

1999

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

**CHILDREN AND YOUNG PEOPLE
(CONSEQUENTIAL AMENDMENTS) BILL 1999**

EXPLANATORY MEMORANDUM

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Minister for Education**

CHILDREN AND YOUNG PEOPLE BILL 1999

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OUTLINE

This Bill makes consequential amendments following the commencement of the *Children and Young People Act 1999* ('the CYPAct'), which reformed the law relating to children in the Australian Capital Territory.

The *Children and Young People (Consequential Amendments) Bill 1999* makes consequential amendments to certain ACT Acts and Regulations mainly by repealing or amending sections that refer to terms that have now been replaced by the Act.

REVENUE/COST IMPLICATIONS

The Bill has no revenue or cost implications.

FORMAL CLAUSES

Clauses 1 and 2 are formal requirements referring to the short title and commencement of the Bill.

AMENDMENTS

Clause 3 repeals the Acts mentioned in Schedule 1. Clause 4 amends the Acts and Regulations set out in Schedules 2 and 3 respectively.

Schedule 1 lists nine amendment Acts repealed by the Bill.

Schedules 2 and 3 detail amendments to Acts and Regulations. Many amendments simply change references to the 'Children's Services Act 1986' to refer to the 'Children and Young People Act 1999' and adjust section number references. Others change references to 'Director of Family Services' and 'Director' to refer to the 'chief executive' (or the 'chief executive responsible for administering Chapter 2 of the Children and Young People Act 1999'). These can be summarised as follows:

In relation to each item in column 1 of Table A:

- the Bill amends the part, section, subsection or paragraph (referred to in column 2) of the named Act (in column 3) by substituting 'Children's Services Act 1986' (CSA) with a reference to the 'Children and Young People Act 1999' (CYPA), and
- where the reference in the named Act to the CSA also referred to a specific section number of the CSA (referred to in column 4), the Bill substitutes the corresponding section number in the CYPA (in column 5).

In relation to each item in column 1 of Table B:

- the Bill amends the section, subsection or paragraph (referred to in column 2) of the named Act or Regulation (in column 3) by substituting either 'Director of Family Services' or 'Director' (called DFS or D in column 4 of the table) with 'chief executive', 'C&YP chief executive' or 'chief executive responsible for administering Chapter 2 of the Children and Young People Act 1999' (called CE, CYPce or CEresp in column 5).

In relation to each item in column 1 of Table C:

- the Bill amends the section, subsection or paragraph (referred to in column 2) of the named Act or Regulation (in column 3) by inserting definitions of the 'Children and Young People Act 1999' or 'chief executive' under that Act (called CYPA and CYPce respectively in column 4).

TABLE A

Column 1 ITEM	Column 2 PROVISION	Column 3 ACT AMENDED	Column 4 CSA	Column 5 CYPA
1	3(2)(b)(iv)	Coroners Act 197	47(1)(h) to (m), 69C, 69M	94(1)(l) to (m), 132, 143
2	349ZP(11)	Crimes Act 1900	36	82
3	349ZX(12)	Crimes Act 1900	36	82
4	443(7)(b)	Crimes Act 1900	47(1)(j), (k)	94(1)(k), (l)
5	34B(2)(a)(ii)	Criminal Injuries Compensation Act 1983	47	94
6	34C(a)(ii)	Criminal Injuries Compensation Act 1983	48	96
7	4(1)(d)	Evidence (Closed-Circuit Television) Act 1991	Part V	Chapter 7 Part 3
8	5(2)	Hawkers Act 1936	Part VIII	Chapter 10
9	11(ya)	Juries Act 1967	19	33
10	11(zj)	Juries Act 1967	157	408
11	248C(2)(c)(iii)	Magistrates Court Act 1930		
12	4 (definition of 'mentally dysfunctional offender')	Mental Health (Treatment and Care) Act 1994	Part IV	Chapter 6 Part 2
13	4 ('referring officer')	Mental Health (Treatment and Care) Act 1994	33(1)	79
14	16(1)(c)	Mental Health (Treatment and Care) Act 1994	83A	Chapter 7 Part 3
15	16(1)(d)	Mental Health (Treatment and Care) Act 1994	49A	Chapter 6
16	Heading to Part 8	Mental Health (Treatment and Care) Act 1994		
17	70(1)	Mental Health (Treatment and Care) Act 1994	Part IV or s.83A	Chapter 6 Part 2 or Chapter 7 Part 3
18	70(3)	Mental Health (Treatment and Care) Act 1994		
19	90(5)(e)	Mental Health (Treatment and Care) Act 1994	Part IV or s.83A	Chapter 6 Part 2 or Chapter 7 Part 3
20	3(1)	Prisoners (Interstate Transfer) Act 1993		

