

2011

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**CHILDREN AND YOUNG PEOPLE
(TRANSITION FROM OUT-OF-HOME CARE) AMENDMENT BILL 2011**

EXPLANATORY STATEMENT

**Presented by
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Introduction

This Explanatory Statement relates to the *Children and Young People (Transition From Out-of-Home care) Amendment Bill 2011* as presented in the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The Statement must to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Outline

The purpose of this Bill is to make amendments to the *Children and Young People Act 2008* and incorporate the provision of support and assistance for young people transitioning from out of home care beyond the statutory age of 18 years up to 25 years. This includes post care support to assist young people who have been in out of home care up to the age of 25 years.

Young people transitioning from care are often confronted by issues including reconnecting with their families and communities, coming to terms with the reasons why they came into care or finding themselves alone, without the security of a family or community to fall back on.

Research indicates there are poor life outcomes for young people transitioning from out of home care. Factors contributing to such outcomes include:

- many young people have experienced and are still recovering from considerable physical, sexual or emotional abuse or neglect prior to entering care;
- many young people have experienced poor care while in state care; and
- many care leavers do not have adequate support networks to rely upon.

Young people leaving out of home care are more likely to be vulnerable, disadvantaged and at greater risk of social isolation, homelessness, poor economic and educational outcomes and are more likely to come into contact with the criminal justice system than young people who have not been in statutory care.

The transition into young adulthood for young people in care is a critical developmental event in their life. A well-planned, gradual and flexible process transitioning young people from care is very important, including the provision of support for a period of time after they have left care.

The evidence points to a need to improve the accessibility and appropriateness of services and supports to young people transitioning from care, in particular a need to focus on the 15 to 25 year old age group. This is in recognition of the need for ongoing yet intermittent assistance as young people grow older in order to develop the necessary social skills and networks to support their move to adulthood.

The Bill will strengthen the care and support options provided to young people who are or have been in out of home care. The service will ensure supports are better targeted to young people and young adults, commenced early in the planning process and lead to improved coordination across service providers. This should reduce the need for crisis management.

The service aims to improve access to supports, education and employment opportunities and less reliance on costly and intensive government services and intervention. This will improve health and wellbeing outcomes by reducing the potential for homelessness, isolation, unemployment and the likelihood of contact with the criminal justice system.

The Bill upholds the human rights to protection of the family and children as outlined at section 11 of the *Human Rights Act 2004*.

Amendments

Clause 1 Name of the Act

This is a technical clause and sets out the name of the new Act as the *Children and Young People (Transition From Out-of-Home Care) Amendment Act 2011*.

Clause 2 Commencement

This clause enables the new Act to commence on a day nominated by the Minister in a commencement notice.

Clause 3 Legislation amended

This clause identifies the Act to be amended is 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 technical clause limits the application of section 339 to part 15.5 which deals with transition to adulthood provisions for young people and young adults.

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

This technical clause limits the application of section 340 to part 15.5 which deals with transition to adulthood provisions for young people and young adults.

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

This clause omits section 455 (b) (viii). The purpose is to have all provisions in the Act regarding transition from out of home care be inserted in a new part titled 'Transition to adulthood' (see clause 8).

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

This clause inserts a new note clarifying that the director-general may provide assistance to a young person who transitions from out-of-home care.

Clause 8 New part 15.5

This clause outlines the support and assistance available to young people and young adults who are or were in out of home care to adulthood up to the age of 25 years.

New sections created by this clause engage the right to privacy under the *Human Rights Act 2004*. The new sections will not limit the right to privacy and will maintain the current information sharing provisions of the Act as outlined under Chapter 25.

Chapter 25 of the Act provides the legal framework for receiving and giving information to specified people and agencies about a child or young person while performing a function under the Act. When making a decision about sharing information as a function of the Act, the best interests of the child or young person is the paramount consideration. Significantly, the decision-maker may not require the consent of the person where information is sought. Best practice would, however, seek to involve the young person in such decisions.

The provision of support services for young adults over 18 years will rely on information sharing as consented to by the person. This is a best practice model and reflects the changing role of the persons involved. The relationship between the young person and those offering support is based on voluntary participation, engagement and self determination.

In addition to the right to privacy, new sections created by this clause engage the right to equal protection of the law without discrimination, at section 8(3) of the *Human Rights Act 2004*. However, it is justifiable under section 28 of the *Human Rights Act 2004* because the proposed positive discriminatory measures recognise that the 15-25 year age group is most vulnerable, at risk and need of supports to successfully transition from out of home care to adulthood.

Section 529A Object—pt 15.5

This clause sets out the object of the new part 15.5 which emphasises an empowering and self-determining approach for young people and young adults.

Section 529B Who is a young adult?—pt 15.5

This clause sets out that a young adult is younger than 25 years of age. Accordingly support and assistance will be available to a young adult up to the age of 25 years.

Section 529C What is a transition plan?

This clause outlines what a transition plan is and what types of support and assistance may be included in the plan.

Section 529D Transition plans—when prepared

This clause requires the director-general to prepare a transition plan for a young person who is in out-of-home care and is at least 15 years of age.

Section 529E Transition plans—consultation

This clause outlines who must be consulted in the development of the plan.

**Section 529F Transition plans—review—young person for whom
director-general has parental responsibility**

This clause outlines the review process of a transition plan for a young person when the director-general has an aspect of parental responsibility for the young person. It is important during the review process for the director-general to consider the views and wishes of the young person regarding who else should be consulted about the review.

**Section 529G Transition plans—review—young person for whom
director-general does not have parental responsibility**

This clause outlines the review process of a transition plan for a young person when the director-general does not have any aspect of parental responsibility for the young person.

Section 529H Transition plans—review—young adult

This clause outlines the review process of a transition plan for a young adult.

Section 529I Assistance generally

This clause outlines the services the director-general may provide to a young person or young adult who was in out-of-home care. This clause extends the services to young adults up to the age of 25 years.

Section 529J Financial assistance

This clause enables the director-general to provide financial assistance to a young person or young adult who was in out-of-home care. The director-general must be satisfied on reasonable grounds that the assistance is appropriate and necessary given the circumstances of the person.

Clause 9 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 used in the Act.

Clause 10 Section 538 heading

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

Clause 11 Section 538, definition of *transition plan*

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

Clause 12 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 13 **Dictionary, new definition of *therapeutic protection transition plan***

This clause inserts a new definition of therapeutic protection transition plan into the Act to ensure consistency within the Act.

Clause 14 **Dictionary, definition of *transition plan***

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

Clause 15 **Dictionary, new definition of *young adult***

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