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THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CHILDREN AND YOUNG PEOPLE AMENDMENT BILL 2015 (No 3)

EXPLANATORY STATEMENT

**Presented by
Mick Gentleman MLA
Minister for Children and Young People**

Introduction

This Explanatory Statement relates to the *Children and Young People Amendment Bill 2015 (No 3)* 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. The Explanatory Statement does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The Statement must 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.

Overview of out-of-home care reforms

The purpose of this Bill is to give effect to a number of important elements of *A Step Up for Our Kids* (Out-of-home care Strategy 2015-2020) (the Strategy) that was released by the ACT Government in January 2015. The Strategy places out-of-home care on a sustainable funding path for the future by:

- supporting parents to retain care of their children safely;
- reducing the rate of children coming into out-of-home care;
- improving outcomes for children and young people in care; and
- avoiding significant costs to government over the medium to long-term.

The Strategy recognises that the rights and best interests of the child or young person are paramount. In doing so an aim of the Strategy is to strengthen decision making around the child or young person and embed a culture of listening to the voices of children and young people. This will include a renewed focus on achieving permanent family placements as quickly as possible. There will also be a focus on gathering and provision of information by people who have a close relationship with a child or young person.

The Strategy seeks to ensure that high-risk families receive support to parent their children successfully and that the needs of children and young people who come to the attention of child protection services are identified and addressed as early as possible. Services and supports include placement prevention services, reunification services, a mother and baby unit, supported contact services and parent-child programs. This is a placement prevention response focused on keeping children and young people at home with their birth families when it is safe to do so.

A fundamental plank of the Strategy will be implementing a therapeutic trauma-informed care system. This will include the provision of therapeutic assessments and plans for every child and young person in care. This service will also be available for a period of time to children and young people in placement prevention services. A trauma recovery service has also commenced to provide high quality, trauma-informed therapeutic services to children from birth to age 12 who have experienced abuse and neglect or who are in contact with the child protection system.

To give effect to a number of important elements of the Strategy, the Bill enhances decision making in the best interests of the child or young person by reducing the period of time a child or young person must be in care before more permanent placement decisions can be made by the Court. This amendment supports the principles applying to the Act, in particular avoiding undue delay that is likely to impact the child's or young person's wellbeing (section 9(d)). The Bill also provides additional financial support to assist young people to transition to adulthood.

Overview of the Bill

Amendments in the Bill give effect to a number of important elements in the Strategy. Some of these amendments are minor and technical in nature and do not alter the policy of the Act. For instance, clause 27 establishes a new category of carer – an approved carer. This has been done to simplify the assessment and approval processes for foster carers as well as support a greater understanding of the requirements and processes to become an out-of-home carer and understanding responsibilities under the Act. However, the criteria for approval to be a carer has not been altered.

Other amendments change policy and are necessary to give effect to the Strategy. For instance, in recognition of the particular vulnerabilities of children younger than two years old and the need for placement stability without undue delay, the proposed amendments in clauses 14, 15 and 16 amend the criteria for a short-term parental responsibility provision for this cohort of children. The period of time will reduce from not longer than two years to one year. For children over the age of two years the period of time will remain the same.

The Bill re-orders existing provisions in sections 503 to 529 in such a way that the criteria, approval, placement and renewal requirements can be easily accessed and understood by people engaged in protection, care and wellbeing of children and young people. This re-ordering does not in any way substantively alter requirements under the existing Act.

The Bill amends information sharing provisions to allow other people, close to the care of children and young people, to declare care teams. Consistent with this reform, the Bill gives responsibility for annual review reports and care plans to a responsible person of an approved care and protection organisation for children and young people on long-term orders. This reform will see people who have greater knowledge about and closer relationships with children and young people making case-management decisions.

The Bill enhances safeguards for children and young people by including psychologists in the category of a mandated reporter and placing the same requirements on them that exist for other health professionals. The Bill also contemporises the role and functions of the Ministerial Advisory Children and Youth Services Council by allowing it to be established from time-to-time with a specific strategic purpose and remit.

Overview of human rights considerations

The amendments in this Bill have been carefully considered in the context of the objects of the *Children and Young People Act 2008* (Children and Young People Act). Specific attention has been given to the overarching objective to protect the safety and wellbeing of children and young people in the ACT and also balancing their rights and interests, with those of their birth parents, within the Territory's human rights scheme.

