

2005
LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY

CHILDREN AND YOUNG PEOPLE AMENDMENT BILL 2005 (No 2)

EXPLANATORY STATEMENT

Presented by
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Minister for Children, Youth and Family Support

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SUMMARY OF CLAUSES

Clause 1 sets out the name of the Act.

Clause 2 provides for commencement arrangements.

Clause 3 The Bill amends the *Children and Young People Act 1999*.

Clause 4 This clause specifies that the best interests principle is the paramount consideration for decision-makers across the Act, except in relation to decisions made under chapter 6 (young offenders). See also clause 10, which provides for the best interest principle to be a consideration in the decision making process about matters under chapter 6 (young offenders).

Clause 5 This clause sets out the general principles and provides that they are to be applied except when it would be contrary to the best interests of the child or young person. The general principles in this clause are to guide all decisions and actions made or taken under the Act, whether by the chief executive, the court or otherwise. The best interests principle will limit the operation of these principles to the extent of any inconsistency.

Clause 6 This clause outlines the Indigenous children and young people principle. The principle provides that decision-makers must take into account submissions made by or on behalf of any relevant indigenous organisation and indigenous traditions and cultural values.

Clause 7 This clause provides that in making a decision about the placement of an Aboriginal or Torres Strait Islander child or young person, the decision-maker must make the decision in accordance with this section and any cultural plan in existence.

Clause 8 This clause provides the meaning of indigenous cultural plan. An indigenous cultural plan is a plan developed by the chief executive in consultation with the child or young person, any relevant Aboriginal and Torres Strait Islander people who have an interest in the child or young person's well-being and any relevant indigenous organisations. The aim of the plan is to preserve and enhance the child or young person's identity as an Aboriginal or Torres Strait Islander person.

Clause 9 This clause provides for representation of carers and Aboriginal and Torres Strait Islander people on the Children's Services Council by stipulating that at least one member must represent the interests of these groups.

Clause 10 This clause provides a new principle for decision makers to give regard to the best interests of the young person or young offender.

Clause 11 This clause provides the meaning of abuse and neglect of children and young people. A new concept is introduced of a child or young person being at risk of abuse or neglect. This replaces the concept of likelihood of abuse or neglect and reflects contemporary child protection assessment of risk. A child or young person will be at risk of abuse or neglect if there is a significant risk of the abuse or neglect occurring. The standard of proof is the balance of probabilities. Examples are included to highlight cases when the chief executive may decide a child or young person is at risk of abuse and neglect.

Clause 12 This clause introduces a new principle which guides decision-makers' action regarding consultation with, and participation of, children and young people and people with parental responsibility in decision-making. For any care and protection decision, the decision-maker must attempt to ensure that the child or young person (or their legal representative) and people with parental responsibility understand the nature of the decision, the decision-making process, that they may participate in the decision-making process having their views and wishes heard and understand the final decision after it is communicated to them. The clause is intended to apply to all decisions made about a child by all decision makers in chapter 7, including a court.

Clause 13 This clause outlines the criteria for a child or young person being in need of care and protection. The new concept of risk replaces the old terminology of likelihood of abuse or neglect. A child or young person is in need of care and protection if the child has been abused or neglected, is being abused or neglected or is at risk of abuse or neglect and no-one with parental responsibility is willing and able to protect the child or young person.

Clause 14 This clause allows for the event amounting to a child or young person being in need of care and protection to be one which occurs outside the Territory. This clause varies the critical nexus in section 9 which provides that functions under the Act can be exercised in relation to children and young people who ordinarily live in, or are present in, the Territory or who are subject to an event occurring in the Territory which leads to a voluntary or mandatory report about their care and protection.

Clause 15 This clause clarifies that public servants working with or in a direct service delivery role to children and young people are mandated to report abuse and neglect.