Column 1 ITEM	Column 2 PROVISION	Column 3 ACT AMENDED	Column 4 CSA	Column 5 CYPA
21	3 (definition of 'shelter')	Remand Centres Act 1976		
22	15(1)(f)	Remand Centres Act 1976		
23	37B(2)(c)(v)(B)	Supreme Court Act 1933		
24	37B(2)(c)(vi)(A)	Supreme Court Act 1933		

TABLE B

Column 1 ITEM	Column 2 PROVISION	Column 3 ACT AMENDED	Column 4 D or DFS	Column 5 CE, CYPce or CEresp
1	4(1) (definition of 'principal officer'), 15, 16(1), 16(2), 17(1)(a), 17(3), 17(4), 17(5), 19(1)(a), 19(3), 24, 25(2), 26(4), 26(10), 29(3)(c), 31(2), 31(3), 32(1), 32(2), 35(2) to (4), 36(1), 36(2)(b), 37(2), 38(1), 38(2), 38(4) to (8), 39(1), 40(d), 41(2), 48(2) to (6), 55(2)(b)(ii), 56(1) to (3), 58, 60(1)(a), 61(1), 61(2)(b), 62(1), 62(2), 67(1)(b), 67(2), 68(6), 68(7), 69, 70(2), 70(3), 72(1) to (5), 73, 74, 75(2), 76(2), 77(2), 78(1), 78(2)(a), 78(3), 79(1), 79(2)(b), 80(1) to (3), 81(1), 82(1) to (3), 83(1)(b), 85(1), 85(2), 86(a) to (c), 91(b), 92, 93(a), 94(2)(b) and (c), 95(1), 96(2), 102, 103, 108, 109(1), 109(5), 110(2) to (4), 115(1), 115(2), 117, 121(b), and headings to 17, 24, 93, 115.	Adoption Act 1993	D	CE
2	3(1) (definition of 'custodial officer')	Coroners Act 1997	DFS	CEresp
3	121 (definition of 'responsible officer')	Drugs of Dependence Act 1989	DFS	CEresp
4	11(y)	Juries Act 1967	DFS	CEresp
5	71(e)	Mental Health (Treatment and Care) Act 1994	DFS	CYPce

Column 1 ITEM	Column 2 PROVISION	Column 3 ACT AMENDED	Column 4 D or DFS	Column 5 CE, CYPce or CEresp
6	87(2)(c)	Mental Health (Treatment and Care) Act 1994	DFS	CYPce
7	89(1)(j)	Mental Health (Treatment and Care) Act 1994	DFS	CYPce
8	94(k)	Mental Health (Treatment and Care) Act 1994	DFS	CYPce
9	2(3)	Testamentary Guardianship Act 1984	DFS	CYPce
10	3(1) (definition of 'adoption list'), 7(2)(a)(iv), 12, 13(1), 13(2), 15(2), 16, 17, 30(1), 30A, and headings to regulations 11 and 12	Adoption Regulations	D	CE
11	11(2), 11(4)	Remand Centres Regulations	D	CYPce

TABLE C

Column 1 ITEM	Column 2 PROVISION	Column 3 ACT AMENDED	Column 4 CYPA or CYPce
1	4	Mental Health (Treatment and Care) Act 1994	CYPA, CYPce
2	2(5)	Testamentary Guardianship Act 1984	CYPce
3	11(5)	Remand Centres Regulations	CYPce

In addition Schedule 2 makes the following specific amendments:

Adoption Act 1993

Section 3

This section repealing former enactments is repealed.

