

**2011**

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

**CHILDREN AND YOUNG PEOPLE (TRANSITION TO INDEPENDENCE)  
AMENDMENT BILL 2011**

**EXPLANATORY STATEMENT**

**Circulated by  
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## OVERVIEW

The purpose of the Children and Young People (Transition to Independence) Amendment Bill 2011 is to amend the *Children and Young People Act 2008* (the Act) to extend the legislative responsibility of the director general to support young people who have been subject to Care and Protection Orders in the ACT from 18 to 25 years of age. To this end the Bill sets out the framework of obligations primarily on the director general but also on others involved in the care of children and young people for whom the director general is ultimately responsible. The Bill sets out the support services to be provided to young people and young adults as they leave the care and protection system and commence their independent adult lives.

This Bill brings the ACT into line with several other Australian jurisdictions. This Bill draws considerably on the New South Wales *Children and Young Persons (Care and Protection) Act 1998* and the Western Australian *Children and Community Services Act 2004*.

This Bill is premised on a recognition that the obligations imposed on the Territory as a parent should as much as possible reflect the obligations and ordinary expectations that exist of birth parents. Typically children in the Territory's care have suffered significant trauma, abuse or neglect and this only adds to the need for increased assistance not only through childhood and adolescence but also into adult life.

Research indicates that young people and young adults who have been in out-of-home care have much poorer life outcomes. Post care options for young people and young adults transitioning to independence from the Care and Protection system must be enhanced to provide improved opportunities for future success and better life outcomes for a particularly vulnerable group within the community. This Bill recognises that young people and young adults transitioning towards independence have distinct needs and characteristics that must be taken in account when planning and delivering services for them.

Currently under the Act all planning for transition towards independence begins at age 15. The Bill amends the existing requirements by providing that the young person or young adult must be involved in the formulation of the transition plan and that the plan must include proposals for accommodation, education and training, employment, financial security, social support, life skills support and health care. This will hopefully ensure that the young person or young adult has a comprehensive plan for the future. These plans must be reviewed at least annually and regardless of the amount of contact a young adult has from the age of 18 to 25 with the Territory care system they remain eligible to have their transition plan reviewed annually.

The Bill creates a Charter of Rights for Children and Young People in Out of Home Care. The charter is to include, young people and young adults in, or previously in, out-of-home care to ensure that the charter provides for the rights of young people leaving care up until the age of 25 years. The Bill creates an obligation on the part of the Territory and

out of home carers to uphold the rights conferred by the charter and creates an obligation on the director general to promote compliance by out-of-home carers.

The Bill provides that all young people and young adults transitioning to independence are entitled to the possession, free of charge, of any personal material held by the Community Services Directorate or by any bodies or persons that or who have provided care for the young person or young adult. This entitlement is complimented by mechanisms to ensure that young people and young adults are supported throughout the process so their overall health and well-being is preserved while accessing their protected personal information.

The Bill articulates the additional services that young people and young adults who were formally in the care of the director general are entitled to receive these include support to access social services or financial assistance to help with a range of basic ordinary expenses such as the cost of education, training and household furnishings as these young people and young adults transition towards independence.

## **HUMAN RIGHTS**

The Bill engages the right to privacy identified in section 12 of the *Human Rights Act 2004*. The extent to which the Bill may limit this right must be balanced against the extent to which the Bill recognises and promotes the right to the protection needed by a child established by section 11 of the *Human Rights Act 2004*.

The Bill potentially engages the right to privacy in that some information about people in the care and protection system will be disclosed to others however in all cases this may only occur where it is in the best interests of the child or young person, or in the case of a young adult where they consent to the disclosure. Further discussion is included in the notes on the individual clauses below.

## **THE DELEGATION OF LEGISLATIVE POWER**

The Bill delegates legislative power to the Minister for Children and Young People to create guidelines for the application of obligations created by the bill where it is not practical for the Legislative Assembly to do so. The delegated authority is minor and technical in nature and does not involve any substantive policy matters. The bill also delegates power to the director-general of the Community Services Directorate to create a charter of rights for children, young people and young adults in, or previously in, out-of-home care. For comments on the appropriateness of the delegation are included in the notes on the individual clauses below.

## SUMMARY OF CLAUSES

### **Clause 1 Name of the Act**

This clause is a technical clause and sets out the name of the proposed Act as the *Children and Young People (Transition to Independence) Amendment Act 2011*.

### **Clause 2 Commencement**

This clause is a technical clause setting out when commencement of the Act will occur.

