

2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Children, Youth and Family Support)

Children and Young People Amendment Bill 2005

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(Minister for Children, Youth and Family Support)

Children and Young People Amendment Bill 2005

A Bill for

An Act to amend the *Children and Young People Act 1999*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **1 Name of Act**

2 This Act is the *Children and Young People Amendment Act 2005*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

5 *Note* The naming and commencement provisions automatically commence on
6 the notification day (see Legislation Act, s 75 (1)).

7 **3 Legislation amended**

8 This Act amends the *Children and Young People Act 1999*.

9 **4 Chapter 14**

10 *substitute*

11 **Chapter 14 Standards and standing orders**

12 **401A Definitions for ch 14**

13 In this chapter:

14 *exempt provision*—see section 403A (2).

15 *place of detention* means an attendance centre, institution, shelter or
16 other place that children and young people may be detained under
17 this Act, but does not include a remand centre.

18 **402 Standard-making power**

19 (1) The chief executive may make standards for this Act.

20 (2) The standards may make provision in relation to the following:

21 (a) the care to be provided by the chief executive for children or
22 young people for whom the chief executive has parental
23 responsibility;

1 (b) the conduct of family group conferences.

2 (3) A standard is a notifiable instrument.

3 *Note* A notifiable instrument must be notified under the Legislation Act.

4 **403 Standing order-making power**

5 (1) The Minister may make standing orders for this Act.

6 (2) The standing orders may make provision in relation to the following
7 at or in relation to places of detention:

8 (a) safety, management and good order (including security);

9 (b) welfare, health and safety;

10 (c) powers of search, including of anyone entering, leaving or
11 inside a place of detention;

12 (d) use of force;

13 (e) personal property;

14 (f) education;

15 (g) visits;

16 (h) mail and phone calls;

17 (i) medical care and examinations;

18 (j) use of technology, including video surveillance and other
19 monitoring devices;

20 (k) discipline, including penalties and the withdrawal of
21 entitlements;

22 (l) behaviour management strategies;

23 (m) anything else prescribed by regulation.

1 (3) To remove any doubt, the *Listening Devices Act 1992* does not
2 apply in relation to the use of video surveillance or other monitoring
3 devices in accordance with a standing order.

4 (4) A standing order is a disallowable instrument.

5 *Note 1* A disallowable instrument must be notified, and presented to the
6 Legislative Assembly, under the Legislation Act.

7 *Note 2* Exempt provisions are not required to be notified.

8 (5) This section expires 1 year after the day it commences.

9 **403A Standing orders—provisions about security etc**

10 (1) The Minister may, in writing, certify that—

11 (a) a stated provision of the standing orders applies to—

12 (i) the security of a place of detention; or

13 (ii) the safety of people at a place of detention; or

14 (iii) anything else prescribed by regulation; and

15 (b) the publication of the provision would be contrary to the public
16 interest.

17 (2) The certificate must state in general terms the matter to which the
18 provision (the *exempt provision*) applies.

19 (3) A certificate under subsection (2) is a notifiable instrument.

20 *Note* A notifiable instrument must be notified under the Legislation Act.

21 (4) The following provisions of the Legislation Act do not apply in
22 relation to an exempt provision:

23 (a) section 61 (Notification of registrable instruments);

24 (b) section 62 (Effect of failure to notify registrable instrument);

25 (c) section 64 (Presentation of subordinate laws and disallowable
26 instruments);

1 (d) section 65 (Disallowance by resolution of Assembly);

2 (e) section 68 (Amendment by resolution of Assembly).

3 **403B Standing orders—inspection**

4 The chief executive must ensure that a copy of the standing orders
5 (including any exempt provisions) is always available at attendance
6 centres, institutions and shelters for inspection by—

7 (a) a judge or magistrate; or

8 (b) the community advocate; or

9 (c) the human rights commissioner; or

10 (d) an official visitor; or

11 (e) the ombudsman.

12 **5 Regulation-making power**
13 **Section 417 (2) (b)**

14 *substitute*

15 (b) make provision in relation to—

16 (i) the duties of people in charge of shelters, attendance
17 centres and institutions; and

18 (ii) the health and safety (including medical examinations) of
19 children or young people, and other people, at places of
20 detention; and

21 (iii) travel and transport arrangements for children or young
22 people attending attendance centres or performing
23 community service; and

24 (iv) the discipline and security (including the use of force,
25 inspection of mail, and the use of video surveillance and
26 other monitoring devices) at or in relation to places of
27 detention; and

- 1 (v) the safety, management and good order of places of
2 detention; and
- 3 (vi) working out the periods mentioned in section 106 (4)
4 (Community service orders) and section 110 (4)
5 (Attendance centre orders).

6 **6 New section 417 (4)**

7 *insert*

- 8 (4) In this section:

9 *place of detention* means an attendance centre, institution, shelter or
10 other place that children and young people may be detained under
11 this Act, but does not include a remand centre.

12 **7 New chapter 17**

13 *insert*

14 **Chapter 17 Transitional**

15 **418 Standing orders may operate retrospectively etc**

- 16 (1) This section applies to a standing order made under section 403
17 within 28 days after the day this section commences.
- 18 (2) The standing order may provide that the standing order (or a
19 provision of the standing order) commences on a date not earlier
20 than 10 May 2000.
- 21 (3) Subsection (2) has effect despite the Legislation Act, section 76
22 (Non-prejudicial provision may commence retrospectively).
- 23 (4) The standing order has effect—
- 24 (a) as if it had been enacted by an Act; and
- 25 (b) despite anything in—

- 1 (i) this Act (other than this section); or
2 (ii) any other territory law, including the *Listening Devices*
3 *Act 1992*; but
4 (c) subject to the *Human Rights Act 2004*.

