



Australian Capital Territory

Children and Young People Amendment Act 2006

A2006-6

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J2005-874

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Australian Capital Territory

Children and Young People Amendment Act 2006

A2006-6

An Act to amend the *Children and Young People Act 1999*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2005-874

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Children and Young People Amendment Act 2006*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Children and Young People Act 1999*.

Note This Act also amends the *Public Advocate Act 2005* (see s 32).

4 Section 11

substitute

11 Best interests of child or young person paramount consideration

- (1) In making a decision or taking action under this Act in relation to a child or young person, the decision-maker or person taking the action must regard the best interests of the child or young person as the paramount consideration (the *best interests principle*).

- (2) This section does not apply to a decision under chapter 6 (Young offenders).

Note A decision-maker making a decision under ch 6 about a young person or young offender must have regard to the best interests of the young person or young offender (see s 68 (aa)).

5 General principles Section 12 (1)

omit everything before paragraph (b), substitute

- (1) In making a decision or taking action under this Act in relation to a child or young person, the decision-maker or person taking the action must apply the following principles except when it would be contrary to the best interests of a child or young person:

6 Section 14

omit everything before paragraph (a), substitute

14 Indigenous children and young people principle

In making a decision or taking action under this Act in relation to an Aboriginal or Torres Strait Islander child or young person, the decision-maker or person taking the action must take into account the following:

7 Indigenous placement principle Section 15 (1)

substitute

- (1) In making a decision about the placement of an Aboriginal or Torres Strait Islander child or young person, the decision-maker must make the decision in accordance with—
- (a) this section; and
 - (b) any indigenous cultural plan in force for the child or young person.

8 New section 15 (5)

insert

(5) In this section:

indigenous cultural plan, for a child or young person, means a plan to preserve and enhance the identity of the child or young person as an Aboriginal or Torres Strait Islander person, that is developed by the chief executive in consultation with—

- (a) the child or young person (taking into consideration the age and maturity of the child or young person); and
- (b) any Aboriginal or Torres Strait Islander people who have an interest in the wellbeing of the child or young person; and
- (c) any relevant indigenous organisation.

**9 Members of the council
Section 36 (2)**

substitute

(2) The Minister must ensure that there is always—

- (a) at least 1 member who represents the interests of carers; and
- (b) at least 1 member who represents the interests of Aboriginal and Torres Strait Islander people.

**10 Principles
Section 68**

insert

- (aa) regard must be had to the best interests of the young person or young offender;

11 Section 151

substitute

151 What is *abuse*?

In this chapter:

abuse, of a child or young person, means—

- (a) physical abuse; or
- (b) sexual abuse; or
- (c) emotional abuse (including psychological abuse) if the child or young person has suffered or is suffering in a way that has caused or is causing significant harm to his or her wellbeing or development; or
- (d) emotional abuse (including psychological abuse) if—
 - (i) the child or young person has been or is being exposed to conduct that is domestic violence under the *Domestic Violence and Protection Orders Act 2001*; and
 - (ii) the exposure has caused or is causing significant harm to the wellbeing or development of the child or young person.

151A What is *neglect*?

In this chapter:

neglect, of a child or a young person, means a failure to provide the child or young person with a necessity of life that has caused or is causing significant harm to the wellbeing or development of the child or young person.

Examples of necessities of life

- 1 food
- 2 shelter
- 3 clothing

4 medical care

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

151B When is a child or young person *at risk of abuse or neglect*?

For this chapter, a child or young person is *at risk of abuse or neglect* if, on the balance of probabilities, there is a significant risk of the child or young person being abused or neglected.

Examples of when a child is at risk of abuse or neglect

- 1 Jane is 3 months old and the chief executive has already received 5 reports about her. Jane's parents are long-term drug users and Jane was born with neonatal withdrawal syndrome. Jane's parents' relationship is violent and, although Jane herself has not been physically harmed, she has been in her mother's arms when her father assaulted her mother. Police have been called to the family home a number of times because of reports of family violence. This usually results in Jane's parents separating for a short period then reconciling. Jane's mother has 3 older children from earlier relationships who are subject to care and protection orders and are being cared for by kin (under s 31 (1) (b)) because of emotional abuse from witnessing violence between their mother and Jane's father. Jane's parents have agreed to work with the chief executive to address their drug use and violent behaviour. However, they have not actually made the changes they agreed to make. Jane's parents do not have contact with extended family and Jane is not regularly seen by any health professionals or other community support people. In these circumstances, the chief executive may decide that, on the balance of probabilities, there is a significant risk of Jane being abused or neglected. Jane is therefore a child at risk of abuse or neglect.
- 2 Michael is 7 years old and in the full-time care of his mother. He has never had any contact with his father. Michael's mother has a mental illness characterised by episodes of psychosis. When Michael's mother has been unwell, she has locked Michael and herself in the home for weeks at a time. Michael sometimes says that 'bad people' are after him and will hurt him and his mother. Michael's mother attempted suicide by driving off a bridge with Michael in the car. In these circumstances, the chief executive may decide that, on the balance of probabilities, there is a significant risk of Michael being abused or neglected. Michael is therefore a child at risk of abuse or neglect.