The main objects of the Children and Young People Act are described in section 7 of the Act. The purposes are:

- (a) providing for, and promoting, the wellbeing, care and protection of children and young people in a way that—
 - (i) recognises their right to grow in a safe and stable environment; and
 - (ii) takes into account the responsibilities of parents, families, the community and the whole of government for them; and
- (b) ensuring that children and young people are provided with a safe and nurturing environment by organisations and people who, directly or indirectly, provide for their wellbeing, care and protection; and
- (c) preventing abuse and neglect of children and young people by providing whole of government assistance to children and young people, their parents and families, the community, and others who have responsibility for them; and
- (d) ensuring that Aboriginal and Torres Strait Islander people are included and participate in—
 - (i) providing for, and promoting, the wellbeing, care and protection of Aboriginal and Torres Strait Islander children and young people; and
 - (ii) preventing the abuse and neglect of Aboriginal and Torres Strait Islander children and young people; and
 - (iii) rehabilitating and reintegrating Aboriginal and Torres Strait Islander young offenders; and
- (e) ensuring that services provided by, or for, government for the wellbeing, care and protection of children and young people—
 - (i) are centred on the needs of children and young people; and
 - (ii) are informed by processes which engage children and young people, wherever possible, and take their views and wishes into account; and
 - (iii) foster and promote the health, education, developmental needs, spirituality, self-respect, self-reliance and dignity of children and young people; and
 - (iv) respect the individual race, ethnicity, religion, disability, sexuality and culture of children and young people; and
- (f) ensuring that young offenders—
 - (i) receive positive support and opportunities to become rehabilitated and reintegrated community members; and

- (ii) share responsibility for rehabilitation and reintegration with their parents and families, the community and the government in partnership; and
- (g) imposing standards that must be complied with for the delivery of services to children and young people; and
- (h) ensuring the protection of children and young people in employment.

The Bill engages, supports and places limitations on, the following rights in the *Human Rights Act 2004* (Human Rights Act):

- section 11 (Protection of family and children); and
- section 12 (Privacy and reputation).

Engagement with these rights needs to be carefully considered with section 28 of the Human Rights Act (Human rights may be limited) to determine whether the engagement is proportionate and can be demonstrably justified and the least restrictive means available to achieve the purposes of protecting the human rights of children, young people and their families.

The amendments in this Bill have been developed in line with the notion that governments not only have responsibility to ensure that human rights are free from violation, but that governments are required to provide for the full enjoyment of rights, subject to any reasonable and justifiable limitations. Consideration of this responsibility supports the positive protection of the rights of children, young people and their families, consistent with section 11 of the Human Rights Act.¹

The Bill also seeks to embody and express relevant international human rights standards for children and young people such as the *Convention on the Rights of the Child*. For instance, the Convention requires states to act in the best interests of the child (article 3) and provide special protection when a child cannot remain in their immediate family environment (with birth parents) (article 20).

Limitation on human rights – section 28(2) of the Human Rights Act

The preamble to the Human Rights Act notes that although human rights are necessary for individuals to live lives of dignity and value, few rights are absolute. However, they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society.

Section 28(2) of the Human Rights Act provides the framework that is used to determine the acceptable limitations that may be placed on human rights in the Territory. The section requires that any limitation on a fundamental right must be authorised by a Territory law, be based on evidence and be reasonable to achieve a legitimate aim. Whether a limitation is reasonable depends on whether it is proportionate. Proportionality requires that a limitation is necessary and rationally connected to the objective; the least restrictive in order to accomplish the object, and not have a disproportionately severe effect on the person to whom it applies.

¹ Colvin, M & Cooper, J, 2009, 'Human Rights in the Investigation and Prosecution of Crime' Oxford University Press, p.424-425.

The ACT Government acknowledges that the amendments in the Bill engage and limit the human rights of a section of the ACT community – children, young people and their birth parents.

Human rights are therefore only subject to reasonable limits which are demonstrably justifiable. In determining if a limit is reasonable and demonstrably justifiable the following relevant factors are considered:

- the nature of the right affected
- the importance of the purpose of the limitation
- the nature and extent of the limitation
- the relationship between the limitation and its purpose; and
- the least restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

Section 11 Protection of family and children

Under Section 11 of the Human Rights Act:

- (1) The family is the natural and basic group unit of society and is entitled to be protected by society; and
- (2) Every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind.

Section 11 notes that the concept of a family is broad. It cites the United Nations *International Convention on Civil and Political Rights*, General Comment 19 (39th session, 1990, which states, in part;

“The Committee notes that the concept of the family may differ in some respects from State to State, and even from region to region within a State, and that it is therefore not possible to give the concept a standard definition.”²

The nature of the right affected (section 28(2)(a))

It is recognised that children and young people have a right to a family. For this reason, under the Strategy there is a focus on supporting parents to retain care of their children safely, and increasing investment in early intervention services and supports. If this is not possible, amendments seek to enable stability and permanence with an alternative family as a priority for children and young people in care.

It is also recognised that children and young people have a fundamental right to life (article 6) and protection (article 3) as outlined in the *Convention on the Rights of the Child*. In these circumstances states have a responsibility to ensure alternative care for such a child (article 20).