### **Clause 3 Legislation amended**

This clause identifies the Act to be amended, namely the *Children and Young People Act 2008*.

### **Clause 4 Age – care and protection chapters stop applying if person discovered to be adult New section 339 (5)**

This clause is a technical clause that provides that limitations on application of other sections of the Act created by this section do not apply to section 528 and part 15.5 which is the bulk of the new provisions dealing with the transition out of care.

### **Clause 5 Care and protection chapters stop applying when young person becomes adult New section 340 (5)**

This clause is a technical clause that, as with the previous clause, provides that this section does not apply to section 528 and part 15.5.

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

This clause amends the existing definition of care plan so that for a young person aged 15 or older this includes a transition plan under section 529D.

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

This clause inserts a new note to provide clarification of when the director-general may provide assistance and must prepare a transition plan.

### **Clause 8 Part 15.4 heading**

This clause inserts a new heading Out-of-Home care for Part 15.4 of the Act.

### **Clause 9 Division 15.4.1 heading**

This clause inserts a new heading Preliminary for Division 15.4.1 of the Act.

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

This section provides a definition of when a child or young person is in out-of-home care.

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

This clause inserts a new section regarding the preparation by the director-general of a charter of rights for children, young people and young adults in, or previously in, out of home care. The director-general must provide each child and young person with a copy of the charter of rights. The director-general and out-of-home carers must uphold the rights set out in the charter and the director-general must promote compliance with the rights by out-of-home carers. Creation of the Charter itself has been delegated to the director general as the person responsible for the care of children and young people for whom the Territory is parent as the director general is best placed to identify the particular requirements of children and young people in care and it is simply not practical for the Assembly to fulfil this task. The charter of rights is notifiable instrument.

This clause also inserts a new heading ‘Placement with out-of-home carer’ for Division 15.4.1A of the Act.

**Clause 11 Division 15.4.3 heading**

This clause inserts a new heading ‘Information and items to be kept by foster carers and residential care services’ for Division 15.4.3 of the Act.

**Clause 12 Definitions – div 15.4.3  
Section 526, definition of *personal information***

This clause omits the definition of personal information as a new definition is included in section 527 (2) and referenced in the dictionary.

**Clause 13 Section 527 heading**

This clause inserts a new heading ‘Information and items must be kept during placement’ for section 527 of the Act.

**Clause 14 Section 527 (2)**

This clause provides that each care entity must keep protected information about the child or young person and their personal items that the care entity possesses as a result of their placement.

**Clause 15 Section 528 heading**

This clause inserts a new heading ‘Information and items must be kept after placement ends’ for section 538 of the Act.

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

This clause omits the term ‘personal information and records’ and replaces it with ‘protected information and personal items’ to ensure consistency throughout the Act.

**Clause 17 Section 528 (4) and (5)**

This clause clarifies how protected information is to be treated if it is given to the director-general in the following circumstances:

a) the director-general asks the care entity to give the personal information or records to the director-general; or

(b) the care entity stops being a care entity for this Act; or  
(c) 2 years have elapsed since the placement ended; or  
(d) the person to whom the personal information or records relate becomes an adult.  
The protected information becomes a record of an agency and must be kept in accordance with the *Territory Records Act 2002*.

**Clause 18 Section 529**

This clause clarifies when a child or young person may have access to information and items. If during the course of a placement, information or items have been kept by a care entity and not previously given to the director-general, this clause provides that the director-general can direct the care entity to give the child or young person the information or items or access to them if it is considered on reasonable grounds that it is in the best interests of the child.

The director-general may place conditions on the direction if they believe that this would benefit the child or young person. For example this may include ensuring that adequate support is available for the child or young person accessing this information for the first time.

**Clause 19 New part 15.5**

New part 15.5 provides the framework under which young people and young adults who are transitioning or have transitioned from care are to be provided for.

The new sections created by this clause do potentially engage the right to privacy as others will be involved in the formulation of transition plans for young people and young adults. Any limitation that may occur must be evaluated in the context of the positive obligation to protect the needs of a child required by the *Human Rights Act 2004*. Any limitation is considered proportionate on the basis that while the scope of the limitation cannot readily be identified as the amount of information disclosed will very much depend on the particular circumstances, the person to whom the information is disclosed will be subject to the information secrecy provisions of chapter 25 of the Act.