5 **Example for par (c)**

6 The standing orders are subject to the right to liberty and security of the
7 person under the *Human Rights Act 2004*, section 18.

8 *Note* An example is part of the Act, is not exhaustive and may extend,
9 but does not limit, the meaning of the provision in which it
10 appears (see Legislation Act, s 126 and s 132).

- 11 (5) Subsections (1) to (4) are laws to which the Legislation Act,
12 section 88 (Repeal does not end effect of transitional laws etc)
13 applies.

14 **419 Review of initial standing orders**

- 15 (1) In this section:

16 *initial standing orders* means the standing orders to which
17 section 418 applies.

- 18 (2) The chief executive must review the initial standing orders, and
19 report to the Minister in writing about the results of the review,
20 within 3 months after the day this section commences.

21 **420 Effect of declaration in NI2005-179 etc**

- 22 (1) In this section:

23 *relevant declaration* means the *Children and Young People*
24 *(Community Youth Justice Centre) Attendance Centre Declaration*
25 *2005 (No 1)* NI2005-179.

- 26 (2) The relevant declaration has effect, and is taken to have always had
27 effect, under this Act as if the declaration commenced on
28 5 July 2004.

- 1 (3) Block 1, section 13, in the Division of City is taken to be, and
2 always to have been, an attendance centre for this Act, section 412
3 during the period beginning on 12 November 2001 and ending on
4 4 July 2004.
- 5 (4) Block 14, section 49, in the Division of Symonston is taken to be,
6 and always to have been, an attendance centre for this Act,
7 section 412 for the period beginning on 10 May 2000 and ending on
8 11 November 2001.
- 9 (5) Block 14, section 49, in the Division of Symonston is taken to be,
10 and always to have been, an attendance centre for the *Children's*
11 *Services Act 1986*, section 157 for the period beginning on
12 self-government day and ending on 9 May 2000.
- 13 (6) Subsections (1) to (5) are laws to which the Legislation Act,
14 section 88 (Repeal does not end effect of transitional laws etc)
15 applies.

16 **421 Effect of declarations in NI2005-180 and NI2005-181**

- 17 (1) In this section:
- 18 *relevant declarations* means the following:
- 19 • the *Children and Young People (Quamby Youth Detention*
20 *Centre) Shelter Declaration 2005 (No 1)* NI2005-180
 - 21 • the *Children and Young People (Quamby Youth Detention*
22 *Centre) Institution Declaration 2005 (No 1)* NI2005-181.
- 23 (2) The relevant declarations have effect, and are taken always to have
24 had effect, under this Act as if the relevant declarations commenced
25 on 10 May 2000.
- 26 (3) The relevant declarations are taken to have also had effect, and
27 always have had effect, as if—
- 28 (a) they had been made under the *Children's Services Act 1986*;
29 and

- 1 (b) as made under that Act, they commenced on 25 March 1994
2 and ended on 9 May 2000.
- 3 (4) Subsections (1), (2) and (3) are laws to which the Legislation Act,
4 section 88 (Repeal does not end effect of transitional laws etc)
5 applies.
- 6 **422 Effect of declaration in NI2005-222**
- 7 (1) In this section:
- 8 *relevant declaration* means the *Children and Young People*
9 *(Marlow Cottage) Shelter Declaration 2005 (No 1)* NI2005-222.
- 10 (2) The relevant declaration has effect, and is taken always to have had
11 effect, under this Act as if the relevant declaration commenced on
12 10 May 2000.
- 13 (3) The relevant declaration is taken to have also had effect, and always
14 have had effect, as if—
- 15 (a) it had been made under the *Children’s Services Act 1986*; and
16 (b) as made under that Act, it commenced on 6 November 1995
17 and ended on 9 May 2000.
- 18 (4) Subsections (1), (2) and (3) are laws to which the Legislation Act,
19 section 88 (Repeal does not end effect of transitional laws etc)
20 applies.

21 **423 Effect of approval in NI1988-1**

- 22 (1) In this section:
- 23 *relevant approval* means the *Children’s Services (Attendance*
24 *Centre, Shelter and Institution) Approval 1988 (No 1)* NI1988-1.
- 25 (2) To remove any doubt and without limiting the period for which the
26 relevant approval had effect, the approval is taken always to have
27 had effect for the period beginning on self-government day and
28 ending on 24 March 1994.

1 (3) Subsections (1) and (2) are laws to which the Legislation Act,
2 section 88 (Repeal does not end effect of transitional laws etc)
3 applies.

4 **424 Effect of appointment of official visitors**

5 (1) In this section:

6 *relevant instrument* means the *Children and Young People Official*
7 *Visitor Appointment 2005 (No 1)* DI2005-89.

8 (2) To remove any doubt, the appointment of the official visitors by the
9 relevant instrument has effect, and is taken always to have had
10 effect, for the period stated in the instrument.

11 (3) Subsections (1) and (2) are laws to which the Legislation Act,
12 section 88 (Repeal does not end effect of transitional laws etc)
13 applies.

14 **424 Expiry—ch 17**

15 This chapter expires 4 months after the day it commences.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2005.

2 Notification

Notified under the Legislation Act on 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.