² General Comment No. 19: Protection of the family, the right to marriage and equality of the spouses (Art. 23). 27/07/90. CCPR General Comment No. 19. (General Comments).

The importance of the purpose of the limitation (section 28(2)(b))

The Bill prioritises the rights and best interests of the child and young person over the rights of their birth parents. This is in recognition of the effects of prolonged or repeated trauma experienced by children and young people on neurological and emotional development.

The effects of trauma on the neurodevelopment of children in the first two years can have long lasting impacts on social, educational and economic outcomes for children in care. Where the child or young person cannot return home in a timely manner, the Bill allows earlier decisions by the Childrens Court for children under two years to be made that provides a permanent alternative family setting for the child to grow up.

For children and young people who cannot return to their birth families safely, creating a stable and safe family environment for the child or young person must be of priority. This approach is based on research about the effects of multiple and disrupted placements on development and provides the greatest chance for better outcomes for children and young people in out-of-home care, in particular the opportunity for a child or young person to develop a trusting relationship with a primary carer.

The nature and extent of the limitation (section 28(2)(c))

The right of children, young people and birth parents to live as a family will only be limited in circumstances where the Childrens Court is satisfied that a child or young person cannot live safely with their birth parents.

In recognition of the impact of trauma on the development of children younger than two years old, the proposed amendments in clauses 13-16 differentiate the period of time necessary for this cohort of children, for the director-general to be able to seek stable living arrangements. The Bill proposes to allow the director-general to seek long-term care orders for children aged under two years, after a continuous period of 12 months in care.

The proposed amendments in clauses 17-18 will also reduce the period of time that a child or young person is required to be in care and living with the carer who will be assuming full parental responsibility under an enduring parental responsibility order. The period of time will reduce from two years to one year or a total of one year in the previous two years.

The proposed amendments change the timeframe of the limitation by bringing forward the period of time necessary before the Childrens Court is able to extend short-term care orders or make long-term care orders.

It should be noted under existing provisions of the Children and Young People Act, the Childrens Court can already make long term care orders in shorter time-frames.

The relationship between the limitation and its purpose (section 28(2)(d))

The purpose of the amendment is to limit the right of children, young people and their birth parents to live as a family where the birth parents cannot demonstrate the capacity to ensure the safety and wellbeing of the child or young person.

These amendments will enable a child or young person to be in a long-term stable family environment without undue delay, when it has been determined that the child or a young person is best placed away from their birth parents.

The decision to seek placement orders will be based on a sound assessment of need and only if it is considered to be in the child or young person's best interests.

The least restrictive means reasonably available to achieve the purpose the limitation seeks to achieve (section 28(2)(e))

The ACT Government has concluded that, in balancing the respective rights of children and their families, these amendments do not unreasonably or unnecessarily infringe on the human rights of children and young people or their birth parents. This is because children and young people are entitled to a safe and secure family environment, the protection needed "by the child because of being a child, without distinction or discrimination of any kind"³, and because there is a rational connection between the proposed amendments and the issues they aim to address.

With these amendments the Childrens Court will be able to make decisions about care arrangements for children and young people in care without undue delay, thereby enhancing the child's or young person's safety and wellbeing and minimising disruption to their lives.

Section 12 Privacy and reputation

Under section 12 of the Human Rights Act

Everyone has the right—

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- (b) not to have his or her reputation unlawfully attacked.

The nature of the right affected (section 28(2)(a))

Under the Human Rights Act, ACT residents have the right to privacy and the right to be protected from unlawful attacks on their reputation. This means that when care plans and reports are prepared about children and young people, there should be no risk of the information contained within those documents being used in such a way as to compromise their privacy and reputation. However, to the extent that it is necessary for information to be shared about children and young people in care in their best interests, the right to privacy is limited as a consequence.

The proposed amendments in clauses 12 and 22 will allow the director-general to delegate her or his power to prepare care plans and provide annual review reports, respectively, to those people who have daily care of a child or young person and therefore have a relatively intimate knowledge of their circumstances.

Clauses 56-57 will allow the responsible person from an approved care and protection organisation to prepare care plans and provide annual review reports, declare care teams and hold information sharing delegations to identified staff within their own agencies. This will ensure people who need to share information about a

³ *Human Rights Act 2004 (ACT)*, section 11(2).

child or young person can do so quickly and easily and are able to make decisions that promote the rights of the child or young person.

The importance of the purpose of the limitation (section 28(2)(b))

A key reform in the Strategy is for approved care and protection organisations to exercise greater autonomy in making case management decisions about children and young people on long-term orders in their care. To give effect to this reform, it is necessary to amend information sharing provisions of the Children and Young People Act.

Information sharing provisions are governed by the principle that information about children and young people will be exchanged only in their best interests. It is therefore critical that appropriate information is made available to people who have responsibility for the safety and wellbeing of children and young people, even in circumstances where the information is of a personal nature. The personal experiences of children and young people will largely govern decisions made about their future care arrangements.

