



AUSTRALIAN CAPITAL TERRITORY

## **Children and Young People (Consequential Amendments) Act 1999**

**No. 64 of 1999**

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**An Act to amend certain Acts, in consequence of the enactment of the *Children and Young People Act 1999* and for other purposes**

*[Notified in ACT Gazette No 45: 10 November 1999]*

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

**1 Short title**

This Act may be cited as the *Children and Young People (Consequential Amendments) Act 1999*.

**2 Commencement**

(1) Section 1 and this section commence on the day this Act is notified in the *Gazette*.

(2) The remaining provisions commence on the day Chapter 2 (General objects, principles and parental responsibility) of the *Children and Young People Act 1999* commences.

**3 Acts repealed**

The Acts mentioned in Schedule 1 are repealed.

**4 Consequential amendments of other laws**

- (1) The Acts mentioned in Schedule 2 are amended as set out in Schedule 2.
- (2) The regulations mentioned in Schedule 3 are amended as set out in Schedule 3.

**SCHEDULE 1**

Section 3

**ACTS REPEALED**

*Children's Services (Amendment) Act 1987*

*Children's Services (Amendment) Act (No. 2) 1987*

*Children's Services (Amendment) Act 1988*

*Children's Services (Amendment) Act 1991*

*Children's Services (Amendment) Act (No. 2) 1991*

*Children's Services (Amendment) Act 1994*

*Children's Services (Amendment) Act 1996*

*Children's Services (Amendment) Act 1997*

*Children's Services (Amendment) Act 1998*

*Children's Services (Amendment) Act 1999*

**SCHEDULE 2**

Subsection 4 (1)

**AMENDMENTS OF ACTS**

***Adoption Act 1993***

**Section 3—**

Repeal the section.

**Subsection 4 (1) (definition of *guardian*)—**

- (a) Add at the end of paragraph (b) “and”.
- (b) Add at the end the following paragraph:
  - “(c) someone with parental responsibility for the long-term care, welfare and development of the child, whether by order of a court or otherwise.”.

**Subsection 4 (1) (definition of *principal officer*)—**

Omit “Director”, substitute “chief executive”.

**Subsection 4 (1) (definition of *Director*)—**

Omit the definition.

**Paragraph 17 (2) (a)—**

Omit the paragraph, substitute the following paragraph:

- “(a) the person is not an officer of the administrative unit responsible for providing services for children and young people under the *Children and Young People Act 1999*; and”.

**Subsection 36 (1)—**

Omit the subsection, substitute the following subsections:

“(1) If—

- (a) each person required to consent to the adoption of a child under section 27 (Consents of parents and guardians) has consented; or
- (b) the requirement for consent has been dispensed with under section 35 (Dispensing with consent) in relation to the child;

the chief executive is the guardian of the child (other than for the purpose of section 27) until—

- (c) an adoption order is made; or
- (d) any consent given is revoked; or
- (e) the Court makes an order relating to the guardianship of the child.

“(1A) Subsection (1) does not apply in relation to a child if—

- (a) the principal officer of a private adoption agency is the guardian of the child (other than for the purpose of section 27) because of subsection (2); or
- (b) a declaration requested under section 38 (Transfer of guardianship of child pending adoption) that the child is under the guardianship of an authority in a State or another Territory is in force.”.

**Subsection 36 (3)—**

Omit the subsection, substitute the following subsection:

“(3) This section does not apply in relation to a child for whom the chief executive has parental responsibility for the long-term care, welfare and development under the *Children and Young People Act 1999*.”.

**Paragraph 62 (1) (d)—**

Omit “Director’s”, substitute “chief executive’s”.

