must take place before an information can be laid against a young person.

The new section—

- (a) Requires a member of the Police to be a party to the consultation only where the prosecution is initiated by a member of the Police. In other cases the informant or a person acting on his behalf will be required to consult with a Social Worker before the prosecution is commenced;
- (b) Dispenses with the need for consultation where—
 - (i) The young person was, at the time of the alleged offence, on probation; or
 - (ii) The alleged offence is a breach by the young person of obligations imposed on him by a sentence of periodic detention;

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- (c) Allows a Maori Community Officer to take part in any such consultation even though the young person is not a Maori or a descendant of a Maori.

Clause 7 improves the arrangement of the provisions in section 27 (2) of the principal Act.

Clause 8 allows the Court, in its discretion, to appoint a barrister or solicitor to assist the Court or to represent a child or young person, in any proceedings under the Act. The existing provision confers this power only in respect of complaint proceedings under section 27 of the Act.

Clause 9 amends section 30 (2) of the principal Act. This section allows the Court, on certain grounds, to exclude a child or young person from the hearing of a complaint. One of the grounds is that the proceedings are, or appear likely to be of such a nature as to cause a deterioration in the relationship between the child or young person and a parent. Under the proposed amendment the likelihood of a deterioration in the relationship between the child or young person and his guardian or the person for the time being having the care of the child or young person may also be taken into account (except where that guardian or person is the Director-General of Social Welfare or other officer of the Department of Social Welfare).

Clause 10: Subclause (1) corrects an error. Section 36 of the principal Act relates to orders which may be made in respect of a young person. As presently worded paragraph (g) of subsection (1) of that section inadvertently refers to a child.

Subclause (2) inserts a new paragraph (ia) in section 36 (1). The new paragraph provides that where a charge is proved against a young person who was under the guardianship of the Director-General at the time when the offence was committed, the Children and Young Persons Court may order that young person to undertake community work.

Subclause (3) effects amendments that are consequential on the insertion, by *subclause (2)*, of the new paragraph (ia) in subsection (1).

Clause 11 protects a school principal or head teacher from civil or criminal action in respect of a report provided in good faith and with reasonable care for a Children and Young Persons Court under section 41 (5) of the principal Act.

Clause 12 inserts a new subsection (1) in section 42 of the principal Act. This section deals with access by parents, counsel, children, and young persons to reports furnished by Social Workers. The amendment extends the section so that it will deal as well with access to reports furnished by school principals and head teachers. In addition the new subsection refers expressly to the overriding provisions of subsection (5) of section 42. This subsection (5) authorises the Court to order that any report made available to a solicitor or to counsel be not given or shown to the person for whom he is acting.

Clause 13 inserts new section 42A which gives Children and Young Persons Courts the power to require a child or young person in respect of whom complaint or information proceedings have been taken to undergo a psychiatric examination.

Subsection (1) of the new section gives such a Court the authority to require such an examination at any stage of the complaint or information proceedings.

Subsection (2) of the new section provides that any adjournment, remand, or reference on bail for the purpose of obtaining a psychiatric report shall not exceed 14 days.

Subsection (3) of the new section enables the Court, on the recommendation of a medical practitioner or a psychiatrist, to order that a child of or over the age of 10 years or a young person be detained in a psychiatric hospital for up to one week so that a psychiatric assessment may be carried out.

Subsection (4) requires the assessment to be carried out by a medical practitioner holding a specialist psychiatric appointment or being on the register of specialists in the speciality of psychological medicine or psychiatry.

Subsection (5) of the new section requires the Court to have regard to the psychiatric report before a finding is made. Section 42 of the principal Act which deals with access to reports is to apply to psychiatric reports obtained under the new section.

Subsection (6) of the new section provides that nothing in the section operates to prevent treatment of any child or young person during the period of his detention in a psychiatric hospital pursuant to an order under *subsection (3)* of the new section where consent to the treatment is given—

- (a) In the case of a young person of or over the age of 16 years, by that young person; or
- (b) In any other case, by a guardian or other appropriate person in the absence of a guardian.

Subsection (7) of the new section requires service of a copy of every order made under the section on a parent or guardian or person for the time being having the care of the child or young person.

Subsections (8) and (9) provide for the detention and release of any child or young person to whom an order under *subsection (3)* relates.