Approved care and protection organisations already hold records and information about children and young people in care and are required to comply with a range of privacy and information sharing requirements contained in ACT and Commonwealth legislation such as the Children and Young People Act, *Territory Records Act 2002*, the Commonwealth *Privacy Act 1988* and the *Freedom of Information Act 1989*. It is also proposed that approved care and protection organisations will be subject to the ACT *Information Privacy Act 2014*.

In implementing the reforms contained in the Strategy, the regulatory oversight of approved care and protection organisations will provide a strong regulatory framework with which approved care and protection organisations will need to comply. This will include the handling and exchange of information. Furthermore, the implementation of the Strategy will include training approved care and protection organisations about their responsibilities and obligations.

An amendment is also proposed for psychologists to be mandated reporters (clauses 10-11). This amendment places the same responsibilities on psychologists as other health professionals that are mandated reporters. This amendment will enhance the safety of children and young people by making it mandatory for a psychologist to report sexual abuse or non-accidental physical injury to a child or young person.

Any information provided by a psychologist to the director-general must comply with information sharing provisions under ACT and Commonwealth laws. These provisions are about protecting the privacy and interests of children, young people and reporters. The obligations of psychologists apply to all considerations under section 28.

The nature and extent of the limitation (section 28(2)(c))

The limitation is defined in terms of information obtained and shared about children and young people, which is disseminated to those who have responsibility for safeguarding and protecting the wellbeing of children and young people. While the

proposed amendments enhance information sharing arrangements, they do not significantly limit the human rights of children and young people because the information can only be provided to the children and young people themselves, their legal representatives, the Childrens Court, the director-general and her or his delegates and people with direct care and protection responsibilities.

As outlined above, individuals or organisations holding confidential information about children and young people are required to comply with a range of privacy and information sharing requirements under ACT and Commonwealth laws.

At present, under Division 25.3.2 (ss860-863) of the Children and Young People Act, safety and well-being information about a child or young person may be shared between the Minister or director-general, information sharing entities (defined in section 859) and members of care teams. The new section 863(5) (clause 57) extends the power to declare care teams for the purpose of information sharing to responsible persons for approved kinship and foster care organisations and approved residential care services.

The relationship between the limitation and its purpose (section 28(2)(d))

The purpose of the limitation is to protect the best interests of children and young people, notwithstanding their right to privacy and the protection of their reputation. This will be achieved by ensuring that information can be obtained and disseminated in the interests of their safety and wellbeing.

The least restrictive means reasonably available to achieve the purpose the limitation seeks to achieve (section 28(2)(e))

The ACT Government has concluded that, in balancing the respective rights of children and young people, these amendments do not unreasonably or unnecessarily limit the human rights of children, young people and their families. This is because people and organisations responsible for children and young people in care have a duty to ensure their safety and wellbeing. Consequently, there is a rational connection between the proposed amendments and the issues they aim to address.

As noted earlier, approved care and protection organisations are required to comply with a range of privacy and information sharing requirements contained in ACT and Commonwealth legislation before information about a child or young person can be exchanged.

The strengthened regulatory oversight, contract and relationship management system will ensure approved kinship and foster care organisations meet legislative requirements and standards.

Notes on Clauses

Clause 1 Name of the Act

This is a technical clause and sets out the name of the Act as the *Children and Young People Amendment Act 2015 (No 3) (Act)*.

Clause 2 Commencement

This clause enables the Act to commence on 1 January 2016.

Clause 3 Legislation Amended

This Act amends the *Children and Young People Act 2008*

Clause 4 Part 2.2

A new section 27 (Establishment of Council) changes *the* Children and Youth Services Council to *a* Children and Youth Services Council (Council). The new section 27 also incorporates the old section 28 (Functions of Council).

This amendment allows a Council to be established from time to time to exercise stated functions with specific strategic purpose and remit. This will ensure that when a Council is stood up there is a clearly identified focus that will be determined by the Terms of Reference issued by the Minister. The instrument establishing a Council is to be a notifiable instrument.

The amendment proposes that a Council will be comprised of members with expertise related to the purpose for it being convened rather than having a more general representative membership as required under the Act.

A new section 28 incorporates the old sections 29 to 32, which have been omitted, bringing together the requirements for the appointment and ending of appointment of Council members. The old sections 33-36 have been removed because of the Minister's broad powers in terms of the convening and functioning of a Council under sections 27-28.

Clause 5 Who is a *suitable entity*? Section 61, examples 4 to 6

Examples 4-6 in section 61 are omitted as kinship carers and foster carers are no longer deemed to be suitable entities for a stated purpose but will obtain parental authority as a function of a new category of carer to be known as approved carer.