**Further amendments**

The following provisions are amended by omitting “Director” (wherever occurring) and substituting “chief executive”:

Section 15, subsections 16 (1) and (2), paragraph 17 (1) (a), subsections 17 (3), (4) and (5), paragraph 19 (1) (a), subsection 19 (3), section 24, subsections 25 (2) and 26 (4) and (10) (definition of *prescribed person*), paragraph 29 (3) (c), subsections 31 (2) and (3), 32 (1) and (2), 35 (2), (3) and (4) and 36 (1), paragraph 36 (2) (b), subsections 37 (2), 38 (1), (2), (4), (5), (6), (7) and (8) and 39 (1), paragraph 40 (d), subsections 41 (2) and 48 (2), (3), (4), (5) and (6), subparagraph 55 (2) (b) (ii), subsections 56 (1), (2) and (3) (definition of *support*), section 58 (definition of *relevant authority*, paragraphs (a) and (c)), paragraph 60 (1) (a), subsection 61 (1), paragraph 61 (2) (b), subsections 62 (1) and (2), paragraph 67 (1) (b), subsections 67 (2) and 68 (6) and (7), section 69, subsections 70 (2) and (3) and 72 (1), (2), (3), (4) and (5), sections 73 and 74, subsections 75 (2), 76 (2), 77 (2) and 78 (1), paragraph 78 (2) (a), subsections 78 (3) and 79 (1), paragraph 79 (2) (b), subsections 80 (1), (2) and (3), 81 (1) and 82 (1), (2) and (3), paragraph 83 (1) (b), subsections 85 (1) and (2), paragraphs 86 (a), (b) and (c) and 91 (b), section 92, paragraph 93 (a), 94 (2) (b) and (c), subsections 95 (1) and 96 (2), sections 102, 103 and 108, subsections 109 (1) and (5) (definition of *relevant person*, subparagraphs (b) (iii), (c) (iii), (i) (ii) and (l) (ii)), subsections 110 (2), (3) and (4) and 115 (1) and (2), section 117 and paragraph 121 (b).

**SCHEDULE 2**—continued

***Bail Act 1992***

**Paragraphs 23 (b) and (c)**—

Omit the paragraphs, substitute the following paragraphs:

- “(b) the principles in sections 12 and 68 (Principles) of the *Children and Young People Act 1999*;
- (c) if the determination is being made by a court and a report has been given to the court under section 73 (Powers of court with respect to reports) of the *Children and Young People Act 1999* in relation to the child—the contents of the report.”.

**Paragraph 26 (1) (b)**—

Omit the paragraph, substitute the following paragraph:

- “(b) any other conditions that the court or authorised officer considers appropriate having regard to the principles in sections 12 and 68 of *Children and Young People Act 1999*.”.

**Paragraphs 26 (3) (a) and (b)**—

Omit the paragraphs, substitute the following paragraphs:

- “(a) may not impose a condition referred to in subsection 25 (1) unless the court or the authorised officer is of the opinion that the imposition of the condition is—
  - (i) necessary to secure 1 or more of the purposes specified in subparagraphs 25 (4) (a) (i), (ii), (iii) and (iv) (the ***relevant purposes***); or
  - (ii) in accordance with the principles under sections 12 and 68 of the *Children and Young People Act 1999* (the ***relevant principles***); and
- (b) may not, except at the request of the accused person, impose a condition, or a combination of conditions, that puts a greater obligation on the accused than is—
  - (i) necessary to secure the relevant purposes; or
  - (ii) in accordance with the relevant principles.”.

***Community Advocate Act 1991***

**Paragraph 13 (1) (ma)**—

Before “*Mental Health (Treatment and Care) Act 1994*” insert “*Children and Young People Act 1999, Guardianship and Management of Property Act 1991* and”.

**Section 16A—**

Repeal the section.

**Subsection 19 (1) (definition of *protected information*)—**

Omit the definition, substitute the following definition:

“*protected information* means information that identifies, or tends to identify—

(a) a client; or

(b) a person who provides information about a client to a person to whom this section applies.”.

**Subsection 19 (1)—**

Insert the following definition:

“*client*, in relation to protected information, means a person who had a disability at the time the information was received.”.

**Subsection 19 (2)—**

Omit “or another Act”.

***Coroners Act 1997***

**Subsection 3 (1) (definition of “custodial officer”, paragraph (e))—**

Omit the paragraph, substitute the following paragraph:

“(e) the chief executive responsible for administering Chapter 2 (General objects, principles and parental responsibility) of the *Children and Young People Act 1999* or an officer within the meaning given by that Act, dictionary;”.