The purpose of any limitation is to provide improved services for the young person or young adult and to better fulfil the Territory's obligation to that young person in the role of parent. The Bill expressly provides that any decision that may limit the right to privacy may only be made where it is in the best interest of the young person to do so. There is no reasonably available alternative to the proposal and failing to provide for the relatively minor limitation could result in a poorer outcome for the young person concerned as many others have been or will be involved in their care and failing to consider their views and potentially very valuable input would not be consistent with the protected rights of the child especially given the particular vulnerability of the young people concerned. For these reasons the limitation is proportionate and the most appropriate means of achieving the desired outcome.

Section 529A

**Object – pt 15.5**

This new section sets out the object of the new part 15.5. The object is to safeguard the wellbeing of each young person who is preparing to leave out-of-home care and those young adults who have left out of home care.

**Section 529B                      **Who is a young adult? – pt 15.5****

This new section sets out a young adult as an adult who is younger than 26 years of age.

**Section 529C                      **When does a young person or young adult leave out-of-home care? – pt 15.5****

This new section sets out that a young person leaves out-of-home care when a young person is at least 16 years old, leaves out-of-home care and the director-general believes that the young person is unlikely to return to out-of-home care or that a young adult was in out-of-home care immediately before becoming a young adult.

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

This new section outlines what a transition plan is and what proposals may be included in the plan. This is intended to provide guidance to all case workers and provide consistency across the system to ensure that all young people and young adults are receiving access to similar levels of support. It ensures that all the necessities are considered and planned for; these include accommodation, education and training employment, financial security, social support, life skills support and health care.

**Section 529E                      **Transition plans****

This new section requires the director general to prepare a transition plan (as defined above) for a young person who is in out-of-home and is at least 15 years of age. The director-general must take reasonable steps to ensure that the transition plan is implemented. Again this should provide all those responsible for the young person including case workers and carers with a consistent framework to ensure that the ongoing needs of the young person are met and they are provided with an appropriate level of support.

**Section 529F                      **Transition plans – who must be consulted****

This new section provides that the director-general must consult with the young person and inform the young person about the proposals that are intended to be included in the plan. This section is intended to ensure that those who are supporting the young person or young adult also have the opportunity to be consulted and advise the director-general about the young person's needs, wants and aspirations and how they may be best supported to reach these. The director-general must consider any submissions made by others that have a genuine interest in the wellbeing of the young person.

It is important to recognise the cultural significance of family and kin who may have an interest in the wellbeing of the young person and this section aims to strengthen this by noting that there is a need to consult with any Aboriginal or Torres Strait Islander people or organisations who provide ongoing support to the young person.

**Section 529G                      **Transition plans – who must be given a copy****

This new section provides that once a transition plan has been prepared the director-general is required to provide copies to the young person, the out-of-home carer for a person in out-of-home care and anyone else who has a role in implementing the transition plan. This section is intended to create a culture of inclusion and make sure everyone who has a role in the transition plan is informed and clearly understands how the young person hopes to make the transition to independence as successfully as possible.

**Section 529H                      **Transition plans – review – young person****

This new section provides that once a transition plan is in force it must be reviewed by the director-general at least once each year and in consultation with the young person. Provision is also made for the director general to consult with the current out-of-home carer where the young person is in out-of-home care or with a previous out-of-home carers where the young person has left out-of-home care. The director-general is also able to involve anyone else who would be involved in implementing the transition plan or provide advice or guidance about the plan as it is to be revised.

The cultural needs of Aboriginal and Torres Strait Islander young people and young adults and their community have been provided for and explicit provision for the need to involve these people has been made – conditional on it being in the best interests of the particular young person or young adult.

This section also provides that once a transition plan has been revised and updated the director-general is required to provide copies to the young person, the out-of-home carer for a person in out-of-home care and anyone else who has a role in implementing the transition plan. This section is intended to create a culture of inclusion and make sure everyone who has a role in the revised transition plan is informed and clearly understands how the young person hopes to make the transition to independence as successfully as possible.

**Section 529I                      **Transition plans – review – young adult****

This new section is similar to 529H, provision is made so that once a transition plan is in force the director-general must take reasonable steps to ask the young adult whether they agree to a review of the plan. Where the young adult agrees to a review the director-general must do so in consultation with the young adult.

This section outlines that the director-general may, with the agreement of the young adult, consult with a previous out-of-home carer. The director-general is also able to involve anyone else who would be involved in implementing the transition plan or provide advice or guidance about the plan as it is to be revised.

The cultural needs of Aboriginal and Torres Strait Islander young people and young adults and their community have been provided for and explicit provision for the need to involve these people has been made – conditional on it being in the best interests of the particular young adult.



