

2011

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Ms Meredith Hunter)

Children and Young People (Transition to Independence) Amendment Bill 2011

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Children and Young People (Transition to Independence) Amendment Bill 2011

A Bill for

An Act to amend the *Children and Young People Act 2008*

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

J2011-177

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **1 Name of Act**

2 This Act is the *Children and Young People (Transition to*
3 *Independence) Amendment Act 2011.*

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by written
6 notice.

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

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see Legislation
11 Act, s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see Legislation Act, s 79).

15 **3 Legislation amended**

16 This Act amends the *Children and Young People Act 2008.*

17 **4 Age—care and protection chapters stop applying if**
18 **person discovered to be adult**
19 **New section 339 (5)**

20 *after the note, insert*

21 (5) This section does not apply to—

22 (a) section 528 (Information and items must be kept after
23 placement ends); and

24 (b) part 15.5 (Transition to independence).

1 **5 Care and protection chapters stop applying when young**
2 **person becomes adult**
3 **New section 340 (5)**

4 *insert*

- 5 (5) This section does not apply to—
6 (a) section 528 (Information and items must be kept after
7 placement ends); and
8 (b) part 15.5 (Transition to independence).

9 **6 What is a *care plan*?**
10 **Section 455, definition of *care plan*, paragraph (b) (vii)**

11 *substitute*

- 12 (vii) if the young person is, or is proposed to be, placed in
13 out-of-home care and is at least 15 years old—a transition
14 plan for the young person.

15 *Note* ***In out-of-home care***—see s 507A.
16 ***Transition plan***, for a young person or young adult—
17 see s 529D.

18 **7 Director-general may provide assistance**
19 **Section 503 (2), new note**

20 *insert*

21 *Note* If the young person is at least 15 years old and leaves out-of-home care,
22 the director-general must prepare a transition plan for the young person
23 and may provide further assistance (see pt 15.5).

1 **8 Part 15.4 heading**

2 *substitute*

3 **Part 15.4 Out-of-home care**

4 **9 Division 15.4.1 heading**

5 *substitute*

6 **Division 15.4.1 Preliminary**

7 **507A When is a child or young person *in out-of-home care*?**

8 In this Act:

9 *in out-of-home care*—a child or young person is *in out-of-home*
10 *care* if the child or young person is placed by the director-general
11 with an out-of-home carer under section 512 (Director-general may
12 place child or young person with out-of-home carer).

13 **10 New section 511A and division 15.4.1A heading**

14 *insert*

15 **511A Charter of rights for children, young people and young**
16 **adults in, or previously in, out-of-home care**

- 17 (1) The director-general must prepare a charter of rights for children,
18 young people and young adults in, or previously in, out-of-home
19 care (the *charter of rights*).
- 20 (2) The director-general must give a copy of the charter of rights to
21 each child and young person in out-of-home care.
- 22 (3) The director-general must uphold the rights conferred by the charter
23 of rights.

- 1 (4) The director-general must promote compliance with the charter of
2 rights by out-of-home carers.
- 3 (5) Out-of-home carers must uphold the rights conferred by the charter
4 of rights.
- 5 (6) The charter of rights is a notifiable instrument.

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

7 **Division 15.4.1A Placement with out-of-home carer**

8 **11 Division 15.4.3 heading**

9 *substitute*

10 **Division 15.4.3 Information and items to be kept by**
11 **foster carers and residential care**
12 **services**

13 **12 Definitions—div 15.4.3**
14 **Section 526, definition of *personal information***

15 *omit*

16 **13 Section 527 heading**

17 *substitute*

18 **527 Information and items must be kept during placement**

1 **14 Section 527 (2)**

2 *substitute*

3 (2) Each care entity for the child or young person for the placement
4 must keep the following things during the placement:

5 (a) protected information about the child or young person that the
6 care entity possesses because of the placement;

7 **Example**

8 records made by the care entity about the child or young person because of
9 the placement

10 *Note 1* **Protected information**—see s 844.