Clause 14 gives the Court authority to attach additional conditions to a supervision order placing a child under the supervision of a Social Worker. The additional conditions, which are conditions that can already be applied to a young person, are conditions that:

- (a) The child not associate with specified persons;
- (b) The child undergo any specified medical, psychological, or psychiatric examination;
- (c) Affect the child's place of residence, employment, or earnings;
- (d) Require the child's attendance at centres that conduct educational, recreational, instructional, cultural, or work programmes, or sporting activity;
- (e) Require the child to undertake community work;
- (f) Are necessary to ensure the child's good conduct or to prevent the commission by him of any offence.

Clause 15 makes it clear that the Director-General has authority, in appropriate cases to arrange psychiatric treatment for, or to seek admission to a psychiatric hospital for, any child or young person committed to his guardianship by Court order. Unless a reception order is made however, psychiatric treatment cannot be given unless consent to the treatment is given—

- (a) In the case of a young person of or over the age of 16 years, by the young person; or
- (b) In any other case, by a guardian or other appropriate person in the absence of a guardian.

Clause 16 amends section 58 (1) of the principal Act so that a supervision order in respect of a young person as well as a supervision order in respect of a child will continue in force pending the outcome of an appeal against the order to the Supreme Court.

Clause 17 clarifies the definition of the term "home" in section 84 of the principal Act. The amendments effected by this clause make it clear that the definition is comprehensive and that premises are a "home", for the purposes of Part IX of the principal Act, if it is intended to accommodate or provide for 5 or more persons from one or more of the categories mentioned in that definition.

Clause 18 inserts a new section 103A in the principal Act. The new section enables a child or young person who is serving a sentence of imprisonment to be detained under that sentence not only in accordance with the Penal Institutions Act 1954 but also in any residence (within the meaning of the Children and Young Persons Act 1974) for the time being approved for the purpose by the Minister of Social Welfare with the concurrence of the Minister of Justice.

Hon. Mr Walker

CHILDREN AND YOUNG PERSONS AMENDMENT

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A BILL INTITULED

An Act to amend the Children and Young Persons Act 1974

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title**—This Act may be cited as the Children and Young Persons Amendment Act 1977, and shall be read together with and deemed part of the Children and Young Persons Act 1974* (hereinafter referred to as the principal Act).

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2. Children's Boards—(1) Section 13 (2) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) A member of the Police appointed by a commissioned officer of Police:” 5

(2) Section 13 (2) of the principal Act is hereby further amended by repealing paragraph (c), and substituting the following paragraph:

“(c) An officer of the State services, or an honorary Community Officer (under section 5 (1) of the Maori Welfare Act), appointed by the Secretary for Maori Affairs:” 10

(3) Section 13 (7) of the principal Act is hereby amended by inserting, after the words “of this section”, the words “or who, being honorary Community Officers, hold office under paragraph (c) of that subsection”. 15

3. Community Officers—The principal Act is hereby amended, as from the commencement of the 1st day of April 1975,—

(a) By omitting from subsections (6) and (7) of section 15 the word “Welfare” wherever it appears, and substituting in each case the word “Community”: 20

(b) By omitting from section 26 (2) the word “Welfare” in the first place where it appears, and substituting the word “Community”. 25

4. Proceedings not to be published—The principal Act is hereby amended by inserting in Part II, after section 19, the following section:

“19A. No person shall publish any report of proceedings at any meeting of a Children's Board except by leave of the Board which heard the proceedings; and the proviso to subsection (1) of section 24 of this Act and subsections (2) and (3) of that section shall apply accordingly with such modifications as are necessary.” 30

5. Jurisdiction of the Children and Young Persons Court— 35
(1) Section 25 (2) of the principal Act is hereby amended by inserting, after the word “offence”, the words “(other than murder or manslaughter)”.

(2) Section 25 of the principal Act is hereby further amended by inserting, after subsection (2), the following subsection: 40

“(2A) Where any child who is of or over the age of 10 years is charged with murder or manslaughter the preliminary hearing of the charge shall, subject to section 34 of this Act, take place before a Children and Young Persons Court and the provisions of this Act shall apply accordingly as if that child were a young person.”

6. Consultations in respect of young persons—(1) The principal Act is hereby amended by repealing section 26, and substituting the following section:

10 “26. (1) Where a young person is alleged to have committed an offence and the offence is such that if the young person is charged he will be required pursuant to section 25 (3) of this Act to be brought before a Children and Young Persons Court then, subject to subsections (2) and (3) of this section, unless the young person has been arrested, no information in respect of that offence shall be laid until consultation on the matter has taken place between—

“(a) The informant or a person acting on his behalf; and

“(b) A Social Worker.