Section 4

Amendment to this section is consequential on the introduction by the CYPAct of the concept of parental responsibility. In subsection (1) the definition of 'guardian' is amended by adding a reference to a person who has parental responsibility for the long-term care, welfare and development of a child.

Section 17

In paragraph (2)(a) the term 'Housing and Community Services Bureau' is replaced with 'administrative unit responsible for providing services for children and young people under the Children and Young People Act 1999' to refer to the CYPAct and to allow for periodic change of administrative responsibilities in the public service.

Section 36

Amendment to this section is consequential on the introduction by the CYPAct of the concept of parental responsibility. It also reflects the change of responsibilities under the CYPAct from the Director of Family Services to the chief executive. In subsections (1) and (3) references to the 'Director of Family Services' being the 'guardian' of a child, and a child being a 'ward' of the 'Director', are changed to refer to the 'chief executive' having 'parental responsibility for the long-term care, welfare and development' of the child. Subsection (1A) is added to simply clarify the fact that subsections (1) and (2) are mutually exclusive alternatives.

Bail Act 1992

Section 23

Amendment to paragraphs (b) and (c) is consequential on the restatement in sections 11 and 66 of the CYPAct of principles underpinning the Act previously contained in section 5 of the *Children's Services Act 1986* ('CSA'). It also reflects the reformulation in section 71 of the CYPAct of what was section 162 in the CSA.

Section 26

Amendment to paragraphs (1)(b), (3)(a) and (3)(b) is consequential on the restatement in sections 11 and 66 of the CYPAct of principles underpinning the Act previously contained in section 5 of the CSA.

Community Advocate Act 1991

Section 13

Amendment to this section is consequential on the references in the CYPAct to functions given to the Community Advocate. Paragraph (1)(ma) is amended by adding a reference to the CYPAct (and to rectify the previous inadvertent omission of

a reference to functions given to the Community Advocate under the *Guardianship and Management of Property Act 1991*).

Section 16A

Amendment to this section is consequential on the introduction in sections 157 and 162 of the CYPAct of provisions covering reporting of suspected abuse by the Community Advocate. The section is therefore repealed.

Section 19

Amendment to this section is consequential on the treatment of confidential information under section 401 of the CYPAct. Consistent with the CYPAct, disclosure of client information is thus prevented under the *Community Advocate Act 1991* unless necessary for the exercise of a function under that Act or the CYPAct. Subsection (1) is amended by adding a definition of 'client' to better describe a person with a disability with whom the Community Advocate has dealings under the Act. (Previously the section referred only to a 'person'.) The definition of 'protected information' is also adjusted to include a reference to information of or about a client.

As performance of the Community Advocate's functions under other Acts is covered by the operation of section 13 of the *Community Advocate Act 1991*, the reference to 'or another Act' in subsection (2) is omitted.

Coroners Act 1997

Section 3

Amendment to this section is consequential on the introduction in sections 94 and 104-107 of the CYPAct of provisions relating to community service orders as a dispositional option for young offenders. A reference to the CYPAct is added to subparagraph (2)(b)(i).

Crimes Act 1900

Section 37A

Amendment of this Act by introduction of this section is consequential on rationalisation of criminal offence provisions in the CYPAct. This section is a restatement in clearer terms of what was previously contained in subsections 139(1) to (4) of the CSA. Subsection (6) gives definitions of relevant terms by reference back to the CYPAct.