11 *Note 2* An example is part of the Act, is not exhaustive and may extend,
12 but does not limit, the meaning of the provision in which it
13 appears (see Legislation Act, s 126 and s 132).

14 (b) personal items of the child or young person that the care entity
15 possesses because of the placement.

16 *Note* **Personal items**, for a child, young person or young adult—see the
17 dictionary.

18 **15 Section 528 heading**

19 *substitute*

20 **528 Information and items must be kept after placement ends**

21 **16 Section 528 (1) to (3)**

22 *omit*

23 personal information or records

24 *substitute*

25 protected information or personal items

17 Section 528 (4) and (5)

substitute

(4) If protected information is given to the director-general under subsection (3), the protected information is a record of an agency under the *Territory Records Act 2002*, section 9 (Meaning of *record* of an agency etc).

(5) This section is subject to division 15.5.4 (Entitlement to personal items and access to personal information).

Note Div 15.5.4 applies to young people who have left out-of-home care.

18 Section 529

substitute

529 Child or young person may have access to information and items

(1) This section applies if—

(a) a care entity for a child or young person for a placement keeps protected information or personal items under section 527; and

(b) the care entity has not given the protected information or personal items to the director-general under section 528.

(2) The director-general may, if satisfied on reasonable grounds that it is in the child's or young person's best interests, direct the care entity to give the child or young person—

(a) the protected information or personal items; or

(b) access to the protected information or personal items.

(3) A direction may be conditional.

(4) If the director-general gives a care entity a direction, the care entity must comply with the direction.

1 (5) If the direction is subject to a condition about the access to be given,
2 the care entity must comply with the condition.

3 (6) This section is subject to division 15.5.4 (Entitlement to personal
4 items and access to personal information).

5 *Note* Div 15.5.4 applies to young people who have left out-of-home care.

6 **19 New part 15.5**

7 *insert*

8 **Part 15.5 Transition to independence**

9 **Division 15.5.1 Preliminary**

10 **529A Object—pt 15.5**

11 The object of this part is to safeguard the wellbeing of—

12 (a) each young person who is preparing to leave out-of-home care;
13 and

14 (b) each young person and young adult who has left out-of-home
15 care.

16 **529B Who is a *young adult*?—pt 15.5**

17 In this part:

18 *young adult* means an adult who is younger than 26 years old.

19 *Note* **Adult** means an individual who is at least 18 years old (see Legislation
20 Act, dict, pt 1).

1 **529C** **When does a young person or young adult *leave***
2 ***out-of-home care*?—pt 15.5**

3 In this part:

4 ***leave out-of-home care***—

- 5 (a) a young person in out-of-home care ***leaves out-of-home care*** if
6 the young person—
- 7 (i) is at least 16 years old; and
 - 8 (ii) leaves out-of-home care; and
 - 9 (iii) the director-general is satisfied on reasonable grounds
10 that the young person is unlikely to return to out-of-home
11 care; and
- 12 (b) a young adult ***leaves out-of-home care*** if the young adult was
13 in out-of-home care immediately before becoming a young
14 adult.

15 **Division 15.5.2** **Transition plans**

16 **529D** **What is a *transition plan*?**

17 (1) In this Act:

18 ***transition plan***, for a young person or young adult, means a written
19 plan for meeting the young person's or young adult's needs—

- 20 (a) for a young person in out-of-home care—
- 21 (i) as the young person prepares to leave out-of-home care;
22 and
 - 23 (ii) after leaving out-of-home care; and
 - 24 (iii) into young adulthood; or

- 1 (b) for a young person or young adult who has left out-of home
2 care—
- 3 (i) after leaving out-of-home care; and
4 (ii) into young adulthood.
- 5 (2) A transition plan may include proposals about the following for the
6 young person or young adult:
- 7 (a) accommodation;
8 (b) education and training;
9 (c) employment;
10 (d) financial security;
11 (e) social support;
12 (f) life skills support;
13 (g) health care.
- 14 **Examples**
- 15 1 physical health
16 2 mental health
17 3 emotional health
18 4 sexual health
- 19 *Note 1* If a young person is at least 15 years old, a care plan for the young
20 person must also include a transition plan (see s 455).
- 21 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
22 does not limit, the meaning of the provision in which it appears (see
23 Legislation Act, s 126 and s 132).