Clause 6 Director-general may approve suitable entity for purpose Section 63 (2)

This amendment is consequential to the amendments noted in clause 5.

Clause 7 Meaning of *care and protection purpose* Section 352B, definition of *care and protection purpose*, paragraph (a)

Clause 8 Section 352B examples and note

The definition of a care and protection purpose in the Act includes 'one that relates to a function under the care and protection chapters'. To simplify and clarify the definition, these clauses (7 through 8) name the functions in the Act that are care and protection purposes. These clauses do not affect the ability to prescribe care and protection purposes by regulation.

Clause 9 Intervention – suspension if child or young person unsafe Section 352P(3)(a)

This clause is a consequential amendment arising from clause 34.

Clause 10 Offence – mandatory reporting of abuse; Section 356(2) – definition of *mandated reporter*, new paragraph (ea)

A new paragraph 356(2)(ea) is inserted to include psychologists as mandated reporters. This amendment places the same responsibilities on psychologists as other health professionals that are mandated reporters. This amendment will enhance the safety of children and young people by making it mandatory for a psychologist to report sexual abuse or non-accidental physical injury to a child or young person.

The amendment engages section 12 of the Human Rights Act (Privacy and reputation) as the provision of confidential information in relation to a child or young person is subject to ACT and Commonwealth legislation, as outlined above.

Clause 11 Section 356(2); new definition of *psychologist*

In this section a psychologist is defined as a person registered under the Australian *Health Practitioner Regulation National Law* (ACT) to practice in the psychology profession (other than as a student).

Clause 12 New Section 457A

A new section 457A enables the director-general to delegate her or his powers to prepare a care plan for a child or young person in care to a person responsible for an approved kinship and foster care organisation or a residential care service.

The amendment engages with section 12 of the Human Rights Act (Privacy and reputation) because the provision of confidential information about a person is subject to Commonwealth and ACT privacy information.

Clause 13 Care and protection order – length: Section 465(2), note 1

In note 1 of section 465(2), the words in parentheses, *not longer than 2 years*, are omitted as the period of time for a short-term parental responsibility provision in a care and protection order is changed in section 476 (see clause 14). The amendment differentiates between the circumstances for children under two years and children and young people over the age of two years.

Clause 14 What is a *short-term parental responsibility provision* ? Section 476; definition of *short-term parental responsibility provision*

The words *not longer than 2 years* are to be omitted and substituted with the words “not longer than –

- (a) for a child who is younger than 2 years old when the order is made - 1 year;
- (b) in any other case - 2 years”

This amendment distinguishes between children under two years of age and children or young people over two years of age for the purpose of making a short-term parental provision in a care and protection order. This amendment is proposed in recognition of the special vulnerability of children under the age of two years.

The amendments noted in clauses 15 and 16 are especially important given many children and young people in care have experienced significant abuse and neglect and are likely to experience developmental delays.

If parents are engaged with support services and are able to demonstrate commitment to parenting their child safely, this would be taken into account by the Childrens Court in determining orders.

The amendment engages with section 11 of the Human Rights Act (Protection of the family and children) by providing children and young people with a safe and stable family environment where it is not safe for them to return to their birth parents.

Clause 15 Short term parental responsibility provision – extension section 477(1)

In this section, after the word *order* the words *the extension decision* are inserted in parentheses to clarify the intention of the provision.

Clause 16 Section 477(2)(a) and (b)

This clause amends the criteria for extension of a short-term parental responsibility provision in a care and protection order for children under two years of age. For this cohort of children, the period of time will reduce from two years or two years in three years, to one year. For children over the age of two years the period of time will remain two years.

The amendment differentiates between children under the age of two years (477(2)(a)) and all other children and young people (477(2)(b)). The differentiation recognises the impact of trauma on the neurodevelopment of children under two years of age and the importance of stability of placement for safe, healing relationships.

The amendment engages with section 11 of the Human Rights Act (Protection of the family and children) by providing children and young people with a safe and stable family environment where it is not safe for them to return to live with their birth parents.

Clause 17 Enduring parental responsibility provision – criteria for making; Section 482(1)(a)(i) and (ii)

Section 482(1)(a)(i) and (ii) reduces the period of the time in which a child or young person needs to be in care before an enduring parental responsibility order can be made. The period of time will reduce from two years or a total of at least two years in three years, to one year or a total of at least one year in two years.

These amendments will enable the courts to make a decision for a child or young person to be in a long-term stable family environment, when it has been determined that a child or young person is best placed away from their birth parents.

The amendment engages with section 11 of the Human Rights Act (Protection of the family and children) by providing children and young people with a safe and stable family environment where it is not safe for them to return to their birth parents.