Clause 16 This clause removes the requirement for a mandated reporter to report abuse or neglect of a child or young person if the reporter reasonably suspects that another person has made a report to the chief executive about the same child or young person and the same abuse or injury. For example, a doctor in a hospital would not be required to report sexual abuse of a child if the doctor is aware that a nurse has reported the same abuse about the same child to the chief executive.

Clause 17 The chief executive must provide reports on children and young people for whom the chief executive has parental responsibility to the Public Advocate as soon as practicable if the incident giving rise to the report involves the authorised carer. This could mean an act or omission by the carer. The Public Advocate will provide oversight of the chief executive's actions in relation to children and young people allegedly abused or neglected in care.

Clause 18 This clause provides that the facilitator of a family group conference may undertake pre-conference preparation including mediation and resolution of conflict to facilitate a conference. This preparation may not result in a conference occurring.

Clause 19 This clause requires the chief executive to report annually for a child or young person subject to a final care and protection order of at least one year in duration. If the order is in force for less than one year, but over six months, the chief executive will report at least one month, but not earlier than two months, before the order expires.

Clause 20 This clause provides for a short extension of the power to make standing orders for a place of detention until December 2006, to allow for a detailed consideration of the policy matters related to youth justice.

Clause 21 This clause introduces a new concept of information holder. Information holders include the chief executive, official visitors, persons exercising a function under the Act, persons engaged in the administration of the Act or persons previously occupying these roles. Information holders also include anyone else given information by one of these persons. A note has been included to make reference to other parts of the Act that prescribe when protected information may be given to people under various provisions of this Act.

Information is categorised into protected and sensitive information. Sensitive information includes child abuse information, child abuse appraisal information, interstate child abuse information, family group conference information or information prescribed by regulation. Protected information is information about a person that is disclosed to, or obtained by, an information holder because the person is, or has been, an information holder. Protected information includes sensitive information.

Offences are created in certain circumstances where information holders make or divulge a record of protected information about someone else. An offence is created if a person makes a record and is reckless about the record being protected information. Recklessness can be proven by intention, knowledge or recklessness (see section 20(4) of the *Criminal Code 2002*). If a person makes the record knowing it to be protected information, they are liable for prosecution unless an exception applies. An offence is created if an information holder divulges protected information and is reckless about the information being protected and the action resulting in the information being divulged.

Exceptions to these offences include if the record is made or the information is divulged under this Act; or in the exercise of a function, as an information holder, under this Act. A note has been included in this section to make reference to other parts of the Act that provide for information to be given to other people.

Another exception to the offence is if the protected information is not sensitive information and the record is made or the information is divulged under another territory law or in the exercise of a function, as an information holder, under another territory law. A note has been included in this section to make reference to other territory legislation that may provide for information to be given to other people.

Another exception to the offence is if the information is not sensitive information and is divulged with the person's agreement.

The chief executive may release protected or sensitive information where it is given in the best interests of a child or young person. To remove doubt, family group conference facilitators will be able to share all information with the chief executive where it is in the best interests of the child or young person.

An information holder does not need to divulge sensitive information to a court, unless it is necessary to do so for this Act and does not need to divulge protected information (that is not sensitive information) to a court, unless it is necessary to do so for this Act or another Territory law.

Clause 22 This clause provides transitional arrangements for the introduction of the *Public Advocate Act 2005*.

- Clause 23 This clause inserts the definition of at risk of abuse or neglect in the dictionary.
- Clause 24 This clause substitutes the definition of the best interests principle in the dictionary.
- Clause 25 This clause inserts the definition of divulge in the dictionary.
- Clause 26 This clause substitutes the definition of facilitator in the dictionary.
- Clause 27 This clause omits the definition of indigenous placement principle.
- Clause 28 This clause inserts the definition of information holder and in need of care and protection in the dictionary.
- Clause 29 This clause substitutes the definition of neglect in the dictionary.
- Clause 30 This clause inserts references to definitions of protected and sensitive information in the dictionary.
- Clause 31 This clause provides for amendments to the Public Advocate Act 2005 to be omitted.