1 **529E Transition plans**

- 2 (1) The director-general must prepare a transition plan for a young
3 person who is—
4 (a) in out-of-home care; and
5 (b) at least 15 years old.
6 (2) The director-general must take reasonable steps to ensure that the
7 transition plan is implemented.

8 **529F Transition plans—who must be consulted**

- 9 (1) This section applies if the director-general is preparing a transition
10 plan for a young person.
11 (2) The director-general must—
12 (a) develop the plan in consultation with the young person; and
13 (b) tell the young person about the proposals the director-general
14 intends to include in the transition plan.
15 (3) The director-general may, if the director-general believes on
16 reasonable grounds that it is in the best interests of the young
17 person, tell 1 or more of the following people about the proposals
18 the director-general intends to include in the transition plan:
19 (a) for a young person—
20 (i) in out-of-home care—the out-of-home carer; or
21 (ii) who has left out-of-home care—a previous out-of-home
22 carer;

1 (b) anyone else who would be involved in implementing a
2 proposal;

3 **Example—people who would be involved**

4 a community-based service that is providing services to the young person

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

8 (c) for an Aboriginal or Torres Strait Islander young person—

9 (i) any Aboriginal or Torres Strait Islander people who have
10 an interest in the wellbeing of the young person through
11 family, kinship or cultural ties; and

12 (ii) any Aboriginal or Torres Strait Islander people or
13 organisation that has provided ongoing support services
14 to the young person;

15 (d) anyone else the director-general considers would be able to
16 provide information or guidance about the plan.

17 (4) The director-general must give the following people an opportunity
18 to make submissions to the director-general about the proposals:

19 (a) the young person;

20 (b) each person told about the proposals under subsection (3).

21 (5) If a person makes a submission to the director-general about a
22 proposal, the director-general must consider the submission.

23 **529G Transition plans—who must be given a copy**

24 If the director-general prepares a transition plan for a young person,
25 the director-general must give a copy of the transition plan to—

26 (a) the young person; and

27 (b) for a young person in out-of-home care—the out-of-home
28 carer; and

- 1 (c) anyone else who would be involved in implementing the
2 transition plan.

3 **529H Transition plans—review—young person**

- 4 (1) This section applies if a transition plan is in force for a young
5 person.
- 6 (2) The director-general must review the plan—
7 (a) at least once each year; and
8 (b) in consultation with the young person.
- 9 (3) The director-general may, if the director-general believes on
10 reasonable grounds that it is in the best interests of the young
11 person, review the plan in consultation with 1 or more of the
12 following people:
- 13 (a) for a young person—
14 (i) in out-of-home care—the out-of-home carer; or
15 (ii) who has left out-of-home care—a previous out-of-home
16 carer; and
17 (b) anyone else who would be involved in implementing the
18 transition plan as it is to be revised; and
19 (c) for an Aboriginal or Torres Strait Islander young person—
20 (i) any Aboriginal or Torres Strait Islander people who have
21 an interest in the wellbeing of the young person through
22 family, kinship or cultural ties; and
23 (ii) any Aboriginal or Torres Strait Islander people or
24 organisation that will be providing ongoing support
25 services to the young person; and

- 1 (d) anyone else the director-general considers would be able to
2 provide information or guidance about the plan as it is to be
3 revised.
- 4 (4) The director-general must give a copy of the revised transition plan
5 to—
- 6 (a) the young person; and
7 (b) for a young person in out-of-home care—the out-of-home
8 carer; and
9 (c) anyone else who would be involved in implementing the
10 revised plan.