Clause 18 Section 482(1)(b)(i) and (ii)

Section 482(1)(b)(i) and (ii) reduces the period of the time in which a child or young person needs to be living with the carer who will be assuming full parental responsibility under an enduring parental responsibility order. The period of time will

reduce from two years or a total of at least two years in three years, to one year or a total of at least one year in two years.

These amendments will enable the Courts to make a decision for a child or young person to be in a long-term stable family environment, when it has been determined that a child or young person is best placed away from their birth parents.

The amendment engages with section 11 of the Human Rights Act (Protection of the family and children) by providing children and young people with a safe and stable family environment where it is not safe for them to return to their birth parents.

Clause 19 Annual review report—consultation Section 496 (2) (c) and (d)

When preparing an annual review report, the director-general must consult with certain entities. When a child or young person is in foster care, the approved kinship and foster care organisation must be consulted. This clause replaces the term *foster care service* with *approved kinship and foster care organisation*. The clause also adds the requirement to consult with the *approved kinship and foster care organisation* when a child or young person is in kinship care.

**Clause 20 Annual review report—must be given to certain people
Section 497 (1) (e)**

Section 497(1)(e) is omitted as the director-general is no longer required to provide annual review reports to the Childrens Court.

Clause 21 New section 497 (1A)

This amendment provides that the director-general must give an annual review report to the Childrens Court if requested by the court. The amendment is consequential to the amendment noted in clause 20.

Clause 22 New section 501A

This amendment enables the director-general to delegate her or his power to provide annual review reports to a responsible person for an approved kinship and foster care organisation as those people working closely with children and young people in care are best placed to source and provide information about the children and young people.

The amendment engages with section 11 of the Human Rights Act (Protection of the family and children) because the provision of confidential information about a person is subject to Commonwealth and ACT privacy information.

**Clause 23 Definitions—Act
Section 502, definition of *foster care service***

The term *foster care service* has been removed from the list of definitions and replaced with the term *approved kinship and foster care organisation*. The term *approved kinship and foster care organisation* is consistent with definitional terms used in section 63 and Part 10.4 of the Act.

Clause 24 Who is an *out-of-home carer* ?

Section 508, new note

A new note is inserted in section 508 which defines an out-of-home carer as a *kinship carer* (section 516(2)), a *foster carer* (section 518(2)) and a *residential care service* (section 520(2)).

Clause 25 Section 509-511 (omitted)

Section 509 is omitted because section 509(a) is covered by section 516(2) and section 509(b) is covered by section 516(5). The amendment is consequential to the amendment noted in clause 30 and makes no substantive changes.

Section 510 is omitted because the definition of an *approved foster care organisation* is now in section 507A and the definition of *foster carer* is now in section 518(2). The definition of *foster care service* is no longer needed as a *foster care service* is to be known as an *approved kinship and foster care organisation*.

Section 511 is omitted because the definition of *approved residential care organisation* is now in section 507A and the definition of *residential care service* is now in section 520(2).

Clause 26 Section 514, note 2

The words in parentheses, *Director-general may place child or young person with out-of-home carer*, which are the words for the heading of section 512, have been omitted as the word *may* should read *must*.

Similar changes have been made to sections 516(5), 518(5), 524(5) note 2, 525 (5) note 1, 526 and 527.

Clause 27 New Division 15.4.1A

A new division has been inserted to establish a new category of carer – an approved carer. This has been done to simplify the assessment and approval processes for foster carers. The criteria for deciding the suitability of a carer will remain the same and will be based on the suitability entity and general parental authority provisions in the Act. The amendment includes a protection by making the decision a reviewable decision. This new division does not affect a person's requirement to meet the criteria for being granted specific parental authority under sections 516 and 518.

New Section 514A Approved carers – individual may apply

Section 514A provides that an individual seeking status as an approved carer may apply to the director-general or the responsible person for an approved kinship and foster care organisation, in line with the director-general's powers of delegation (refer to new section 514G).

New Section 514B Approved carers – criteria for approval

Section 514B follows section 514A in establishing the process for approval of an approved carer by the director-general. Approval must be in writing but if the approval is provided orally, written approval must be subsequently provided. The applicant must hold a Working with Vulnerable People registration or, for a kinship carer, must have applied for registration in accordance with section 16 of the *Working with Vulnerable People (Background Checking) Act 2011*.

New Section 514C Approved carers – criteria for approval

Section 514C establishes the criteria for approval as an approved carer.

New Section 514D Approved carers – further information, references etc

Section 514D provides that an individual may be required to provide additional information to determine if they are an appropriate person to care for children or young people.

New Section 514E Approved carers – expiry and renewal of approvals

Section 514E provides that the director-general may issue carer approval up to three years. This allows the differences in the circumstances by which kinship carers and foster carers care for children and young people and that kinship carers often only experience one episode of care for a child or young person.

