

House of Representatives

Supplementary Order Paper

Wednesday, 5 July 2017

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill

Proposed amendments to SOP No 329

Carmel Sepuloni, in Committee, to move the following amendments:

Clause 38

Replace *clause 38* (page 30 to page 38) with:

38 Section 65A inserted (Purpose of information sharing and principle for information sharing decisions)

After section 65, insert:

65A Purpose of information sharing and principle for information sharing decisions

- (1) The purpose of **sections 66 to 66C** is to facilitate the gathering and sharing of information to achieve the purposes in **section 4(1)(a) to (i)**.
- (2) Persons carrying out functions under **sections 66 to 66C** must have regard to the principle that (because the well-being and best interests of a child or young person are the first and paramount consideration) the well-being and best interests of any child or young person, in general, take precedence over any duty of confidentiality owed by any person in relation to—
 - (a) the child or young person; or
 - (b) any person who is a family member of that child or young person or in a domestic relationship with that child or young person (within the meaning of section 4 of the Domestic Violence Act 1995).

38A Sections 66A to 66C inserted

After section 66, insert:

66A Definitions

In **sections 66B and 66C**,—

authorised child welfare and protection agency, in relation to any of those provisions, means a child welfare and protection agency or a class of child welfare and protection agencies, authorised to exercise powers or perform functions under the particular provision

authorised independent person, in relation to any of those provisions, means an independent person, or a class of independent persons, authorised to exercise powers or perform functions under the particular provision

information relevant to the safety or well-being of a child or young person includes information about—

- (a) a member of the family of that child or young person; or
- (b) any other person in a domestic relationship (as defined in section 2 of the Domestic Violence Act 1995) with that child or young person; or
- (c) any person who is likely to reside with the child or young person.

66B Use and disclosure of personal information relating to child or young person or classes of children or young persons

- (1) An authorised child welfare and protection agency or an authorised independent person that holds information relevant to the safety or well-being of a child or young person may—
 - (a) use that information for the purposes of—
 - (i) making or contributing to an assessment of risk or need; or
 - (ii) making or contributing to a decision or plan; or
 - (iii) executing a decision or plan; or
 - (iv) preventing a child from being subject to harm; and
 - (b) disclose that information to another authorised child welfare and protection agency or an authorised independent person if the supplier of the information reasonably believes that disclosing the information will assist the agency or independent person receiving the information to achieve any of the purposes in **paragraph (a)**.
- (2) No civil, criminal, or disciplinary proceedings shall lie against any person in respect of the disclosure or supply, or the manner of the

disclosure or supply, by that person under this Part of information concerning a child or young person (whether or not that information also concerns any other person), unless the information was disclosed or supplied in bad faith.

66C Consultation to be undertaken when information is requested or proposed to be disclosed under section 66B

If an authorised child welfare and protection agency or an authorised independent person proposes to disclose information under **section 66B**, the agency or person must, if it is practicable and appropriate to do so,—

- (a) inform the child or young person concerned, or their representative, about the proposed disclosure, including the purposes and likely recipients of any disclosure:
- (b) provide the child or young person or their representative any reasonable assistance necessary to—
 - (i) understand the nature of the proposed disclosure:
 - (ii) express their views about the proposed disclosure:
 - (iii) understand the consequences of the decision that is taken in relation to the disclosure:
- (c) take into account any view expressed about the proposed disclosure before deciding whether to disclose the information.

Explanatory note

This Supplementary Order Paper amends SOP No 329 amending the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill to replace *clause 38* with *new clauses 38 and 38A*. The information sharing provisions proposed in the Bill are fragmented, complex, and extend compulsory information sharing to unnecessary and potentially harmful lengths. The changes proposed in this Supplementary Order Paper are based on recommendations from the Privacy Commissioner to improve usability and security around information and data sharing concerning vulnerable children.

The current information sharing provisions as proposed in this Bill under *clause 38, new section 66*, are not easily practicable or interpretable, which is concerning given the range of organisations and individuals that will be practicing under this law. There are also significant concerns around the lack of consultation with relevant stakeholders, including children, families, and professionals, during the development of this Bill. The Regulatory Impact Statement that relates to the information sharing provisions in the Bill, dated September 2017, states that “there has been no engagement with non-governmental agencies and professional bodies impacted by the reforms”. This Supplementary Order Paper seeks to bring back clarity and practicability around information sharing.

**Proposed amendments to
Children, Young Persons, and Their Families (Oranga
Tamariki) Legislation Bill**

The lack of consultation, particularly on the compulsory information sharing in this Bill, may have significant unintended consequences including deterring children or families in need from seeking support. This compulsory requirement to share information can impact the trust between professionals and their clients, and fundamentally alter the use of support services or individuals.

A further amendment suggested in this Supplementary Order Paper is the inclusion of protections for those who do disclose information in good faith to promote positive information sharing in the best interests of the child.