11 **529I Transition plans—review—young adult**

- 12 (1) This section applies if a transition plan is in force for a young adult.
- 13 (2) The director-general must take reasonable steps to ask the young
14 adult, at least once each year, whether the young adult agrees to the
15 director-general reviewing the plan.
- 16 (3) If the young adult agrees to the director-general reviewing the plan,
17 the director general must review the plan in consultation with the
18 young adult.
- 19 (4) The director-general may, if the director-general considers that it is
20 in the best interests of the young adult, and the young adult agrees,
21 review the plan in consultation with 1 or more of the following
22 people:
- 23 (a) a previous out-of-home carer;
24 (b) anyone else who would be involved in implementing the
25 transition plan as it is to be revised; and

- 1 (c) for an Aboriginal or Torres Strait Islander young adult—
- 2 (i) any Aboriginal or Torres Strait Islander people who have
- 3 an interest in the wellbeing of the young adult through
- 4 family, kinship or cultural ties; and
- 5 (ii) any Aboriginal or Torres Strait Islander people or
- 6 organisation that will be providing ongoing support
- 7 services to the young adult; and
- 8 (d) anyone else the director-general considers would be able to
- 9 provide information or guidance about the plan as it is to be
- 10 revised.
- 11 (5) The director-general must give a copy of the revised transition plan
- 12 to—
- 13 (a) the young adult; and
- 14 (b) anyone else who would be involved in implementing the
- 15 revised plan.

16 **Division 15.5.3 Assistance after leaving out-of-home**

17 **care**

18 **529J Assistance generally**

- 19 (1) The director-general must provide a young person, or young adult,
- 20 who has left out-of-home care with the services that the
- 21 director-general considers appropriate.
- 22 (2) Without limiting subsection (1), the director-general must provide
- 23 the young person, or young adult, with services to assist the young
- 24 person, or young adult, with obtaining—
- 25 (a) accommodation; and
- 26 (b) education and training; and
- 27 (c) employment; and

- 1 (d) financial security; and
2 (e) legal advice; and
3 (f) social support; and
4 (g) life skills support; and
5 (h) health care.

6 **Examples**

- 7 1 physical health
8 2 mental health
9 3 emotional health
10 4 sexual health

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

- 14 (3) This section does not require the director-general to pay for any
15 service.

16 *Note* Financial assistance may be available under s 529K.

17 **529K Financial assistance**

- 18 (1) The director-general may provide financial assistance to a young
19 person, or young adult, who has left out-of-home care.
20 (2) The director-general may provide financial assistance only if
21 satisfied on reasonable grounds that the assistance is—
22 (a) for an appropriate purpose; and
23 (b) reasonably necessary considering the young person's, or young
24 adult's, circumstances.

25 **Examples—appropriate purposes**

- 26 1 for furnishing accommodation
27 2 for education or training

1 3 for seeking employment

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

5 (3) The director-general may provide financial assistance on the
6 conditions that the director-general considers appropriate.

7 **Example—condition**

8 that the financial assistance be repaid according to a repayment schedule

9 (4) However, if the director-general provides financial assistance in the
10 form of a loan to a young person or young adult, no interest is to be
11 payable on the loan.

12 (5) The Minister may make guidelines about appropriate purposes for
13 financial assistance.

14 (6) A guideline is a notifiable instrument.

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

16 **Division 15.5.4 Entitlement to personal items and** 17 **access to protected information**

18 **529L Entitlement to personal items**

19 A young person, or young adult, who has left out-of-home care is
20 entitled to have and keep, free of charge, all of the young person's
21 or young adult's personal items that are held by—

22 (a) the director-general; or

23 (b) an out-of-home carer for the young person or young adult.

24 *Note* Some out-of-home carers are required to keep personal items
25 during placements (see div 15.4.3).

1 **529M Access to protected information—young person**

2 (1) This section applies if a young person who has left out-of-home care
3 asks for access to protected information about the young person that
4 is held by—

5 (a) the director-general; or

6 (b) an out-of-home carer for the young person.

7 *Note 1 Protected information*—see s 844.

8 *Note 2* Some out-of-home carers are required to keep protected information
9 (see div 15.4.3).

