



AUSTRALIAN CAPITAL TERRITORY

Children's Services (Amendment) Act 1997

No. 85 of 1997

An Act to amend the *Children's Services Act 1986*

[Notified in ACT Gazette S359: 21 November 1997]

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

Short title

1. This Act may be cited as the *Children's Services (Amendment) Act 1997*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

3. In this Act, "Principal Act" means the *Children's Services Act 1986*.¹

Functions of Official Visitor

4. Section 19B of the Principal Act is amended by omitting subsections (5) and (6).

Insertion

5. After Division 3 of Part IV of the Principal Act the following Division is inserted:

"Division 3A—Transfer between institutions

Transfer directions

"62A. (1) The Director may, by instrument, direct under this section that a person be transferred from 1 institution to another institution where—

- (a) the person was committed to the first institution by order under paragraph 47 (1) (k) (whether or not the order specified that particular institution); or
- (b) the person had previously been transferred to the first institution under this Division or Part IVA.

"(2) On the application of a transferee or a person responsible for a transferee, or where a transferee is a ward, the Director may make a transfer direction if—

- (a) the Director believes on reasonable grounds that the transfer is appropriate, having regard to all the circumstances, including—
 - (i) the place or intended place of residence of the parents or other relatives of the transferee;
 - (ii) the present and future education, training or employment of the transferee;
 - (iii) the medical needs of the transferee; and
 - (iv) the safety, health and welfare of the transferee; and
- (b) except where the transferee applies for the transfer—
 - (i) the transferee consents to the transfer; or
 - (ii) the Director determines that the particular circumstances of the case indicate that the transfer should be directed without the transferee's consent.

“(3) For the purpose of deciding whether or not to make a transfer direction under subsection (2), the Director may request any necessary information from—

- (a) the transferee; or
- (b) a person responsible for the transferee.

“(4) The Director may refuse to make a transfer direction under subsection (2) if information sought under this section is not supplied within the time specified by the Director.

“(5) The Director may make a transfer direction otherwise than under subsection (2) if he or she believes on reasonable grounds that the behaviour of the transferee in the institution from which he or she is to be transferred places at risk the safety, health or welfare of other persons detained in the institution, or of the staff of the institution.

“(6) A transfer direction is sufficient authority for an officer or police officer to take the person to the institution to which he or she is to be transferred.

“(7) In this section—

‘person responsible’, in relation to a transferee, means—

- (a) a parent of the transferee;
- (b) a person who has the temporary control of the transferee (whether or not the person has the custody of the transferee); or
- (c) a person who had the temporary control of the transferee immediately before the transferee became subject to detention under this Act;

‘transfer direction’ means a direction for the transfer of a person under this section;

‘transferee’ means a person who is, or is proposed to be, the subject of a transfer direction.

Reporting of transfers

“62B. Where the Director makes a transfer direction under section 62A, the Director shall, within 14 days after making the direction—

- (a) notify the Legislative Assembly Standing Committee on Legal Affairs of the particulars of the direction; and
- (b) give a copy of the notice to the Chief Magistrate and the Community Advocate.

Temporary custody prior to transfer between institutions

“62C. (1) Where the Director makes a transfer direction under section 62A, the person who is the subject of the direction may be placed in a shelter or remand centre until he or she is transferred.

“(2) A person shall not be placed in the Belconnen Remand Centre under subsection (1) without the written approval of—

- (a) the Director; and
- (b) the Director of Corrective Services.

“(3) A person shall not be kept in a remand centre or a shelter under subsection (1) for more than 14 days without the written approval of—

- (a) the Director; or
- (b) if the person is kept in the Belconnen Remand Centre—
 - (i) the Director; and
 - (ii) the Director of Corrective Services.

“(4) A transfer direction is sufficient authority for an officer or police officer—

- (a) subject to any contrary provision in the direction—
 - (i) to take the person to a shelter or remand centre;
 - (ii) to take the person from 1 shelter or remand centre to another; and
 - (iii) to take the person from a shelter to a remand centre or from a remand centre to a shelter; and
- (b) subsequently to take the person to the institution to which he or she is to be transferred.