Section 444

Amendment to this section is consequential on the enactment of the CYPAct in that it changes references to dispositional options for young offenders from section 47 of the CSA to section 94 of the CYPAct. In subsection (1) the term 'C&YPAct order' is used to refer to the type of order to which a court is to give consideration, with that term being linked to the CYPAct by addition of a definition in subsection (2).

Discrimination Act 1991

Section 25A

Amendment to this section is consequential on the change of responsibilities under the CYPAct from the Director of Family Services to the chief executive, and on amendment to section 4 of the *Adoption Act 1993* by this Bill. It changes the reference to 'Director of Family Services' to 'chief executive responsible for administering the Adoption Act 1993'.

Education Act 1937

Amendment to this Act adjusts links to terms defined by the CYPAct.

Section 5

The definition of 'court' is amended to refer to the Childrens Court as established under the CYPAct.

Section 18

Definitions in subsection (10) of 'institution' and 'State institution' are amended to refer to those terms as defined in the CYPAct.

Evidence Act 1971

Amendment to this Act adjusts links to offences referred to in the CYPAct and adds links to new offences created under the CYPAct.

Section 66

Paragraph (3)(b) changes references to what was sections 133, 134 and 135 of the CSA (concerning employment of children) to refer to corresponding sections 370, 371 and 372 of the CYPAct. It adds references to new offences in sections 385 and 386 of the CYPAct (concerning contravention of care and protection orders).

Imperial Acts (Substituted Provisions) Act 1986

Schedule 2, Part 1A

Amendment to this Part is consequential on the introduction by the CYPAct of the concept of parental responsibility. It also reflects the change of responsibilities under the CYPAct from the Director of Family Services to the chief executive. In paragraph (2)(a) references to a child being a 'ward' of the 'Director of Family Services' are changed to refer to the 'chief executive' having 'parental responsibility for the long-term care, welfare and development' of the child under the CYPAct.

Interpretation Act 1967

Amendment to this Act adjusts links to terms defined by the CYPAct.

Section 14

The definition of 'court' is added to refer to the Childrens Court as established under the CYPAct.

Juries Act 1967

Section 11

Amendment to this section is consequential on the change of responsibilities under the CYPAct from the Director of Family Services to the chief executive. In paragraph (x) reference to the Director of Family Service is omitted. There is no need to replace this with reference to the chief executive as that reference is already contained elsewhere in the section.

Magistrates Court Act 1930

Section 248C

Amendment to this section is consequential on the transitional provisions contained in Chapter 17 of the CYPAct. Insertion of subsection (3) provides for the effect of section 248C (no fee payable for applications made under the CSA) to continue to have effect in relation to emergency applications which are made under the CSA after commencement of the CYPAct by the operation of the transitional provisions. Insertion of subsection (4) provides for both added subsections to cease to have effect when section 422 of the CYPAct ceases to have effect.

Maintenance Act 1968

Section 23

Amendment to this section is consequential on the introduction by the CYPAct of the concept of parental responsibility. It also reflects the change of responsibilities under the CYPAct from the Director of Family Services to the chief executive. In paragraph (2)(b) references to a child being a 'ward' of the 'Director of Family Services' are changed to refer to the 'chief executive' having 'parental responsibility for the long-term care, welfare and development' of the child under the CYPAct.

Mental Health (Treatment and Care) Act 1994

Section 4

Definition of 'Children's Services Act' omitted and replaced with definition of CYPAct (see table C above).

Section 24A

Amendment to this section reflects the change of responsibilities under the CYPAct from the Director of Family Services to the chief executive. Paragraph (1)(b) amends a provision to be inserted by the *Mental Health (Treatment and Care) (Amendment) Act 1999* by changing a reference to 'Director of Family Services' to 'C&YP chief executive', a term inserted in section 4 of the Act by this Bill (see table C above).

Remand Centres Regulations

Regulation 3

Definition of 'Director' omitted and replaced with definition of 'CYP chief executive' (see table C above).