**Subparagraph 3 (2) (b) (i)—**

Add at the end “or under the *Children and Young People Act 1999*”.

**Subparagraph 3 (2) (b) (iv)—**

Omit “47 (1) (h) to (m) (inclusive) or an arrangement under section 69C or 69M of, the *Children’s Services Act 1986*”, substitute “96 (1) (i) to (m) (inclusive) (Disposition of young offenders) or an arrangement under section 134 (Arrangements for transfer—general) or

**SCHEDULE 2—continued**

145 (Lawful custody for transit through the Territory) of the *Children and Young People Act 1999*”.

***Crimes Act 1900***

**New section 37A—**

After section 37 insert the following section:

**“37A. Neglect etc of children**

“(1) A person must not—

- (a) ill-treat or abuse a child who is in the person’s care; or
- (b) neglect a child for whom he or she is caring or has parental responsibility.

Penalty: 200 penalty units or imprisonment for 2 years, or both.

“(2) A person is not guilty of an offence referred to in paragraph (1) (b) by reason only of failing to provide a thing for a child if the person did not provide the thing because he or she could not afford to do so.

“(3) A person must not, knowingly or recklessly, leave a child unattended in such circumstances and for such a time that the child could suffer injury or sickness or otherwise be in danger.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

“(4) A police officer, medical practitioner or child officer may act (including by entering any building, place or vehicle, with such force as is necessary and reasonable) if the police officer, medical practitioner or child officer reasonably believes—

- (a) that a child is being or has been ill-treated, abused or neglected as mentioned in subsection (1) or left unattended as mentioned in subsection (3); and
- (b) that it is necessary to act immediately to safeguard the child.

“(5) An action does not lie against a person by reason of the person having acted under subsection (4) in good faith, without negligence and with reasonable care in the circumstances.

“(6) In this section—

***child officer*** means an officer under the *Children and Young People Act 1999*, section 48.

**parental responsibility**, for a child, means all the duties, powers, responsibilities and authority parents ordinarily have by law in relation to their children.”.

**Subsections 349ZP (11) and 349ZX (12)—**

Omit “36 of the *Children’s Services Act 1986*”, substitute “84 (Identifying material) of the *Children and Young People Act 1999*”.

**Subsection 443 (7) (b)—**

Omit “47 (1) (j) or 47 (1) (k) of the *Children’s Services Act 1986*”, substitute “96 (1) (k) or (l) of the *Children and Young People Act 1999*”.

**Section 444—**

Repeal the section, substitute the following section:

**“444 Sentences of imprisonment and uncompleted juvenile detention orders**

“(1) In imposing a defined sentence on an adult who is, at the time of sentencing, the subject of a C&YP Act order, a court must—

- (a) in deciding the length of the defined sentence, take into account any remaining period during which the C&YP Act order would remain in force if not discharged under paragraph (b); and
- (b) discharge the C&YP Act order accordingly.

“(2) In this section—

**adult** means someone who is 18 years old or older.

**C&YP Act order** means an order under paragraph 96 (1) (g), (h), (i), (j), (k) or (l) of the *Children and Young People Act 1999*.

**defined sentence**, in relation to an adult, means a sentence that would be likely to bring the adult into contact with other adult offenders, including—

- (a) a sentence of imprisonment; and
- (b) a periodic detention order under section 4 (Power to order periodic detention) of the *Periodic Detention Act 1995*; and
- (c) a community service order under section 556G (Directions to perform work).”.

***Criminal Injuries Compensation Act 1983***

**Subparagraph 34B (2) (a) (ii)—**

Omit the subparagraph, substitute the following subparagraph:



**SCHEDULE 2**—continued

“(ii) section 96 (Disposition of young offenders) of the *Children and Young People Act 1999*; or”.

**Subparagraph 34C (a) (ii)**—

Omit the subparagraph, substitute the following subparagraph:

“(ii) section 98 (Disposition without proceeding to conviction) of the *Children and Young People Act 1999*; or”.

***Discrimination Act 1991***

**Section 25A**—

Omit “Director of Family Services”, substitute “chief executive responsible for administering the *Adoption Act 1993*”.