New Section 514F Offence – ongoing duty to update information

Section 514F provides that applicants for approved carer status will have an ongoing obligation to provide updated information to the director-general or a responsible person for an approved kinship and foster care organisation (refer New Section 514G) where that information is relevant to the individual's suitability to care for a child or young person. This requirement is new for kinship carers and will apply only for the period the kinship carer is a carer under section 516. This new provision for kinship carers ensures safety considerations for children and young people while not requiring the kinship carer to provide updated information in accordance with section 514F.

New Section 514G director-general obligations

Section 514G enables the director-general to delegate her or his functions to a responsible person for an approved kinship and foster care organisation. The power to delegate is similar to that formerly able to be exercised by the director-general under the previous section 519, whereby the director-general was able to authorise *a person* to exercise his or functions under the section.

Clause 28 Definitions – Act Section 515

This section has been omitted as these definitions are now in the new section 507A.

Clause 29 Section 516 heading

The heading for this provision has been amended to *Kinship carer—specific parental authority* to reflect the scope of the provision.

Clause 30 Section 516(2)

This amendment moves the definitions of *specific parental authority* and *kinship carer* into section 516(2), for the purpose of clarifying the meaning and intent of the provision.

Clause 31 Section 516 (3) (a) and note

For the purpose of section 61, kinship carers are no longer classified as suitable entities but instead hold the new classification of approved carer (refer to Clause 27). Consequently, a kinship carer will be taken to mean an individual who is an approved carer.

Clause 32 New section 516(3), new notes

An individual whose authorisation as an approved carer (refer section 514B) expires under section 514F(6) because the carer no longer has a child in his or her care automatically loses his or her authorisation as a kinship carer. A kinship carer holds authorisation to care for a specific child or young person only for the duration of the period of care.

Clause 33 Section 516 (5)

This amendment corrects the drafting error noted at clause 26.

**Clause 34 Authorisation of foster care service
Section 517**

This section is omitted because a *foster care service* is now to be known as an *approved kinship and foster care organisation* under section 63.

Clause 35 Section 518

The heading for this provision has been amended to *Foster carer—specific parental authority* to reflect the scope of the provision.

Clause 36 Section 518 (2)

This amendment moves the definition of *specific parental authority* and *foster carer* into section 518(2), for the purpose of clarifying the meaning and intent of the provision.

Clause 37 518(3)

This amendment adds the requirement that a foster carer must be an approved carer (refer to clause 27, section 514B) as well as agreeing to exercise specific parental authority on behalf of the director-general.

Clause 38 Section 518(5)

This amendment corrects the drafting error noted at clause 26.

**Clause 39 Authorisation of foster carer – general parental authority
Section 519**

Section 519 is omitted as a foster carer having general parental authority has been replaced by the classification of approved carer under section 514B.

Clause 40 Section 520 heading

The heading for this provision has been amended to *Residential care service - general parental authority*, to reflect the scope of the provision.

Clause 41 Section 520(1)

This section has been redrafted so that its language and intent is consistent with sections 516 and 518, which are provisions with similar intent. The amendment also moves the definition of *residential care service* into section 520(2).

Clause 42 Sections 522 and 523

These are consequential amendments arising from clauses 34 and 39, respectively. These sections have been omitted.

**Clause 43 Revocation of residential care service’s authorisation
Section 524(1)**

This clause replaces the term *organisation’s* with *approved residential care organisation’s* for the purpose of clarifying the meaning of *organisation’s* in that context.

Clause 44 Section 524 (5), note 2

This amendment corrects the drafting error noted at clause 26.

Clause 45 Section 525 (5), note 1

This amendment corrects the drafting error noted at clause 26.

**Clause 46 Definitions-div 15.4.3
Section 526, definition of care entities, paragraph (a)(ii)**

This is a consequential amendment arising from clause 36. A *foster care service* is to be known as an *approved kinship and foster care organisation*.

Clause 47 Section 526, definition of *placement*

This amendment corrects the drafting error noted at clause 26.

**Clause 48 Information and items must be kept during placement
Section 527 (1)**

This amendment corrects the drafting error noted at clause 26.

Clause 49 Section 529 J heading

This section is renamed *Financial assistance – young person or young adult* to avoid confusion with the new section 529JA (*Financial assistance – previous out-of-home carer*).

Clause 50 New section 529JA

A new section, 529JA, is included to enable the director-general to provide financial assistance to a person who was a carer, where the young adult remains in the placement and this is an agreed part of the transition plan. The subsidy payment would be available up to the young adult turns 21 years of age or leaves the placement, whichever is earlier.

Clause 51 Meaning of *reviewable decision*—div 24.1.3 Section 839, table 839.1A, new items 1A and 1B

The new items 1A and 1B reflect the inclusion in the Act of the new approved carer Classification (see Clause 27, new Division 15.4.1A). Decisions to refuse to approve a person as an approved carer or refuse to renew a person’s approval as an approved carer will be reviewable decisions, as applied previously to foster care organisations and foster carers under section 839, table 839.1A.