This section also provides that once a transition plan has been revised and updated the director-general is required to provide copies to the young adult and anyone else who has a role in implementing the transition plan. This section is intended to create a culture of inclusion and make sure everyone who has a role in the revised transition plan is informed and clearly understands how the young person hopes to make the transition to independence as successfully as possible.

**Section 529J Assistance generally**

This new section provides that the director-general must provide a young person or young adult who has left out-of-home care with the proscribed services as the director-general considers appropriate. The director-general must provide the young person or young adult with services to assist them with obtaining accommodation, education and training, employment, financial security, legal advice, social support, life skills support and healthcare.

This section is intended to ensure continuity in the approach taken to providing assistance and links back to the development and review of transition plans.

**Section 529K Financial assistance**

This new section provides that the director-general may provide financial assistance to a young person or young adult that has left out-of-home care. The director-general is required to be satisfied on reasonable grounds that the assistance is necessary given the circumstances and will be used for an appropriate purpose. Provision is made for the director-general to place conditions on the financial assistance and to ensure that where assistance is provided as a loan no interest is to be charged. It is not intended that a loan will be the only form of financial assistance.

Provision is made for the Minister to make guidelines about the use of this financial assistance and the guidelines are required to be notifiable instrument. This section is intended to ensure that young people and young adults are provided with a range of supports to ensure a better transition to independence and to replicate what would commonly be done by many if not most parents in the community.

**Section 529L Entitlement to personal items**

This new section sets out that a young person or young adult who has left out-of-home care is entitled, free of charge, to their personal items that are held by the director-general or an out-of-home carer. This section is intended to provide clarity about the rights of young people and young adults who have left out-of-home care.

**Section 529M Access to protected personal information – young person**

This section provides that when a young person asks to access their protected personal information that is held by the director-general or an out-of-home carer, the director-general may, if it is in the best interests of the young person give the young person access to the information or direct the out-of-home carer to provide the information they hold.

**Section 529N Access to protected personal information – young adult**

This new section provides that young adults who have left out-of-home care are entitled to have access to protected personal information that is held by the director-general or an out-of-home carer.

**Section 529O            Access to protected personal information – support and assistance**

This new section provides that where a young person or young adult seeks access to protected information under Division 15.4.4 the director-general must provide an appropriate person to support and assist the young person or young adult accessing the information. The Minister may make guidelines about who appropriate people may be and the support and assistance they may best provide to the young person or young adult.

This section is intended to ensure that when young people or young adults are accessing protected personal information that they are made aware of the potential impacts doing so may have. The information these young people or young adults are accessing may contain sensitive or confronting content that can have emotional impacts, as such it is important to provide adequate supports to ensure that any potential for harm is minimised.

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

This clause inserts a new definition of therapeutic protection transition plan to clarify the new meaning of a transition plan in the Act.

**Clause 21        Section 538 heading**

This clause inserts a new heading for Section 538 of the Act.

**Clause 22        Section 538, definition of *transition plan***

This clause inserts a new definition of transition plan into the Act.

**Clause 23        Therapeutic protection order – application to state grounds etc**  
**Section 540 (d) (ii)**

This clause inserts a reference to a therapeutic protection transition plan for the child or young person to ensure consistency within the Act..

**Clause 24        Dictionary, definition of *care entities***

This clause inserts a new definition of care entities into the Act.

**Clause 25        Dictionary, new definition of *charter of rights***

This clause inserts a new definition of charter of rights into the Act.

**Clause 26        Dictionary, new definition of *in out-of-home care***

This clause inserts a new definition of in out-of-home care into the Act.

**Clause 27        Dictionary, new definition of *leave out-of-home care***

This clause inserts a new definition of leave out-of-home care into the Act.

**Clause 28 Dictionary, definition of *personal information***

This clause omits the definition of personal information from the Act.

**Clause 29 Dictionary, new definition of *personal items***

This clause inserts a new definition of personal items into the Act and provides details of what these include.

**Clause 30 Dictionary, definition of *placement***

This clause inserts a new definition of placement for a child or young person into the Act.

**Clause 31 Dictionary, new definition of *therapeutic protection transition plan***

This clause inserts a new definition of therapeutic protection transition plan into the Act.

**Clause 32 Dictionary, new definition of *transition plan***

This clause inserts a new definition of transition plan for a young person or young adult into the Act.

**Clause 33 Dictionary, new definition of *young adult***

This clause inserts a new definition of young adult into the Act.