20 “(2) Notwithstanding anything in paragraph (a) of subsection (1) of this section:

“(a) Where the informant is a member of the Police acting in his capacity as such, the consultation required by subsection (1) of this section shall, subject to subsection (4) of this section, be consultation between a Social Worker and a member of the Police for the time being designated by name or office by a commissioned officer of Police to carry out consultations under subsection (1) of this section on behalf of members of the Police either generally or in an area that includes the area in which the offence is alleged to have been committed:

35 “(b) Where the informant (not being a member of the Police acting in his capacity as such) is an officer or employee of a Department of State, acting in his capacity as such, a person shall be deemed to have been authorised by the informant to take part in the consultation on behalf of the informant if that person was, at the time of the consultation, designated by name or office by the head of the Department to carry out such consultations on

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behalf of officers and employees of the Department either generally or in an area that includes the area in which the offence is alleged to have been committed:

“(c) Where the informant is an officer or employee of a body corporate, acting in his capacity as such, a person shall be deemed to have been authorised by the informant to take part in the consultation on behalf of the informant if that person is designated by name or office by the body corporate to carry out such consultations on behalf of officers and employees of the body corporate either generally or in an area that includes the area in which the offence is alleged to have been committed.

“(3) Consultation under subsection (1) of this section shall not be necessary where—

“(a) At the time when the offence is alleged to have been committed the young person was for the time being under the supervision of a probation officer under or by virtue of the Criminal Justice Act 1954; or

“(b) The alleged offence is an offence against any of the provisions of section 21 (1) of the Criminal Justice Amendment Act 1962.

“(4) A Community Officer appointed under section 4 of the Maori Welfare Act 1962 may be present at, and may take part in, any consultation under subsection (1) of this section.”

(2) Nothing in this section shall require further consultation in respect of any alleged offence if the consultation required by section 26 of the principal Act (as it stood immediately before the commencement of this Act) has taken place before the commencement of this Act.

7. Proceedings in respect of children or young persons in need of care, protection, or control—(1) Section 27 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) A child or young person shall be in need of care, protection, or control within the meaning of this Act if—

“(a) His development is being avoidably prevented or neglected; or

“(b) His physical or mental health, or his emotional state, is being avoidably impaired or neglected; or

“(c) He is being, or is likely to be, neglected or ill-treated; or

“(d) His parent or guardian or the person for the time being having care of him,—

- “(i) Has failed or is failing to exercise the duty and care of parenthood; or
“(ii) Is unable or unwilling, to carry out the duty and care of parenthood; or
5 “(e) He is exhibiting behaviour which—
“ (i) Is beyond the control of his parent or guardian or the person for the time being having care of him; and
10 “(ii) Is of such nature and degree as to cause concern for his well-being or his social adjustment or for the public interest; or
“(f) He has behaved in a manner which—
“ (i) Was beyond the control of his parent or guardian or the person for the time being having care of him; and
15 “(ii) Was of such nature and degree as to cause concern for his well-being or his social adjustment or for the public interest; or
“(g) His parent or guardian or the person for the time being having care of him is unable to provide, or is failing to provide, adequate training and control; or
20 “(h) Being of school age within the meaning of the Education Act 1964, he is persistently failing to attend school without reasonable cause; or
25 “(i) Being a child of or over the age of 10 years, he has committed an offence or offences the number, nature, or magnitude of which indicates that—
30 “(i) He is beyond the control of his parent or guardian or the person for the time being having care of him; and
“(ii) It is in the interests of his future social training, or in the public interest, that a finding be made in terms of this section of this Act.”
35 (2) Section 27 (3) of the principal Act is hereby consequentially amended by omitting the words “paragraph (f)”, and substituting the words “paragraph (i)”.
(3) Section 29 (2) of the principal Act is hereby consequentially amended by omitting the expression “section
40 27 (2) (f)”, and substituting the expression “section 27 (2) (i)”.

