

# DEPARTMENT OF CHILD, YOUTH AND WHANAU SERVICES BILL

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AS REPORTED FROM THE SOCIAL SERVICES COMMITTEE

## COMMENTARY

### **Recommendation**

The Social Services Committee has examined the Department of Child, Youth and Whanau Services Bill and recommends that it be passed with the amendments shown in the bill.

### **Conduct of the examination**

The Department of Child, Youth and Whanau Services Bill was referred to the Social Services Committee on 1 June 1999. Submissions were invited and received from the following organisations and agencies: the Public Service Association (PSA), the Māori Women's Welfare League, the New Zealand Council of Christian Social Services (NZCCSS), the Māori Language Commission, the Office of the Commissioner for Children and Te Puni Kōkiri. A submission was also received from the Auckland City Council. Evidence was heard from the PSA. The hearing of evidence took thirty minutes and our consideration took approximately one and a half hours.

We received advice from the Department of Social Welfare.

This commentary sets out the details of our consideration of the bill and the major issues we addressed.

### **Background**

The bill is required to facilitate the creation of a Department of Child, Youth and Whanau Services on 1 October 1999. The Department of Child, Youth and Whanau Services will have as its goal the objective of the Strengthening Families Strategy to improve outcomes for children and young people from "at risk" and "high risk" families.

The benefits of establishing a new department are seen as:

- a more distinct policy/delivery split

- an improved balance between preventive and remedial services
- the application of a Strengthening Families Strategy framework
- improved collaboration with other social sectors, non-Government sector providers, Māori and local communities
- a focus on securing operational efficiencies.

### **Purpose of the bill**

From 1 October 1999, it is the Government's intention that the Children, Young Persons and Their Families Agency (CYPFA), a unit of the Department of Social Welfare, will become a stand-alone Department of Child, Youth and Whanau Services (the new department).

CYPFA was created on 1 January 1999 through the integration of the Children, Young Persons and Their Families Service (CYPFS) and the New Zealand Community Funding Agency. This brought together the functions of community funding, care and protection of children and young people, youth justice and adoption services.

It is intended that the new department will take over all the direct delivery and purchase of service functions of CYPFA. The new department will be a key agency in the delivery of the Strengthening Families Strategy.

This bill is required to ensure that staff, and the responsibilities that will be performed by the new department, are transferred and in place when it becomes operational from 1 October 1999. All current staff in CYPFA, except the General Manager, will transfer to the new department. The new department itself will be established by Order in Council. The bill does not make changes to policy and is machinery in nature.

### **Clause by clause analysis of the bill as introduced**

#### **Clause 1—Short Title and commencement**

The Government has chosen 1 October 1999 as the date for the new department to commence operations. Transitional and preparatory work is aimed at this date.

*Part 1—Preliminary provisions and transfer of employees*

#### **Clause 2—Interpretation**

Clause 2 defines certain terms used in the bill. In particular, the term “chief executive” is required because the administration of the new department and the relevant legislation will move from the Department of Social Welfare. At present, all references in the Children, Young Persons, and Their Families Act 1989 in terms of functions, powers and duties are to the “Director-General” (of Social Welfare). The change in definition would mean that the chief executive of the new department would become responsible for all relevant decision making. Policy responsibility for the Children, Young Persons, and Their Families Act 1989 will remain with the Director-General of Social Welfare.

#### **Clause 3—Application of employment contracts**

Clause 3 is intended to smooth the staff transfer process from the Department of Social Welfare to the new department. This transfer will take effect under section 61A of the State Sector Act 1988.

Where employees of the Department of Social Welfare are transferred to the new department, in every case their conditions of employment must be no less

favourable than those of their existing jobs, and their employment contracts would transfer as if made in respect of the new department. This avoids the necessity to negotiate new employment contracts with staff who are transferred, especially where they would be reconfirmed—that is, transferred to perform the same duties at the same location. However, the clause contains the flexibility to negotiate changed terms and conditions on a no-less-favourable basis where there is a change to an individual employee’s duties or location.

**Clause 4—Employment to be continuous**

Clause 4 ensures that the provisions of employment contracts relating to continuity of employment will not be affected where employees transfer from the Department of Social Welfare to the new department.

**Clause 5—Transfer not sufficient to entitle employee to redundancy or severance payment**

Clause 5 is a standard provision where State employees are moving from one State agency to another. It clarifies that if an employee retains their job, albeit in a changed sense, they will not receive a redundancy payment.

*Part 2—Transfer of obligations and functions, and other matters*

**Clause 6—Transfers of contracts and leases not to give rise to claims**

Clause 6 is a standard provision to protect the Crown from claims for technical breach of contracts or leases based on the change of party to the contract. In a legal sense it is the Crown that contracts with outside parties in respect of government departments. Nevertheless, the contracts in question generally refer to “Her Majesty the Queen acting by and through the (for example) Director-General of Social Welfare”. This clause precludes any possibility of a breach of contract action in a situation such as this where a department changes.

**Clause 7—Continuation of existing proceedings**

Clause 7 is a standard transitional provision to ensure that where proceedings of any type have been initiated in relation to the Department of Social Welfare or the responsible Minister that relate to the functions transferring to the new department, those proceedings can be completed in relation to the new department. The clause also ensures that contingent liabilities transfer to the new department.

**Clause 8—Savings relating to brands, logos and marks, etc**

Clause 8 is a protective provision to ensure no dispute about the use of brands, logos, marks, and so on, that may have been in use prior to the establishment of the new department and that may still be used by the new department.

**Clause 9—Saving of certain appointments**

Clause 9 ensures that the establishment of the new department does not affect existing appointments under the Children, Young Persons, and Their Families Act 1989.

**Clause 10—References to functions being transferred to responsible department**

Clause 10 is intended to ensure a smooth transition from the Department of Social Welfare to the new department. Where instruments or documents of the type referred to in the clause contain references to the Director-General of Social Welfare, any designated unit of the Department of Social Welfare, or any social

worker employed by the Department of Social Welfare, those references are in most circumstances to be read as references relating to the new department.