***Domestic Violence Act 1986***

**Section 5**—

After subsection (1), insert the following subsection:

“(1A) The court may make a protection order on an application for a care and protection order under the *Children and Young People Act 1999* (Chapter 7, Children and young people in need of care and protection) as if—

- (a) the applicant for the care and protection order were an applicant for the protection order; and
- (b) the applicant had properly applied for the protection order under this Act.”.

**Section 5**—

After subsection (2), insert the following subsection:

“(2A) The court may not vary or revoke a protection order mentioned in subsection (1A) unless the chief executive for Chapter 7 (Children and young people in need of care and protection) of the *Children and Young People Act 1999* has been served with a copy of the application for the variation or revocation.”.

**Section 7**—

At the end of the section, add the following subsection:

“(4) The court must, on application by the chief executive who has been served with a copy of an application mentioned in subsection 5 (2A), make

the chief executive a party to the proceedings to which the application relates.”.

***Drugs of Dependence Act 1989***

**Section 121 (definition of *responsible officer*, paragraph (a))—**

Omit the paragraph, substitute the following paragraph:

- “(a) in relation to an offender who is not 18 years old or older—the chief executive responsible for administering Chapter 2 (General objects, principles and parental responsibility) of the *Children and Young People Act 1999*; or”.

***Education Act 1937***

**Section 5 (definition of *the Court*)—**

Omit the definition.

**Section 5—**

Insert the following definition:

- “*court* means the Childrens Court.”.

**Subsection 18 (10)—**

Omit the subsection, substitute the following subsection:

“(10) In this section—

*institution* has the meaning given by the *Children and Young People Act 1999*, dictionary.

*State institution* has the meaning given by the *Children and Young People Act 1999*, section 65.”.

***Evidence Act 1971***

**Paragraph 66 (3) (b)—**

Omit the paragraph, substitute the following paragraph:

- “(b) with an offence against section 374 (Dangerous employment), 375 (Regulation of employment of children and young people), 376 (Duty of employers of children and young people), 389 (Offences in relation to child or young person subject to an order) or 390 (Offence to harbour or conceal child or young person) of the *Children and Young People Act 1999*; or”.

**SCHEDULE 2**—continued

***Evidence (Closed-Circuit Television) Act 1991***

**Paragraph 4 (1) (d)**—

Omit the paragraph, substitute the following paragraph:

“(d) proceedings under Chapter 7 (Children and young people in need of care and protection), Part 3 (Care and protection orders and emergency action) of the *Children and Young People Act 1999*;”.

***Hawkers Act 1936***

**Subsection 5 (2)**—

Omit “Part VIII of the *Children’s Services Act 1986*”, substitute “Chapter 10 (Employment of children and young people) of the *Children and Young People Act 1999*”.

***Interpretation Act 1967***

**Dictionary**—

Insert the following definition:

“***Childrens Court*** means the Childrens Court under the *Children and Young People Act 1999*, section 53.”.

***Juries Act 1967***

**Paragraph 11 (x)**—

Omit the paragraph.

**Paragraph 11 (y)**—

Omit “Director of Family Services”, substitute “chief executive responsible for administering Chapter 2 (General objects, principles and parental responsibility) of the *Children and Young People Act 1999*”.

**Paragraph 11 (ya)**—

Omit the paragraph, substitute the following paragraph:

“(ya) a public servant holding a delegation under section 34 of the *Children and Young People Act 1999* whose principal duty is to direct and control the provision of youth justice services in the Territory;”.

**Paragraph 11 (zj)**—

Omit the paragraph, substitute the following paragraph:

“(zj) persons employed at a place declared to be an attendance centre, an institution or a shelter under section 412 of the *Children and Young People Act 1999*.”.

***Law Reform (Miscellaneous Provisions) Act 1955***

**Paragraph 36 (2) (a)—**

Omit the paragraph, substitute the following paragraph:

“(a) the chief executive responsible for administering Chapter 2 (General objects, principles and parental responsibility) of the *Children and Young People Act 1999* when he or she has parental responsibility for the long-term care, welfare and development of a child because of that Act; or”.