8. Special provisions with regard to evidence, and appointment of counsel or solicitor—Section 29 (3) of the principal Act is hereby amended by omitting the words “on a complaint under section 27 of this Act”, and substituting the words “under this Act”. 5

9. Attendance at hearing—Section 30 (2) of the principal Act is hereby amended by adding to paragraph (c) the words “or a guardian or the person for the time being having care of the child or young person (not being the Director-General or other officer of the Department)”. 10

10. Young persons charged with offences—(1) Section 36 (1) (g) of the principal Act is hereby amended by omitting the word “child”, and substituting the words “young person”. 15

(2) Section 36 (1) of the principal Act is hereby further amended by inserting, after paragraph (i), the following paragraph: 15

“(ia) If at the time when the offence was committed the young person was under the guardianship of the Director-General, order that the young person reasonably and effectively undertake work in the interests of the community for such period as the Court thinks fit under the supervision of an organisation approved by the Director-General either generally or in the particular case.”. 20 25

(3) Section 36 of the principal Act is hereby consequentially amended—

(a) By omitting from the proviso to subsection (1) the expression “(i)”, and substituting the expression “(ia)”. 30

(b) By inserting in subsection (6), after the expression “(i)”, the expression “(ia)”,

(c) By inserting in subsection (8), after the words “paragraph (i)”, the words “paragraph (ia)”,

11. Magistrate to obtain and consider report of Social Worker—Section 41 of the principal Act is hereby amended by inserting, after subsection (5), the following subsection: 35

“(5A) Any principal or head teacher who supplies any report under subsection (5) of this section shall not be under any civil or criminal liability in respect thereof unless he has acted in bad faith or without reasonable care.” 40

12. **Access to reports**—(1) Section 42 of the principal Act is hereby amended by repealing the heading and subsection (1), and substituting the following heading and subsection:

5 “42. **Access to reports**—(1) Subject to subsection (5) of this section, a copy of any report furnished under subsection (3) or subsection (5) of section 41 of this Act shall be shown to the parent of the child or young person and to any solicitor or counsel appearing for the child, young person, or parent, and the Court may order that a copy of any such report be
10 shown to the child or young person.”

(2) Section 42 (2) of the principal Act is hereby amended by omitting the words “the report”, and substituting the words “any such report”.

15 (3) Section 42 (3) of the principal Act is hereby amended by omitting the words “the Social Worker’s”, and substituting the words “any such”.

13. **Psychiatric reports**—The principal Act is hereby amended by inserting, after section 42, the following heading and section:

20 “*Psychiatric Reports*

“42A.—(1) If, at any stage in any proceedings under section 27 or section 34 of this Act, it appears to the Court to be expedient that a psychiatric report on the mental condition of the child or young person to whom the proceedings relate
25 should be available to the Court, the Court may, if it thinks fit,—

30 “(a) Order that the child or young person attend for psychiatric examination by a medical practitioner holding a specialist psychiatric appointment or being registered on the register of specialists in the speciality of psychological medicine or psychiatry; or

35 “(b) Where the child or young person is, or is to be, held in the custody of the Director-General or detained in any residence, order that the child or young person undergo a psychiatric examination at the place at which he is, or is to be, so held or detained.

40 “(2) Any adjournment, remand, or release on bail or any extension thereof, for the purpose of obtaining a report pursuant to subsection (1) of this section, shall not exceed 14 days, but may otherwise be on such conditions as the Court thinks fit.

“(3) If, at any stage in any proceedings under section 27 or section 34 of this Act,—

- “(a) A medical practitioner has certified or given evidence to the effect that a psychiatric assessment of any child of or over the age of 10 years or of any young person (being a child or young person involved in the proceedings) is requisite and it is practicable for such assessment to be carried out outside a psychiatric hospital; or
- “(b) A psychiatric report (whether obtained pursuant to subsection (1) of this section or otherwise) recommending detention of any such child or young person in a psychiatric hospital for further observation is available to the Court—

the Court may, if it considers it expedient, make an order for the detention and examination of that child or young person in a psychiatric hospital within the meaning of the Mental Health Act 1969 for such period, not exceeding one week, as the Court thinks fit.

“(4) The examination required by an order made under subsection (3) of this section shall be carried out by a medical practitioner holding a specialist psychiatric appointment or being registered on the register of specialists in the speciality of psychological medicine or psychiatry.

“(5) Where an order has been made under subsection (1) or subsection (3) of this section, any report furnished to the Court pursuant to the order shall be considered by the Court before a finding is made that a charge or complaint has been proved or, as the case may be, any order is made pursuant to section 31 or section 36 of this Act, and the provisions of section 42 of this Act shall apply with respect to every such report.

“(6) Nothing in this section shall operate to prevent the treatment of any child or young person during the period of his detention in a psychiatric hospital pursuant to an order under subsection (3) of this section where consent to the treatment is given—

“(a) In the case of a young person of or over the age of 16 years, by that young person; or

“(b) In any other case,—

“(i) By a guardian of the child or young person;

or

5 “(ii) If there is no guardian in New Zealand or no such guardian can be found with reasonable diligence or is capable of giving consent, by a person in New Zealand who has been acting in the place of a parent; or

10 “(iii) If there is no person in New Zealand who has been so acting, or if no such person can be found with reasonable diligence or is capable of giving consent, by a Magistrate or the Director-General.