10 (2) The director-general may, if satisfied on reasonable grounds that it
11 is in the young person's best interests—

12 (a) give the young person access, free of charge, to the protected
13 information held by the director-general; and

14 (b) direct the out-of-home carer to give the young person access,
15 free of charge, to the protected information held by the
16 out-of-home carer.

17 (3) A direction under subsection (2) (b) may be conditional.

18 (4) If the director-general gives an out-of-home carer a direction, the
19 out-of-home carer must comply with the direction.

20 (5) If the direction is subject to a condition about the access, the
21 out-of-home carer must comply with the condition.

1 **529N Access to protected information—young adult**

2 A young adult who has left out-of-home care is entitled to have
3 access, free of charge, to protected information about the young
4 adult that is held by—

- 5 (a) the director-general; or
6 (b) an out-of-home carer for the young adult.

7 *Note 1 Protected information*—see s 844.

8 *Note 2* Some out-of-home carers are required to keep protected information
9 (see div 15.4.3).

10 **529O Access to protected information—support and assistance**

- 11 (1) If a young person or young adult seeks access to protected
12 information under this division, the director-general must provide an
13 appropriate person to support and assist the young person, or young
14 adult, accessing the information.
15 (2) The Minister may make guidelines about appropriate people and the
16 support and assistance they may provide to a young person, or
17 young adult, accessing protected information under this division.
18 (3) A guideline is a notifiable instrument.

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

20 **20 Definitions—Act and ch 16**
21 **Section 530 (2), definition of *transition plan***

22 *substitute*

23 *therapeutic protection transition plan*—see section 538 (What is a
24 *therapeutic protection transition plan?*).

- 1 **21 Section 538 heading**
- 2 *substitute*
- 3 **538 What is a *therapeutic protection transition plan*?**
- 4 **22 Section 538, definition of *transition plan***
- 5 *omit*
- 6 *transition plan*
- 7 *substitute*
- 8 *therapeutic protection transition plan*
- 9 **23 Therapeutic protection order—application to state**
- 10 **grounds etc**
- 11 **Section 540 (d) (ii)**
- 12 *substitute*
- 13 (ii) a therapeutic protection transition plan for the child or
- 14 young person; and
- 15 **24 Dictionary, definition of *care entities***
- 16 *substitute*
- 17 *care entities*, for a child or young person for a placement, for
- 18 division 15.4.3 (Information and items to be kept by foster carers
- 19 and residential care services)—see section 526.
- 20 **25 Dictionary, new definitions**
- 21 *insert*
- 22 *charter of rights*—see section 511A.
- 23 *in out-of-home care*—see section 507A.

1 *leave out-of-home care*, for part 15.5 (Transition to
2 independence)—see section 529C.

3 **26 Dictionary, definition of *personal information***

4 *omit*

5 **27 Dictionary, new definition of *personal items***

6 *insert*

7 *personal items*, for a child, young person or young adult—

8 (a) means items belonging to, or about, the child, young person or
9 young adult; and

10 (b) includes the following:

11 (i) a birth certificate;

12 (ii) a passport;

13 (iii) a school report;

14 (iv) a medical report;

15 (v) a copy of a photograph; but

16 (c) does not include sensitive information about another person.

17 *Note Sensitive information*—see s 845.

18 **28 Dictionary, definition of *placement***

19 *substitute*

20 *placement*, for a child or young person, for division 15.4.3
21 (Information and items to be kept by foster carers and residential
22 care services)—see section 526.

1 **29 Dictionary, new definition of *therapeutic protection***
2 ***transition plan***

3 *insert*

4 *therapeutic protection transition plan*, for chapter 16 (Care and
5 protection—therapeutic protection of children and young people)—
6 see section 538.

7 **30 Dictionary, definition of *transition plan***

8 *substitute*

9 *transition plan*, for a young person or young adult—see
10 section 529D.

11 **31 Dictionary, new definition of *young adult***

12 *insert*

13 *young adult*, for part 15.5 (Transition to independence)—see
14 section 529B.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2011.

2 Notification

Notified under the Legislation Act on 2011.

3 Republications of amended laws

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

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