

**2012**

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

**CHILDREN AND YOUNG PEOPLE AMENDMENT BILL 2012 (No 2)**

**EXPLANATORY STATEMENT**

**Presented by**  
**Joy Burch MLA**  
**Minister for Disability, Children and Young People**

## Introduction

This Explanatory Statement relates to the *Children and Young People Amendment Bill 2012* (No 2) 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 minor amendments to the *Children and Young People Act 2008* (the Act) that will improve the interpretation of the Act and the provision of services to children, young people and families.

The Bill engages the following rights in the *Human Rights Act 2004*: the right to life (section 9(1)); the right to not be punished in a cruel, inhuman or degrading way (section 10(1)(b)); the right to protection of children (section 11); the right to freedom of movement (section 13); and the right to humane treatment when deprived of liberty (section 19(1)).

## 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 Amendment Act 2012* (No 2).

### 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      **Managing use of force** **New sections 223 (3A) and (3B)**

This clause sets out that the director-general must give notice to a treating doctor or a nurse if force is used, unless it is used for the purposes of planned use of restraint when a young detainee is outside a detention place.

For example, the use of handcuffs on a young offender who has been assessed as being at risk of attempting to escape while being transported to court.

This provision engages the following rights in the *Human Rights Act 2004*:

- a) Right to life (section 9(1));
- b) Right to not be punished in a cruel, inhuman or degrading way (section 10(1)(b));
- c) Right to protection of children (section 11(2));
- d) Right to freedom of movement (section 13); and
- e) Right to humane treatment when deprived of liberty (section 19(1)).

The amendment maintains current requirements around the use of force including that the circumstances are sufficiently serious to justify the use; the kind of restraint is appropriate in the circumstances; and the restraint is used appropriately in the circumstances.

#### **Clause 5      Section 223 (5)**

This technical clause ensures provisions in the Act are consistent by substituting 'child or young person' with 'young detainee' in provisions under section 223 and Division 6.6.4.

#### **Clause 6      Strip searches directed by director-general Section 258 (1) (a) (ii)**

This clause omits 'good order' being a basis to conduct a strip search under the Act.

This amendment engages the following rights in the *Human Rights Act 2004*:

- a) Right to not be punished in a cruel, inhuman or degrading way (section 10(1)(b));
- b) Right to protection of the child (section 11(2));
- c) Right to privacy (section 12); and
- d) Right to humane treatment when deprived of liberty (section 19(1)).

The amendment protects these rights by limiting the grounds on which strip searches may take place.

#### **Clause 7      Body searches directed by director-general Section 264 (1) (b)**

This clause omits 'good order' being a basis to conduct a body search under the Act.

This amendment engages the following rights in the *Human Rights Act 2004*:

- e) Right to not be punished in a cruel, inhuman or degrading way (section 10(1)(b));
- f) Right to protection of the child (section 11(2));
- g) Right to privacy (section 12); and
- h) Right to humane treatment when deprived of liberty (section 19(1)).

The amendment protects these rights by limiting the grounds on which body searches may take place.

**Clause 8      Revocation of foster carer's authorisation**

**New sections 523 (1) (d) and (e)**

This clause sets out a new provision for the revocation of a foster carer's authorisation.

**Clause 9      Revocation of residential care service's authorisation**

**New sections 524 (1) (d) and (e)**

This clause sets out a new provision for the revocation of a residential care service's authorisation.

**Clause 10    Children and young people deaths register**

**Section 727N (4)**

This clause makes clear that any coronial inquest or review by the Territory must have ended before cause or circumstances of the death of a child or young person is placed on the register.