“(7) A copy of every order made under this section shall be served on the parent or guardian or the person for the time being having care of the child or young person to whom the order relates.

15 “(8) An order made under subsection (3) of this section in respect of any child or young person is sufficient authority—

20 “(a) For his detention by a Social Worker or any member of the Police for the purpose of ensuring compliance with the order:

“(b) For his transfer from a residence to a psychiatric hospital:

“(c) For his detention and examination in a psychiatric hospital:

25 “(d) For his return to any residence in which he was detained at the time of his transfer to a psychiatric hospital.

30 “(9) Any child or young person who is detained in a psychiatric hospital pursuant to an order made under subsection (3) of this section may be released or may be returned to a residence, as the case may require, notwithstanding that the period for which he was ordered to be detained has not expired, if the Superintendent of that psychiatric hospital certifies in writing that the assessment of
35 the child or young person has been completed or that no further observation of the child or young person is required.”

14. Power of Court to impose additional conditions—

Section 47 of the principal Act is hereby amended by adding the following subsection:

40 “(3) The Court in placing a child under the supervision of a Social Worker may, in its discretion, impose, in addition to any other conditions that may be imposed, any of the conditions referred to in paragraphs (d) to (i) of subsection (1) of this section.”

15. Psychiatric treatment—The principal Act is hereby amended by inserting, after section 49, the following section:

“49A. (1) The Director-General, or any Social Worker authorised by him generally or specially in that behalf, may, in respect of any child or young person placed under the guardianship of the Director-General by order of the Court under section 31 or section 36 of this Act, do, in any case where the Director-General considers it appropriate, one or more of the following things: 5

“(a) Make with the superintendent of any hospital within the meaning of the Mental Health Act 1969 arrangements of the kind mentioned in section 15 (1) of that Act: 10

“(b) Sign a request under section 19 of the Mental Health Act 1969: 15

“(c) Apply under section 21 of the Mental Health Act 1969 for a reception order.

“(2) Where the Director-General or a Social Worker makes arrangements or signs a request pursuant to paragraph (a) or paragraph (b) of subsection (1) of this section, the child or young person to whom those arrangements or that request relates shall not receive psychiatric treatment in any psychiatric hospital or licensed institution by virtue of those arrangements or that request unless consent to the treatment is given— 20 25

“(a) In the case of a young person of or over the age of 16 years, by that young person; or

“(b) In any other case,—

“(i) By a guardian of the child or young person; or 30

“(ii) If there is no guardian in New Zealand or no such guardian can be found with reasonable diligence or is capable of giving consent, by a person in New Zealand who has been acting in the place of a parent; or 35

“(iii) If there is no person in New Zealand who has been so acting, or if no such person can be found with reasonable diligence or is capable of giving consent, by a Magistrate or the Director-General.” 40

16. Effect of notice of appeal on guardianship order or supervision order—Section 58 (1) of the principal Act is hereby amended by inserting, after the words “or of any order placing a child”, the words “or young person”.

5 **17. Registration of homes**—Section 84 of the principal Act is hereby amended—

- (a) By omitting from the definition of the term “home” the word “includes”, and substituting the word “means”:
- 10 (b) By omitting from the definition of the term “home” the words “more persons who are”, and substituting the words “more of the following persons, namely”:
- 15 (c) By omitting from paragraph (a) of the definition of the term “home” the word “or” where it appears at the end of that paragraph.

18. Detention of children and young persons serving sentences of imprisonment—(1) The principal Act is hereby amended by inserting, after section 103, the following section:

20 “103A. Notwithstanding anything in the Penal Institutions Act 1954, any child or young person who is serving a sentence of imprisonment may be detained under that sentence not only in accordance with the Penal Institutions Act 1954 but

25 also in any residence for the time being approved for the purpose by the Minister of Social Welfare with the concurrence of the Minister of Justice; but the provisions of the Penal Institutions Act 1954 and of the Criminal Justice Act 1954 shall continue to apply, with such modifications as are necessary, to any such child or young person who is detained for

30 the time being in any such residence.

(2) Section 104 (1) of the principal Act is hereby amended by inserting, after the words “section 43”, the words “or section 103A”.