***Magistrates Court Act 1930***

**Subsection 10G (2)—**

Omit the subsection.

**New section 198A—**

After section 198, insert the following section:

**“198A Powers exercisable in care and protection proceedings**

The court’s power to make an order under this Part may be exercised on an application for a care and protection order under the *Children and Young People Act 1999* (Chapter 7, Children and young people in need of care and protection) as if—

- (a) the applicant for the care and protection order were an applicant for the order under this Part; and
- (b) the applicant had properly applied for that order under this Part.”.

**Subsection 206J (2)—**

Omit the subsection, substitute the following subsections:

“(2) The registrar must cause a copy of the application to be served personally on—

- (a) each other party to the proceedings; and
- (b) if section 198A applies—the chief executive for Chapter 7 (Children and young people in need of care and protection) of the *Children and Young People Act 1999*.

“(2A) The court must, on application by the chief executive served under paragraph (2) (b), make the chief executive a party to the proceedings.”.

**SCHEDULE 2—continued**

**Subparagraph 248C (2) (c) (iii)—**

Omit the subparagraph, substitute the following subparagraph:

“(iii) under the *Children and Young People Act 1999*.”

**Section 248C—**

Add at the end the following subsections:

“(3) A fee or charge determined under subsection 248A (1) is not payable for filing a document, or for the service or execution of process, in relation to proceedings under the *Children’s Services Act 1986* after the commencement of the *Children and Young People Act 1999*.

“(4) Subsection (3) and this subsection cease to have effect on the day that section 427 (Emergency action—s 75 and s 76 of repealed Act) of the *Children and Young People Act 1999* ceases to have effect.”

***Maintenance Act 1968***

**Paragraph 23 (2) (b)—**

Omit the paragraph, substitute the following paragraph:

“(b) if the chief executive responsible for administering Chapter 2 (General objects, principles and parental responsibility) of the *Children and Young People Act 1999* has parental responsibility for the long-term care, welfare and development of the child; or”.

***Mental Health (Treatment and Care) Act 1994***

**Section 4 (definition of *mentally dysfunctional offender*)—**

Omit “Part IV of the *Children’s Services Act*”, substitute “Chapter 6 (Young offenders), Part 2 (Within the Territory) of the C&YP Act”.

**Section 4 (definition of *referring officer*, paragraph (b))—**

Omit “subsection 33 (1) of the *Children’s Services Act 1986*”, substitute “section 81 (Limitations in respect of criminal proceedings against young people) of the C&YP Act”.

**Section 4 (definition of *Children’s Services Act*)—**

Omit the definition.

**Section 4—**

Insert the following definitions:

“*C&YP Act* means the *Children and Young People Act 1999*.”

**C&YP chief executive** means the chief executive responsible for administering Chapter 2 (General objects, principles and parental responsibility) of the *Children and Young People Act 1999*.”.

**Paragraphs 16 (1) (c) and (d)—**

Omit the paragraphs, substitute the following paragraphs:

- “(c) required to submit to the jurisdiction of the Tribunal by an order under Chapter 7 (Children and young people in need of care and protection), Part 3 (Care and protection orders and emergency action) of the C&YP Act;
- (d) required to submit to the jurisdiction of the Tribunal by an order under Part 11A (Unfitness to plead, mental illness and mental dysfunction) of the *Crimes Act 1900* or Chapter 6 (Young offenders) of the C&YP Act; or”.

**Paragraph 24A (1) (b)—**

Omit the paragraph, substitute the following paragraph:

- “(b) if the person who is to be the subject of the order is a child—the child’s parents and the C&YP chief executive;”.

**Heading to Part 8—**

Omit “**CHILDREN’S SERVICES**”, substitute “**C&YP**”.

**Subsection 70 (1) (definition of order for recommendations, paragraph (b))—**

Omit “under Part IV or section 83A of the Children’s Services Act”, substitute “under Chapter 6 (Young offenders), Part 2 (Within the Territory) or Chapter 7 (Children and Young People in need of care and protection), Part 3 (Care and protection orders and emergency action) of the C&YP Act”.

**Subsection 70 (3)—**

Omit “Children’s Services Act”, substitute “C&YP Act”.