#### **Clause 11—Transfer of contracts and leases**

Clause 11 enables the Director-General of Social Welfare, in certain circumstances, to transfer to the new department specified responsibilities for the administration of contracts and leases that should appropriately lie with the new department. The clause applies to contracts and leases that relate to more than one unit of the Department of Social Welfare—for example, the contract relating to its voice and telephone network.

#### **Clause 12—Amendments to other enactments**

Clause 12, by means of a schedule of amendments, proposes a large number of amendments to a series of Acts and regulations.

The amendments would largely change references in the affected Acts (principally, the Children, Young Persons, and Their Families Act 1989) from the Director-General of Social Welfare to the chief executive of the new department. The amendments would also change references to the Department of Social Welfare to references to the new department.

A small number of amendments relate to functions currently administered within CYPFA that would be transferred from the Department of Social Welfare to other departments or bodies.

The schedule also proposes some other minor technical amendments—for example, to update references to repealed provisions.

#### **Clause 13—Consequential repeals**

Clause 13 sets out a range of provisions that would need to be consequentially repealed as a result of amendments already made. Some amendments relate to references to the “Director-General of Social Welfare” in existing legislation and there is a need to change these to “chief executive”.

#### **Schedule**

The schedule contains a list of enactments that would be amended by the bill.

### **Issues arising in submissions and committee’s consideration**

#### **Proposed name of the new department**

The proposed name of the new department was raised as an issue in a number of submissions. The Māori Language Commission commented on the use of the word “whanau” in the title. The commission does not advocate the use of Māori words in isolation in English titles, and would prefer either an all-Māori title or both a Māori and English title, to be used separately.

The Office of the Commissioner for Children submitted that the mixing of Māori and English words in the title is potentially confusing, and would prefer the use of one language or the other.

Te Puni Kōkiri stated that the use of the word “whanau” and the creation of the new department give rise to substantial and fundamental concerns that impact directly on Māori. It expressed the view that the use of both an English and a Māori title would overcome problems associated with mixed language use. It suggested that the placement of the word “whanau” in an English language title is both linguistically inappropriate and likely to engender critical feedback from Māori, and that the use of the Māori word “whanau” as a synonym for the

English word “family” is incorrect as it assumes that distinctive Māori ways of thinking and looking at the world can be paralleled in English.

The PSA noted that the use of the word “whanau” could be seen as stigmatising Māori and conveying the message that only Māori children require the services of the new department.

The Māori Women’s Welfare League provided definitions of “whanau”. It submitted that the word means more than just a family and its use in the Short Title and content of the bill should reflect these definitions.

The majority of our time in consideration was spent in discussing the use of the word “whanau” in the Short Title of the bill. Cabinet’s view in deciding the Short Title of the bill was that “whanau” is now a word in common usage, and widely used by New Zealanders to describe family and extended family. The Children, Young Persons, and Their Families Act 1989, which is the principal statute that would be administered by the new department, makes extensive use of the word “whanau” in many of its provisions.

After consideration of the submissions we received, and discussion within our caucuses, we decided that it is preferable to keep the Short Title of the bill wholly in English, with both English and Maori names for the new department.

Therefore we recommend that the bill be amended accordingly.

#### **Establishment of a new department**

The NZCCSS questioned whether the structural change that the bill would enact is necessary to achieve the desired outcomes. It noted that the creation of another new department would mean yet another change in social services delivery structures; that constant change makes it difficult for providers to build good relationships with government agencies; and that it takes time for government officials to build up expertise. The PSA also questioned the need for structural change. The Auckland City Council supports focusing on operational efficiencies, provided that services are not cut and staff numbers are maintained or improved to ensure quality service.

The establishment of the new department represents the culmination of a series of changes within the welfare sector that commenced in 1992. The most recent major change was the establishment of the Department of Work and Income. It is the Government’s intention that the establishment of the new department will contribute to a more distinct policy/delivery split; an improved balance of preventative and remedial services; improved collaboration with other social sectors; and a focus on securing operational efficiencies.

We note that CYPFA is already established as a business unit within the Department of Social Welfare and that voluntary sector and other social service agencies will not be dealing with any new agency after 1 October 1999.

#### **Principal objectives of the bill**

The PSA questioned the match of the objectives in the bill with the objectives of the Children, Young Persons, and Their Families Act 1989. The PSA contended that if the government agency responsible for administering the Children, Young Persons, and Their Families Act 1989 has objectives that differ from the Act, there are concerns about the Government’s ability to meet its obligations under the Act. Both the PSA and the Auckland City Council expressed concern that by focusing on “at risk” groups, the wellbeing of others could be ignored. While the Auckland City Council is supportive of the Strengthening Families Strategy, it noted that in

Auckland, for example, there are particular social service needs in relation to the immigrant and refugee populations.

The list of aims to be achieved by the strategies adopted by the new department that is set out in the bill's explanatory note is not intended to be a comprehensive list, but only a summary of the significant aims. The department's focus on "at risk" and "high risk" families does not mean that other groups would be ignored. The new department would have the same responsibilities under the Children, Young Persons, and Their Families Act 1989 as the present CYPFA.

The State is also funding a wide range of community-based organisations that complement the role of the State. There is a need for good referral and communication systems to ensure that this arrangement works effectively.

### **Consultation with Māori**

Te Puni Kōkiri noted that it had not been consulted on the use of the word "whanau" in the name of the new department, and that the work of the new department requires consultation with Māori. It has been concerned about the perceived gap in outcome measures, targets and indicators in relation to Māori, both in the proposal for the new department and also within the Strengthening Families Strategy, which does not provide for the area of whanau well-being.

We consider that Māori should have been consulted about the use of the word "whanau" in the Short Title of the bill before the bill was drafted, and we recommend to the Government that there be an ongoing process of consultation with Māori.