Clause 52 Section 839, table 839.1A, items 2, 4, 6 and 7

This clause removes item 2 – *refuse to authorise approved foster care organisation as a foster care service* and item 6 – *revoke authorisation of approved foster care organisation as foster care service* as a consequential amendment arising from clause 33. The clause also removes item 4 - *refuse to authorise person as foster carer* and item 7 - *revoke authorisation of person as foster carer* as a consequential

amendment arising from clause 36. The approval of a care and protection organisation and an individual as a suitable entity for a purpose under section 63 of the Act was made a reviewable decision on 1 July 2015.

Clause 53 Section 854 heading

Clause 54 Section 854(2), definition of carer, paragraph (b)

**Clause 55 Who is an information sharing entity?
Section 859(1), definition of information sharing entity,
Paragraph (d)**

**Clause 56 Care teams-sharing safety and wellbeing information
Section 863 (1), example 6**

Clauses 53 through 56 replace the term *foster care service* with the term *approved kinship and foster care organisation*.

Clause 57 New section 863 (5)

The new section 863(5) enables a responsible person for an approved kinship and foster care organisation or a responsible person for an approved residential care service to declare a care team for a child or young person for the purpose of sharing safety and wellbeing information.

This change will ensure that the people who are sharing and receiving safety and wellbeing information are those closest to the children and young people and have the best understanding of their circumstances.

The amendments engage section 12 of the Human Rights Act (Privacy and reputation) because the provision of confidential information about a person is subject to Commonwealth and ACT privacy legislation.

**Clause 58 Protection of people giving certain information
Section 874(2) (n)**

This clause replaces the term *foster care service* with the term *approved kinship and foster care organisation*.

**Clause 59 ACT Child welfare services must assist public advocate
Section 879 (3), definition of child welfare service,
new paragraph (f)**

This clause adds *approved care and protection organisation* to the definition of a *child welfare service* under the Act. This amendment adds an additional safeguard when responsibility for case management of a child or young person is held by a care and protection organisation and ensures cooperation by these organisations with the Public Advocate.

Transitional Arrangements

Clause 60 New chapter 29

Section 981

The commencement day will be 1 January 2016.

Section 982

This clause adds a new section 982 of the Act to replace the term *foster care service* with the term *approved care and protection organisation*.

New Section 983 – Authorisation of kinship carers

A person who holds approval as a suitable entity under section 63 and authorisation for the purpose of being a kinship carer for a child or young person under section 516 immediately before the commencement day of the *Children and Young People Amendment Act 2015 (No 3)*, will be taken to retain approval under the new section 514B as an approved carer

New Section 984 – Authorisation of foster carers

A person who holds authorisation as a foster carer for a child or young person under section 518 immediately before the commencement day of the *Children and Young People Amendment Act 2015 (No 3)*, will be taken to retain authorisation under the new section 514B and authorisation under the amended section 518 until the first of the events listed in subsection (3), occur.

Sections 983 and 984 enable kinship and foster carers, respectively, to retain specific parental responsibility for a child or young person following the transition to arrangements for the *Children and Young People Amendment Act 2015 (No 3)*, thus ensuring continuity of care arrangements for a child or young person.

Section 985 – Expiry of Chapter 29

Chapter 29 will expire 3 years after the commencement day of the *Children and Young People Amendment Act 2015 (No 3)*.

- Clause 61** Dictionary, definition of *approved carer*
- Clause 62** Dictionary, definition of *approved foster care organisation*
- Clause 63** Dictionary, new definition of *approved kinship and foster care organisation*
- Clause 64** Dictionary, definition of *approved residential care organisation*
- Clause 65** Dictionary, definition of *foster carer*
- Clause 66** Dictionary, definition of *foster care service*
- Clause 67** Dictionary, definition of *general parental authority*
- Clause 68** Dictionary, definition of *kinship carer*
- Clause 69** Dictionary, definition of *out-of-home carer*
- Clause 70** Dictionary, definition of *residential care service*
- Clause 71** Dictionary, definition of *specific parental authority*

Clauses 61 through 71 update the dictionary to reflect the change to terms enacted through this Bill.

Schedule 1

Consequential Amendments

Section 16(3) of the *Working with Vulnerable People (Background Checking) Act 2011 (WWVP Act)* – definition of *kinship carer*, is amended consequential to the omitting of section 509 in the *Children and Young People Amendment Act 2015 (No 3)* and the inserting of the definition of *kinship carer* in section 516.

Additionally, the note to Schedule 1, part 1.1 of the WWVP Act is amended to reflect changes to definitions in the Children and Young People Act as noted in clauses 30-31(s516), clauses 35-36 (s518) and clauses 40-41 (s520).