“(5) In this section—

‘Director of Corrective Services’ means the Director of Corrective Services under the *Periodic Detention Act 1995*.”.

Arrangements for transfer—general

6. Section 69C of the Principal Act is amended by adding at the end the following subsection:

“(2) The Director shall only make an arrangement for the transfer of a particular young offender from the Territory to a State in the circumstances referred to in section 69D.”.

Power to arrange for transfers

7. Section 69D of the Principal Act is amended—

- (a)** by omitting subsection (1) and substituting the following subsection:

“(1) On the application of a young offender or a person responsible for a young offender, or where a young offender is a ward, the Director may make an arrangement for the transfer of the young offender from the Territory to a State if—

- (a) the Director believes on reasonable grounds that the transfer is appropriate, having regard to all the circumstances, including—
 - (i) the place or intended place of residence of the parents or other relatives of the young offender;
 - (ii) the present and future education, training or employment of the young offender;
 - (iii) the medical needs of the young offender; and
 - (iv) the safety, health and welfare of the young offender;
 - (b) except where the young offender applies for the transfer—
 - (i) the young offender consents to the transfer; or
 - (ii) the Director determines that the particular circumstances of the case indicate that the transfer should be arranged without the young offender's consent;
 - (c) the young offender has been given independent legal advice about the effect of the arrangement; and
 - (d) the Director is satisfied that there is no appeal pending against an order of a court to which the young offender is subject.”;
- (b)** by inserting in subsection (2) “on an application under subsection (1)” after “State”;
- (c)** by inserting in subsection (3) “on an application under subsection (1)” after “arrangement”; and

(d) by inserting after subsection (3) the following subsection:

“(3A) The Director may make an arrangement to transfer a young offender from the Territory to a State otherwise than under subsection (1) if—

- (a) the young offender is detained in an institution;
- (b) the Director believes on reasonable grounds that the behaviour of the young offender in the institution places at risk the safety, health or welfare of other persons detained in the institution or of the staff of the institution;
- (c) the young offender has been given independent legal advice about the effect of the arrangement; and
- (d) the Director is satisfied that there is no appeal pending against an order of the court to which the young offender is subject.”.

Insertion

8. After section 69F of the Principal Act the following section is inserted:

Reporting of transfers

“69FA. Where the Director makes an arrangement for the transfer of a young offender from the Territory to a State, the Director shall, within 14 days after making the arrangement—

- (a) notify the Legislative Assembly Standing Committee on Legal Affairs of the particulars of the arrangement; and
- (b) give a copy of the notice to the Chief Magistrate and the Community Advocate.”.

Insertion

9. After section 69G of the Principal Act the following section is inserted:

Temporary custody prior to transfer from the Territory to a State

“69GA. (1) If the Director makes an arrangement under this Act for the transfer of a young offender from the Territory to a State in the temporary control of an escort (being an escort referred to in subsection 69G (2)), the offender may be placed in a shelter or remand centre until he or she is delivered to the escort.

“(2) A young offender shall not be placed in the Belconnen Remand Centre under subsection (1) without the written approval of—

- (a) the Director; and
- (b) the Director of Corrective Services.

“(3) A young offender shall not be kept in a remand centre or a shelter under subsection (1) for more than 14 days without the written approval of—

- (a) the Director; or
- (b) if the offender is kept in the Belconnen Remand Centre—
 - (i) the Director; and
 - (ii) the Director of Corrective Services.

“(4) An arrangement referred to in subsection (1) is sufficient authority for an officer or police officer, subject to any contrary provision in the arrangement—

- (a) to take the young offender to a shelter or remand centre;
- (b) to take the young offender from 1 shelter or remand centre to another; and
- (c) to take the young offender from a shelter to a remand centre or from a remand centre to a shelter.

“(5) In this section—

‘Director of Corrective Services’ means the Director of Corrective Services under the *Periodic Detention Act 1995*.”.

NOTE

Principal Act

1. Reprinted as at 30 November 1996.

[Presentation speech made in Assembly on 25 September 1997]