### **Transfer of staff**

The PSA pointed out that its involvement in a constructive way in the transfer of staff is important in the establishment of the new department. The PSA also submitted that the legislation used in the creation of the Department of Work and Income should not be mirrored as this new department has differing circumstances to the case of the Department of Work and Income, where one department was established from three units of two different departments.

A staff transfer process will be discussed with the PSA, and the object of the staff transfer provisions in the bill is to facilitate the transfer of staff to the new department in a way that does not disadvantage either the staff or the Crown. The provisions in the bill therefore reflect the views of the PSA except where a change in duties or location necessitates a negotiated change to the terms and conditions of employment. The provisions suggested by the PSA are not in effect different to the provisions in clauses 3 to 5 of the bill and section 61A of the State Sector Act 1988. The differences are minor.

Therefore we do not recommend that the bill be amended.

### **Residual matters**

The PSA noted that the definition of "responsible department" is unusual as it places responsibility for the administration of the Children, Young Persons, and Their Families Act 1989 at the discretion of the Prime Minister.

The wording of the definition is deliberate and is not unusual. Modern Parliamentary Counsel Office drafting style adopts the practice of assigning responsibility for administration to the department designated by the Prime Minister. A number of Acts now use this formula instead of specifying the name of the relevant department. This practice resulted from advice from the

Legislation Advisory Committee and avoids the need for legislative amendment when ministerial portfolios are altered.

**Consequential amendments**

The schedule of the bill proposes amendments to a number of statutes by changing the designation of the chief executive of the Department of Social Welfare from “the Director-General of Social Welfare” to “chief executive” from 1 October 1999. However, some further statutory references need to be amended.

We recommend that the provisions of the Immigration Act 1987, referred to in the schedule to the bill, be amended to reflect changed provisions in that Act that will come into force on 1 October 1999 as a result of the passing of the Immigration Amendment Act 1999.

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KEY TO SYMBOLS USED IN REPRINTED BILL  
AS REPORTED FROM A SELECT COMMITTEE

*Struck Out (Unanimous)*

Subject to this Act,

Text struck out unanimously

*New (Unanimous)*

Subject to this Act,

Text inserted unanimously

*(Subject to this Act,)*

Words struck out unanimously

Subject to this Act,

Words inserted unanimously



*Hon Roger Sowry*

**DEPARTMENT OF CHILD, YOUTH AND (WHANAU)  
FAMILY SERVICES**

ANALYSIS

Title	8. Savings relating to brands, logos, marks, etc
1. Short Title and commencement	9. Saving of certain appointments
1A. Maori name of Department of Child, Youth and Family Services	10. References to functions being transferred to responsible department
<b>PART 1</b>	11. Transfer of contracts and leases
PRELIMINARY PROVISIONS AND TRANSFER OF EMPLOYEES	12. Amendments to other enactments
2. Interpretation	13. Consequential repeals
3. Application of employment contracts	
4. Employment to be continuous	<b>SCHEDULE</b>
5. Transfer not sufficient to entitle employee to redundancy or severance payment	Enactments Amended
<b>PART 2</b>	Part 1
TRANSFER OF OBLIGATIONS AND FUNCTIONS, AND OTHER MATTERS	Amendments to Acts
6. Transfers of contracts or leases, not to give rise to claims	Part 2
7. Continuation of existing proceedings	Amendments to Regulations

A BILL INTITULED

An Act—

- 5 (a) To provide for the transfer of staff and resources from the Department of Social Welfare to the new Department of Child, Youth and (Whanau) Family Services; and
- 10 (b) To facilitate the transfer of the administration of the Children, Young Persons, and Their Families Act 1989 and functions under certain other enactments; and
- (c) To amend related enactments and to provide for related matters

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Department of Child, Youth and (Whanau) Family Services Act 1999.

(2) This Act comes into force on **1 October 1999**.

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*New (Unanimous)*

**1A. Maori name of Department of Child, Youth and Family Services**—The name of the Department of Child, Youth and Family Services is, in the Maori language, Te Tari Awhina i te Tamaiti, te Rangatahi, tae atu ki te Whanau.

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## PART 1

### PRELIMINARY PROVISIONS AND TRANSFER OF EMPLOYEES

**2. Interpretation**—In this Act, unless the context otherwise requires,—

“Chief executive” means, subject to any enactment, the chief executive of the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989: 15

“Contract” includes a licence: 20

“Designated party” means any of the following:

(a) A Minister of the Crown, in his or her capacity as the Minister responsible for the administration of the Children, Young Persons, and Their Families Act 1989: 25

(b) The Director-General of Social Welfare, in his or her capacity as a person with functions under, or connected with the administration of,—

(i) The Adoption Act 1955; or

(ii) The Guardianship Act 1968; or 30

(iii) The Disabled Persons Community Welfare Act 1975; or

(iv) The Adult Adoption Information Act 1985; or

(v) The Protection of Personal and Property Rights Act 1988; or 35

(vi) The Children, Young Persons, and Their Families Act 1989; or

(vii) The Adoption (Intercountry) Act 1997:

(c) A Social Worker employed by the Department of Social Welfare, in his or her capacity as a person with functions connected with—

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(i) The Adoption Act 1955; or

(ii) The Guardianship Act 1968; or

(iii) The Adult Adoption Information Act 1985;  
or

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(iv) The Protection of Personal and Property Rights Act 1988; or

(v) The Children, Young Persons, and Their Families Act 1989:

“Designated successor” means,—

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(a) In relation to a person specified in **paragraph (a)** of the definition of the term “designated party”, the responsible Minister:

(b) In relation to the person specified in **paragraph (b)** of the definition of the term “designated party”, the chief executive of the responsible department:

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(c) In relation to a person specified in **paragraph (c)** of the definition of the term “designated party”, an appropriate Social Worker employed by the responsible department:

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“Designated unit” means any of the following units of the Department of Social Welfare:

(a) The Children, Young Persons and Their Families Agency:

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(b) The Children, Young Persons and Their Families Service (formerly called the New Zealand Children and Young Persons Service):

(c) The New Zealand Community Funding Agency:

“Premises” includes land:

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“Responsible department” means the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989:

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“Responsible Minister” means, subject to any enactment, the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989:

- “Specified right of appeal” means any of the following:
- (a) A right of appeal under section 12 or section 13A or section 20 of the Adoption Act 1955; or
  - (b) A right of appeal under section 31 or section 31B of the Guardianship Act 1968; or
  - (c) A right of appeal under section 341 or section 342 or section 347 of the Children, Young Persons, and Their Families Act 1989; or
  - (d) A right of appeal under section 20 of the Adoption (Intercountry) Act 1997:
- “Specified right of review” means a right of review under section 21 of the Disabled Persons Community Welfare Act 1975:
- “Transferred employee” means any employee of the Department of Social Welfare who transfers (in circumstances to which section 61A of the State Sector Act 1988 applies) to the responsible department.

- 3. Application of employment contracts**—(1) This section and sections 4 and 5 apply to any transferred employee.
- (2) Unless a transferred employee’s employment contract otherwise provides and subject to subsection (3), the transferred employee’s employment contract continues to apply to that employee, on and from the date the employee transfers to the responsible department, on the same terms and conditions (including the period of the contract)—
- (a) As if it were a contract that had been made in respect of the responsible department; and
  - (b) As if it were binding on both that employee and on the chief executive of the responsible department, and on any other party to that contract.
- (3) If there is a change to an employee’s duties or location arising out of his or her transfer to the responsible department, the conditions of employment of that employee may be varied by agreement to reflect that change but the conditions of employment (as so varied) must be no less favourable than those that the employee was entitled to receive under the employment contract applying to the employee at the date of the transfer.
- (4) Subsections (2) and (3) continue to apply to the conditions of employment of each transferred employee to whom this section applies until such time as any of the conditions of employment that apply under the employment contract

applying to that employee at the date of the transfer are subsequently varied (otherwise than for the purpose referred to in **subsection (3)**).

5 (5) The conditions of employment of each such transferred employee are, on and from the date of any subsequent variation to which **subsection (4)** applies, to be determined in accordance with the employment contract applying to that employee in the responsible department.

10 (6) Nothing in **subsection (2)** or **subsection (3)** continues to apply to any transferred employee who receives any subsequent appointment, whether within the responsible department or any other department.

15 **4. Employment to be continuous**—For the purposes of any provisions of a transferred employee's employment contract relating to continuity of service, that employee's transfer from the Department of Social Welfare to the responsible department is insufficient by itself to break his or her employment.

20 **5. Transfer not sufficient to entitle employee to redundancy or severance payment**—No transferred employee is entitled to receive any compensation for redundancy or any severance payment because—

- 25 (a) The position held by that employee in the Department of Social Welfare has ceased to exist; or  
(b) He or she has ceased by virtue of his or her transfer to be an employee of the Department of Social Welfare.

## PART 2

### TRANSFER OF OBLIGATIONS AND FUNCTIONS, AND OTHER MATTERS

30 **6. Transfers of contracts or leases, not to give rise to claims**—(1) No person has any claim against the Crown for breach of any contract merely because the administration of the contract or the benefit or burden of the contract is transferred (in whole or in part) to the responsible department, whether or not the person has agreed to the transfer.

35 (2) **Subsection (1)** applies whether or not the transfer involves the responsible department and its employees gaining access to any information, data, programme, intellectual property right, know-how, chattel, equipment, transmission device, or facility  
40 of the claimant or any other person.

(3) No person has any claim against the Crown for breach of any lease of any premises which are to be occupied or administered (in whole or in part) by the responsible department merely because of that occupation or administration of the premises by the responsible department, whether or not the person has agreed to the occupation or administration of the premises. 5

**7. Continuation of existing proceedings**—(1) If, before the commencement of this Act, a designated party or designated unit has initiated or become a party to any proceedings (including proceedings involving the exercise by any person of a specified right of appeal or specified right of review, in respect of the Department of Social Welfare), the proceedings may be continued, completed, and enforced by or against the designated successor. 10 15

(2) If, before the commencement of this Act, any person was entitled, or claimed to be entitled, to issue any proceedings, apply for or exercise any right of review, or to exercise any right of appeal, referred to in **subsection (1)**,—

(a) That person may, after the commencement of this Act, commence the proceedings, review, or appeal as if the designated successor were the appropriate person in respect of whom the proceedings, review, or appeal relates; and 20

(b) The provisions of **subsection (1)** apply to any such proceedings, review, or appeal commenced under **paragraph (a)** as if they had been commenced prior to the commencement of this Act; and 25

(c) No such proceedings, review, or appeal may be commenced in respect of any person other than the designated successor. 30

**8. Savings relating to brands, logos, marks, etc**—All names, brands, stamps, logos, emblems, marks, forms, and other representations or documents that were, immediately before the date of commencement of this Act, in use by the Department of Social Welfare for the purposes of 1 or more of the designated units— 35

(a) Continue to have effect in relation to anything done before that date; and

(b) May continue to be used, and are to have effect, for the purposes of the functions, duties, and powers of the responsible Minister, the responsible department, or 40

the chief executive of the responsible department under the Children, Young Persons, and Their Families Act 1989 or other appropriate enactment.

5 **9. Saving of certain appointments**—Nothing in this Act affects the appointment of any person as—

- (a) A member of a Care and Protection Resource Panel under section 428 of the Children, Young Persons, and Their Families Act 1989; or
- 10 (b) A member of a grievance panel under regulation 29 of the Children, Young Persons, and Their Families (Residential Care) Regulations 1996.

**10. References to functions being transferred to responsible department**—(1) Unless the context otherwise requires, in any regulation, rule, order, agreement, deed,  
15 instrument, application, notice, direction, contract, lease, or other document in force at the commencement of this Act, the references specified in **subsections (2) to (4)** must be read in the manner indicated in those subsections.