**Paragraph 71 (e)—**

Omit “Director of Family Services”, substitute “C&YP chief executive”.

**Paragraph 87 (2) (c)—**

Omit “Director of Family Services”, substitute “C&YP chief executive”.

**SCHEDULE 2—continued**

**Paragraph 89 (1) (j)—**

Omit “Director of Family Services”, substitute “C&YP chief executive”.

**Paragraph 90 (5) (e)—**

Omit “under Part IV or section 83A of the Children’s Services Act”, substitute “under Chapter 6 (Young offenders), Part 2 (Within the Territory) or Chapter 7 (Children and Young People in need of care and protection), Part 3 (Care and protection orders and emergency action) of the C&YP Act”.

**Paragraph 94 (k)—**

Omit “Director of Family Services”, substitute “C&YP chief executive”.

***Prisoners (Interstate Transfer) Act 1993***

**Subsection 3 (1) (definition of ACT sentence of imprisonment)—**

Omit “*Children’s Services Act 1986*”, substitute “*Children and Young People Act 1999*”.

***Remand Centres Act 1976***

**Section 3 (definition of shelter)—**

Omit the definition, substitute the following definition:

“*shelter* has the meaning given by the *Children and Young People Act 1999*, dictionary.”.

**Paragraph 15 (1) (f)—**

Omit “*Children’s Services Act 1986*”, substitute “*Children and Young People Act 1999*”.

***Supreme Court Act 1933***

**Sub-subparagraph 37B (2) (c) (v) (B)—**

Omit the sub-subparagraph, substitute the following sub-subparagraph:

“(B) the *Children and Young People Act 1999*;”.

**Sub-subparagraph 37B (2) (c) (vi) (A)—**

Omit the sub-subparagraph, substitute the following sub-subparagraph:

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“(A) a matter under the *Children and Young People Act 1999*;”.

***Testamentary Guardianship Act 1984***

**Subsection 2 (3)—**

Omit “Director of Family Services”, substitute “C&YP chief executive”.

**Subsection 2 (5)—**

Omit the subsection, substitute the following subsection:

“(5) In this section—

***C&YP chief executive*** means the chief executive responsible for administering Chapter 2 (General objects, principles and parental responsibility) of the *Children and Young People Act 1999*.”.

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**SCHEDULE 3**

Subsection 4 (2)

**AMENDMENTS OF REGULATIONS**

**Adoption Regulations**

The following provisions are amended by omitting “Director” and substituting “chief executive”:

Subregulation 3 (1) (definition of *adoption list*), subparagraph 7 (2) (a) (iv), regulation 12, subregulations 13 (1) and (2) and 15 (2), paragraphs 16 (a) and (c) and 17 (a), subregulation 30 (1) and regulation 30A.

**Remand Centres Regulations**

**Regulation 3 (definition of *Director*)—**

Omit the definition.

**Subregulations 11 (2) and (4)—**

Omit “Director”, substitute “C&YP chief executive”.

**Regulation 11—**

Add at the end the following subregulation:

“(5) In this regulation—

*C&YP chief executive* means the chief executive responsible for administering Chapter 2 (General objects, principles and parental responsibility) of the *Children and Young People Act 1999*.”.

## NOTES

### Penalty units

See section 33AA of the *Interpretation Act 1967*.

### Section headings

On the day on which the *Adoption Act 1993* is amended by this Act, headings to sections of that Act are altered as set out in the following table:

Section	Alteration
17	Omit “ <b>Director’s</b> ”, substitute “ <b>chief executive’s</b> ”.
24	Omit “ <b>Director</b> ”, substitute “ <b>chief executive</b> ”.
93	Omit “ <b>Director’s</b> ”, substitute “ <b>Chief executive’s</b> ”.
115	Omit “ <b>Director</b> ”, substitute “ <b>Chief executive</b> ”.

### Regulation headings

On the day on which the *Adoption Regulations* are amended by this Act, the headings to regulations 11 and 12 of those Regulations are altered by omitting “**Director**” and substituting “**chief executive**”.

*[Presentation speech made in Assembly on 1 July 1999]*