(2) Every reference to the Director-General of Social Welfare  
20 (or the chief executive of the Department of Social Welfare), when used in relation to 1 or more of the designated units, is a reference to the chief executive of the responsible department.

(3) Every reference to the Director-General of Social Welfare  
25 (or the chief executive of the Department of Social Welfare), when used in relation to his or her functions, duties, or powers under the Children, Young Persons, and Their Families Act 1989, is a reference to the chief executive of the responsible department.

(4) Every reference to any designated unit, where the unit is  
30 referred to in its own right and the reference does not apply to other units of the Department of Social Welfare, is a reference to the responsible department.

(5) Unless the context otherwise requires, when used in  
35 relation to the following enactments, every reference to the Department of Social Welfare is a reference to the responsible department:

- (a) The Adoption Act 1955;
- (b) The Guardianship Act 1968;
- (c) The Adult Adoption Information Act 1985;
- 40 (d) The Children, Young Persons, and Their Families Act 1989;
- (e) The Adoption (Intercountry) Act 1997.

(6) Unless the context otherwise requires, every reference to a Social Worker employed in the Department of Social Welfare, when used in relation to any enactment, is a reference to a Social Worker employed by the responsible department.

**11. Transfer of contracts and leases**—(1) The Director-General of Social Welfare may transfer to the chief executive specified responsibilities for the administration of a contract or lease or any specified benefit, or specified burden, of a contract or lease if— 5

(a) The Director-General, or the Department of Social Welfare, or the Crown acting by or through the Director-General or the department, is a party to the contract or lease; and 10

(b) The contract or lease is in force at the commencement of this Act; and 15

(c) The contract or lease relates—

(i) To the functions of the unit of the Department of Social Welfare called the Children, Young Persons and Their Families Agency; and

(ii) To the functions of any other unit of the Department of Social Welfare, or to the functions of another department, or to both. 20

(2) A transfer may be made under **subsection (1)** only if—

(a) The chief executive agrees to the transfer; and

(b) A notice in writing of the transfer is delivered to the chief executive, and to every other party to the contract or lease. 25

(3) A transfer made under **subsection (1)** is binding on every party to the contract or lease.

**12. Amendments to other enactments**—The enactments specified in the **Schedule** are amended in the manner indicated in that schedule. 30

**13. Consequential repeals**—The following enactments are consequentially repealed:

(a) Sections 23 (4) (a) (*and 27 (3) (a)*), 27 (3) (a), and 30 (a) to (c) of the Department of Social Welfare Act 1971: 35

(b) Sections 35 (1) (a) to (c) and 36 (1) (a) and (4) (a) of the Social Welfare (Transitional Provisions) Act 1990.



SCHEDULE  
ENACTMENTS AMENDED  
PART 1  
AMENDMENTS TO ACTS

Section 12

Title of Act	Amendment
1955, No. 93—The Adoption Act 1955 (R.S. Vol. 1, p. 35)	<p>By inserting in section 2, after the definition of the term “adoption order”, the following definition:</p> <p style="padding-left: 40px;">“ ‘Chief executive’ means the chief executive of the Department:”.</p> <p>By inserting in section 2, after the definition of the term “Court”, the following definition:</p> <p style="padding-left: 40px;">“ ‘Department’ means the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989:”.</p> <p>By repealing the definition of the term “Director-General” in section 2.</p> <p>By omitting from the definition of the term “Social Worker” in section 2 the words “of Social Welfare” wherever they appear.</p> <p>By omitting from the definition of the term “Social Worker” in section 2, and also from sections 7, 8, 9, and 26, the words “Director-General” wherever they appear, and substituting in each case the words “chief executive”.</p>

*New (Unanimous)*

1964, No. 32—The Family Benefits (Home Ownership) Act 1964 (R.S. Vol. 16, p. 139)	By omitting from section 3 (h) the words “Director-General of Social Welfare”, and substituting the words “chief executive”.
1964, No. 136—The Social Security Act 1964 (R.S. Vol. 32, p. 625)	<p>By omitting from section 47 the words “Director-General of Social Welfare” wherever they appear, and substituting in each case the words “chief executive of the Department of Social Welfare”.</p> <p>By omitting from section 47 (7) the words “Director-General”, and substituting the words “chief executive of that department”.</p>

*Department of Child, Youth and (Whanau)  
Family Services*

SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

PART 1—*continued*

AMENDMENTS TO ACTS—*continued*

Title of Act	Amendment
1968, No. 63—The Guardianship Act 1968 (R.S. Vol. 38, p. 613)	<p>By inserting in section 2 (1), after the definition of the term “certified copy”, the following definition:</p> <p style="padding-left: 40px;">“‘Chief executive’ means the chief executive of the Department:”.</p> <p>By inserting in section 2 (1), after the definition of the term “Court”, the following definition:</p> <p style="padding-left: 40px;">“‘Department’ means the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989:”.</p> <p>By repealing the definition of the term “Director-General” in section 2 (1).</p> <p>By omitting from the definition of the term “Social Worker” in section 2 the words “of Social Welfare”.</p> <p>By omitting from sections 10B, 10C, 25, and 29 the words “Director-General” wherever they appear, and substituting in each case the words “chief executive”.</p>
1974, No. 66—The Local Government Act 1974 (R.S. Vol. 25, p. 1)	<p>By omitting from the proviso to section 331 (2) the words “Director-General of Social Welfare”, and substituting the words “Director of Land Transport Safety”.</p>
1975, No. 9—The Ombudsmen Act 1975 (R.S. Vol. 35, p. 469)	<p>By inserting in Part 1 of the First Schedule, after the item relating to the Crown Law Office, the following item:</p> <p style="padding-left: 40px;">“The Department of Child, Youth and (Whanau) Family Services.”</p>
1975, No. 122—The Disabled Persons Community Welfare Act 1975 (R.S. Vol. 26, p. 143)	<p>By repealing the definition of the term “department” in section 2.</p> <p>By repealing the definition of the term “Director-General” in section 2, and substituting the following definition:</p> <p style="padding-left: 40px;">“‘Director-General’,—</p> <p style="padding-left: 80px;">“(a) In, or in relation to, Parts II and 2A, means the Director-General of Health:</p>

SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

PART 1—*continued*

AMENDMENTS TO ACTS—*continued*

Title of Act	Amendment
<p>1975, No. 122—The Disabled Persons Community Welfare Act 1975 (R.S. Vol. 26, p. 143)—<i>continued</i></p>	<p>“(b) In, or in relation to, Parts III and IV, means the chief executive of the Department for the time being responsible for the administration of the Social Security Act 1964:</p> <p>“(c) Otherwise, as appropriate, means that Director-General, or that chief executive, or both:”.</p> <p>By repealing the definition of the term “Minister” in section 2, and substituting the following definition:</p> <p>“ ‘Minister’, in relation to any provisions of this Act, means, subject to any enactment, the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of those provisions:”.</p> <p>By omitting from section 2 the word “purchaser” wherever it appears, and substituting in each case the word “funder”.</p> <p>By repealing the definition of the term “purchase agreement” in section 2.</p> <p>By inserting, after the definition of the term “review officer” in section 2, the following definition:</p> <p>“ ‘Service agreement’ has the meaning given to it by section 22 of the Health and Disability Services Act 1993:”.</p> <p>By repealing section 3, and substituting the following section:</p> <p>“3. <b>Administration</b>—(1) This Act is administered as follows:</p> <p>“(a) Parts II and 2A are administered in the Ministry of Health:</p>

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SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

PART 1—*continued*

AMENDMENTS TO ACTS—*continued*

Title of Act	Amendment
1975, No. 122—The Disabled Persons Community Welfare Act 1975 (R.S. Vol. 26, p. 143)— <i>continued</i>	<p>“(b) The rest of this Act is administered in the Department for the time being responsible for the administration of the Social Security Act 1964.</p> <p>“(2) The Director-General, under the general direction and control of the Minister—</p> <p>“(a) Carries out the administration of provisions of this Act; and</p> <p>“(b) Exercises all the powers conferred on the Director-General by this Act.”</p> <p>By repealing section 22 (1) (a).</p> <p>By omitting from section 22 (3) the words “Director of Social Welfare for the district in which the institution is situated”, and substituting the words “Director-General”.</p> <p>By omitting from sections 25A, 25C, and 25D the words “purchase agreement” wherever they appear, and substituting in each case the words “service agreement”.</p>

*New (Unanimous)*

1976, No. 143—The Alcoholic Liquor Advisory Council Act 1976 (R.S. Vol. 26, p. 1)	<p>By repealing paragraph (d) of section 3 (2), and substituting the following paragraph:</p> <p>“(d) The chief executive of the department for the time being responsible for the administration of the Department of Social Welfare Act 1971, or any other officer of that department nominated by the chief executive.”</p>
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SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

PART 1—*continued*

AMENDMENTS TO ACTS—*continued*

Title of Act	Amendment
<i>New (Unanimous)</i>	
1976, No. 143—The Alcoholic Liquor Advisory Council Act 1976 (R.S. Vol. 26, p. 1)— <i>continued</i>	By omitting from section 6 (2) the words “Director-General of Social Welfare”, and substituting the words “chief executive of the department for the time being responsible for the administration of the Department of Social Welfare Act 1971”. By omitting from section 6 (2) the words “Department of Social Welfare”, and substituting the word “department”.
1980, No. 94—The Family Proceedings Act 1980 (R.S. Vol. 28, p. 545)	By omitting from paragraph (a) of the definition of the term “Social Worker” in section 2 the words “Department of Social Welfare”, and substituting the words “department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989”.
<i>New (Unanimous)</i>	
1983, No. 46—The Civil Defence Act 1983	By omitting from section 19 (2) (m) the words “Director-General of Social Welfare”, and substituting the words “chief executive of the department for the time being responsible for the administration of the Department of Social Welfare Act 1971”.
1985, No. 120—The Criminal Justice Act 1985	By repealing paragraph (b) of the proviso to section 142 (4), and substituting the following paragraph: “(b) The court may remand the person in the custody of the chief

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SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

PART 1—*continued*

AMENDMENTS TO ACTS—*continued*

Title of Act	Amendment
1985, No. 120—The Criminal Justice Act 1985— <i>continued</i>	<p>executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989, if,—</p> <p>“(i) In its opinion, it is desirable to do so by reason of special circumstances; and</p> <p>“(ii) It is satisfied that the chief executive is able and willing to keep the person in custody in accordance with this section.”</p> <p>By omitting from section 142 (5), (5A), (5B), and (5C), and also from section 142A (1), the words “Director-General of Social Welfare” wherever they appear, and substituting in each case the words “chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989”.</p>
1985, No. 127—The Adult Adoption Information Act 1985	<p>By inserting in section 2, after the definition of the term “birth parent”, the following definition:</p> <p>“‘Chief executive’ means the chief executive of the Department.”.</p> <p>By repealing the definition of the term “Department” in section 2, and substituting the following definition:</p> <p>“‘Department’ means the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989.”.</p> <p>By repealing the definition of the term “Director-General” in section 2.</p>

SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

PART 1—*continued*

AMENDMENTS TO ACTS—*continued*

Title of Act	Amendment
1985, No. 127—The Adult Adoption Information Act 1985— <i>continued</i>	By omitting from the definition of the term “Social Worker” in section 2 the words “of Social Welfare”.
1987, No. 74—The Immigration Act 1987 (R.S. Vol. 33, p. 163)	By omitting from sections 5, 8, 9, 11, 12, and 12A the words “Director-General” wherever they appear, and substituting in each case the words “chief executive”. By omitting from (sections 58, 60, 70, 128, and 128B) sections 59, 62, 128, 128B, and 141B (as inserted or amended by the Immigration Amendment Act 1999) the words “Director-General of Social Welfare” wherever they appear, and substituting in each case the words “chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989”.

*New (Unanimous)*

1987, No. 106—The Social Security Amendment Act 1987 (R.S. Vol. 32, p. 834)	By omitting from section 2(4) the words “Director-General of Social Welfare”, and substituting the words “chief executive of the department for the time being responsible for the administration of the Social Security Act 1964”.
1988, No. 4—The Protection of Personal and Property Rights Act 1988	By omitting from the definition of the term “Social Worker” in section 2 the words “Department of Social Welfare”, and substituting the words “department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989”.
1989, No. 24—The Children, Young Persons, and Their Families Act 1989	By inserting, after the definition of the term “Care and Protection Resource Panel”, the following definition: “ ‘Chief executive’ means, subject to

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SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

PART 1—*continued*

AMENDMENTS TO ACTS—*continued*

Title of Act	Amendment
1989, No. 24—The Children, Young Persons, and Their Families Act 1989— <i>continued</i>	<p>any enactment, the person holding office as the chief executive of the department:”.</p> <p>By repealing the definition of the term “Department” in section 2 (1), and substituting the following definition:</p> <p style="padding-left: 40px;">“‘Department’ means the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act:”.</p> <p style="text-align: center;"><i>New (Unanimous)</i></p> <div style="border: 1px solid black; padding: 5px;"> <p>By repealing the definition of the term “Director-General” in section 2 (1).</p> </div> <p>By repealing the definition of the term “Minister” in section 2 (1), and substituting the following definition:</p> <p style="padding-left: 40px;">“‘Minister’ means, subject to any enactment, the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act:”.</p> <p>By repealing the definition of the term “psychiatric hospital” in section 2 (1), and substituting the following definition:</p> <p style="padding-left: 40px;">“‘Psychiatric hospital’ means a hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992:”.</p> <p>By omitting from paragraph (c) (ii) of the definition of the term “residence” in section 2 (1) the words “or a licensed</p>



SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

PART 1—*continued*

AMENDMENTS TO ACTS—*continued*

Title of Act	Amendment
<p>1989, No. 24—The Children, Young Persons, and Their Families Act 1989—<i>continued</i></p>	<p>institution under the Mental Health Act 1969”.</p> <p>By repealing paragraph (c) (iii) of the definition of the term “residence”.</p> <p>By repealing the definition of the term “social welfare district” or “district” in section 2 (1).</p> <p>By omitting from the definition of the term “Social Worker” in section 2 (1) the words “of Social Welfare”.</p> <p>By omitting from sections 2, 7, 34, 39, 40, 42, 43, 44, 45, 47, 48, 53, 57, 70, 78, 79, 81, 82, 84, 86, 91, 93, 94, 98, 100, 101, 103, 104, 105, 110, 111, 112, 113, 119, 121, 126, 128, 129, 132, 139, 140, 147, 152, 154, 178, 186, 191, 205, 234, 235, 236, 238, 239, 242, 251, 252, 258, 268, 269, 283, 285, 286, 298, 304, 305, 306, 307, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 335, 343, 350, 358, 361, 362, 363, 364, 365, 366, 367, 369, 370, 371, 372, 376, 377, 378, 384, 387, 388, 389, 390, 391, 394, 396, 397, 398, 399, 400, 401, 403, 404, 405, 406, 407, 408, 409, 423, 425, 427, 428, 429, 431, 446, and 447 the words “Director-General” wherever they appear, and substituting in each case the words “chief executive”.</p> <p>By omitting from section 14 (2) (c) (iii) the words “Hospital Board”, and substituting the words “hospital and health service within the meaning of the Health and Disability Services Act 1993”.</p> <p>By repealing subparagraph (v) of section 14 (2) (c), and substituting the following subparagraph:</p> <p style="padding-left: 40px;">“(v) A psychiatric hospital.”</p>

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SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

PART 1—*continued*

AMENDMENTS TO ACTS—*continued*

Title of Act	Amendment
<p>1989, No. 24—The Children, Young Persons, and Their Families Act 1989—<i>continued</i></p>	<p>By omitting from sections 104 (2) (a), 343, 350, 360 (1), and 395 the words “Director of Social Welfare for the District” wherever they appear, and substituting in each case the words “principal manager of the Department for the area”.</p> <p>By omitting from section 152 (1) (c) the words “Director of the Social Welfare District”, and substituting the words “principal manager of the Department for the area”.</p> <p>By omitting from section 266 (1) the word “District”.</p> <p>By omitting from section 356 (2) the words “Director of Social Welfare of the district”, and substituting the words “principal manager of the Department for the area”.</p> <p>By omitting from section 360 (2), (3), and (4) the words “the Director” wherever they appear, and substituting in each case the words “that principal manager”.</p> <p>By omitting from sections 373 (1) (i), 378 (1) (e), and 381 (1) the word “Director” wherever it appears, and substituting in each case the word “manager”.</p> <p>By repealing sections 457 to 467.</p> <p>By repealing sections 468 and 469.</p> <p>By repealing section 18A, and substituting the following section:  “18A. <b>Recommendation that student should attend particular school</b>—(1) The Secretary may, on the recommendation of the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989, direct the Board of a state</p>
<p>1989, No. 80—The Education Act 1989 (R.S. Vol. 34, p. 17)</p>	<p>By repealing section 18A, and substituting the following section:  “18A. <b>Recommendation that student should attend particular school</b>—(1) The Secretary may, on the recommendation of the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989, direct the Board of a state</p>

SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

PART 1—*continued*

AMENDMENTS TO ACTS—*continued*

Title of Act	Amendment
<p>1989, No. 80—The Education Act 1989 (R.S. Vol. 34, p. 17)—<i>continued</i></p>	<p>school to enrol at the school any person under 18; and in that case the Board must do so.</p> <p>“(2) No direction may be given under <b>subsection (1)</b> unless the Secretary has taken all reasonable steps to consult,—</p> <p>“(a) The person’s parents; and</p> <p>“(b) The Board of the school concerned; and</p> <p>“(c) The chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989, and any other person or organisation that, in the Secretary’s opinion, may be interested in, or able to advise on or help with, the person’s education or welfare.</p> <p>“(3) A direction under subsection (1) of this section overrides section 11M of this Act and section 5 of the Education Amendment Act 1991.”</p> <p>By omitting from section 22 (3), and also from paragraph (c) of the definition of the term “special institution” in section 92 (1), the words “Director-General of Social Welfare”, and substituting in each case the words “chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989”.</p> <p>By repealing section 22A, and substituting the following section:</p> <p>“22A. <b>Secretary may exempt from enrolment persons placed in residence or programme under Children, Young Persons, and Their</b></p>

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SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

PART 1—*continued*

AMENDMENTS TO ACTS—*continued*

Title of Act	Amendment
<p>1989, No. 80—The Education Act 1989 (R.S. Vol. 34, p. 17)—<i>continued</i></p>	<p><b>Families Act 1989</b>—(1) On an application from the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989, the Secretary may, by a certificate given to the chief executive of that department, exempt a person from the requirements of section 20 if satisfied that the requirements set out in subsection (2) have been met.</p> <p>“(2) The requirements referred to in subsection (1) are that the person—</p> <p>“(a) Has been placed—</p> <p style="padding-left: 40px;">“(i) In a residence established under section 364 of the Children, Young Persons, and Their Families Act 1989; or</p> <p style="padding-left: 40px;">“(ii) In a residential programme instituted by, and operated under contract with, the chief executive of that department where the person would otherwise be in a residence established under section 364 of that Act; and</p> <p>“(b) Will receive education services appropriate to the person’s needs.</p> <p>“(3) The Secretary may at any time revoke a certificate granted under subsection (1)—</p> <p>“(a) On notification by the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989 that the person exempted has been released</p>

SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

PART 1—*continued*

AMENDMENTS TO ACTS—*continued*

Title of Act	Amendment
1989, No. 80—The Education Act 1989 (R.S. Vol. 34, p. 17)— <i>continued</i>	<p>from a residence other than for a temporary period; or</p> <p>“(b) If the Secretary is no longer satisfied that the person exempted meets the requirements of <b>subsection (2)</b>; or</p> <p>“(c) At the request of the chief executive of that department and if satisfied that an exemption from section 20 is no longer required.</p> <p>“(4) A certificate under <b>subsection (1)</b> continues in force until revoked under this section.”</p>
1991, No. 142—The Child Support Act 1991	By omitting from section 8 (3) (a) the words “Director-General of Social Welfare”, and substituting the words “chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989”.

*New (Unanimous)*

1994, No. 164—The Income Tax Act 1994	<p>By omitting from section CC 1 (1)(a)(ii) the words “Social Security Commission”, and substituting the words “chief executive of the department for the time being responsible for the administration of the Social Security Act 1964”.</p> <p>By repealing the definition of the term “Social Security Commission” in section OB 1.</p>
1995, No. 16—The Births, Deaths, and Marriages Registration Act 1995	By omitting from section 21 (2) (d) the words “Director-General of Social Welfare”, and substituting the words “chief executive of the department for the time being responsible for the administration

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SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

PART 1—*continued*

AMENDMENTS TO ACTS—*continued*

Title of Act	Amendment
1995, No. 16—The Births, Deaths, and Marriages Registration Act 1995— <i>continued</i>	of the Children, Young Persons, and Their Families Act 1989”.
1995, No. 55—The Criminal Investigations (Blood Samples) Act 1995	By omitting from section 46 (1) the words “Director-General of Social Welfare”, and substituting the words “chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989”.
1997, No. 109—The Adoption (Inter-country) Act 1997	By inserting in section 2, before the definition of the term “Contracting State”, the following definition: “‘Chief executive’ means the chief executive of the Department.”. By inserting in section 2, after the definition of the term “Convention”, the following definition: “‘Department’ means the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989.”. By repealing the definition of the term “Director-General” in section 2. By omitting from sections 5, 7, 15, 16, 17, 18, 19, 20, 21, 22, and 23 the words “Director-General” wherever they appear, and substituting in each case the words “chief executive”. By omitting from section 22 the words “Department of Social Welfare” wherever they appear, and substituting in each case the word “department”.

SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

PART 1—*continued*

AMENDMENTS TO ACTS—*continued*

Title of Act	Amendment
<i>New (Unanimous)</i>	
1998, No. 96—The Employment Services and Integrated Support (Integrated Administration) Act 1998	By adding to section 10, the following subsection: “(5) Despite subsection (1), every reference in a reciprocal social security agreement in respect of which an Order in Council made under section 19 of the Social Welfare (Transitional Provisions) Act 1990 is in force to the Director-General of Social Welfare or to the Director-General, is to be read as a reference to the chief executive of the department for the time being responsible for the administration of the Department of Social Welfare Act 1971.”

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PART 2  
AMENDMENTS TO REGULATIONS

Title of Regulation	Amendment
The Protection of Personal and Property Rights Rules 1988 (S.R. 1988/213)	By omitting from forms PPPR.7, PPPR.10, and PPPR.12 in the First Schedule the words "within the meaning of the Department of Social Welfare Act 1971", and substituting in each case the words "employed by the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989".
The Children, Young Persons, and Their Families Rules 1989 (S.R. 1989/295)	By omitting from rule 39 (a) the words "Director of Social Welfare for the district", and substituting the words "principal manager of the Department for the area".

*New (Unanimous)*

The State Sector Order 1999 (S.R. 1999/117)	By omitting from clause 2 the word "Whanau", and substituting the word "Family".
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