- 3 Tom is 9 years old and is in the sole care of his father. Since Tom was 6 years old, the chief executive has received numerous reports that Tom's father calls him derogatory names and yells at him on a daily basis, often in the presence of other people. Tom's school counsellor reports that Tom appears anxious, is fearful of loud noises in the school environment and regularly cries for insignificant reasons. Tom is assessed as being at risk of childhood depression by the school counsellor. Tom's father considers his parenting of Tom to be good and will not allow the chief executive to visit the family home to talk to Tom. In these circumstances, the chief executive may decide that, on the balance of probabilities, there is a significant risk of Tom being abused or neglected. Tom is therefore a child at risk of abuse or neglect.
- 4 Amy is 13 years old and regularly goes missing from home to avoid the constant fighting between her mother and stepfather. Amy is engaging in indiscriminate sexual activity and regularly consumes alcohol and illicit drugs which she pays for through prostitution. Amy has intentionally overdosed on medication 3 times and each overdose has required medical treatment. Amy's parents consider that she is now making her own choices and there is nothing they can do to help her. In these circumstances, the chief executive may decide that, on the balance of probabilities, there is a significant risk of Amy being abused or neglected. Amy is therefore a child at risk of abuse or neglect.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

12 New section 155A

in division 7.1.1, insert

155A Helping families understand care and protection procedures

- (1) A decision-maker making a decision under this chapter for a child or young person must endeavour to ensure that the relevant people for the decision—
 - (a) understand what the decision is going to be about; and
 - (b) understand the decision-making process; and

- (c) know that the child or young person and people with parental responsibility for the child or young person may take part in the decision-making process and have their views and wishes heard; and
 - (d) are informed of, and understand, the decision.
- (2) The chief executive must give the relevant people for the decision sufficient information about the decision-making process, in language and a way that they can understand, to allow the child or young person, and people with parental responsibility for the child or young person to take part fully in the decision-making process.
- (3) In this section:
- relevant people***, for a decision for a child or young person, means—
- (a) the child or young person or, if the child is represented, the representative of the child or young person; and
- Note* Representation of children and young people is further dealt with in s 23 and s 24.
- (b) a person with parental responsibility for the child or young person.
- (4) This section is subject to any order of a court.
- Note 1* A child or young person has a right to take part in a proceeding under this Act in relation to the child or young person (see s 22).
- Note 2* A court must also take steps to ensure that the child or young person and other people understand proceedings etc (see s 408).

**13 In need of care and protection
Section 156 (1)**

substitute

- (1) For this chapter, a child or young person is *in need of care and protection* if—
 - (a) the child or young person—
 - (i) has been abused or neglected; or
 - (ii) is being abused or neglected; or
 - (iii) is at risk of abuse or neglect; and
 - (b) no-one with parental responsibility for the child or young person is willing and able to protect the child or young person from suffering the abuse or neglect.

14 Section 157

substitute

157 Incident need not have happened in ACT

- (1) This section applies if a person believes that a child or young person is in need of care and protection under section 156 because the child or young person—
 - (a) has been abused or neglected; or
 - (b) is being abused or neglected; or
 - (c) is at risk of abuse or neglect.
- (2) It does not matter whether conduct giving rise to the belief happened completely or partly outside the ACT.

15 **Mandatory reporting**
Section 159 (1) (i)

substitute

- (i) a public servant who, in the course of employment as a public servant, works with, or provides services personally to, children and young people or families; or

16 **New section 159 (3)**

insert

- (3) Subsection (2) does not apply to a person if the person reasonably believes that—
 - (a) someone else has made a report to the chief executive about—
 - (i) the same child or young person; and
 - (ii) the same abuse or injury; and
 - (b) the other person has reported the same grounds for their suspicion as the person has for their suspicion.

17 **Section 162**

substitute

162 **Chief executive must record reports**

The chief executive must make and keep a written record of—

- (a) each report made to the chief executive under section 158 (Voluntary reporting) or section 159 (Mandatory reporting); and
- (b) each child protection appraisal made because of a report mentioned in paragraph (a).

**18 Action by facilitator
Section 169 (3)**

omit everything before paragraph (c), substitute

- (3) A facilitator may do anything necessary or convenient to be done in relation to facilitating a conference (whether or not the conference actually takes place), including, for example, all or any of the following:
- (a) prepare for the conference, including, for example—
 - (i) meeting with people; and
 - (ii) consulting with people with knowledge of or experience in a particular culture; and
 - (iii) providing mediation; and
 - (iv) resolving conflicts;
- Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).
- (b) asking a person to give information or a report to a conference without inviting that person to be a participant at the conference;

19 New section 189A

insert

189A Public advocate to be told about some incidents

- (1) This section applies if—
- (a) the chief executive receives a report about a child or young person under section 158 (Voluntary reporting) or section 159 (Mandatory reporting); and
 - (b) because of the report, the chief executive makes a child protection appraisal for the child or young person; and

- (c) at the time of the incident that gave rise to the report—
- (i) the chief executive had parental responsibility (sole or shared) for the child or young person; and
 - (ii) someone else (the *authorised carer*) was exercising parental responsibility for the child or young person under section 31 (Authorisation to exercise parental responsibility for particular child or young person) on behalf of the chief executive; and
- (d) the incident either—
- (i) involved the authorised carer; or
 - (ii) happened while the child or young person was in an approved care placement.

Note The chief executive may have parental responsibility for a child or young person under any of the following provisions:

- under a family group conference agreement (see div 7.2.1)
- under a voluntary care agreement (see div 7.2.2)
- under a care and protection order (see pt 7.3)
- after emergency action is taken (see div 7.3.4).

- (2) The chief executive must give a report to the public advocate about—
- (a) the incident; and
 - (b) what action (if any) the chief executive has taken because of the appraisal.
- (3) For this section, a child or young person is in an *approved care placement* if the child or young person is—
- (a) placed in out-of-home care in the form of—
 - (i) foster care; or
 - (ii) kinship care; or

- (iii) care provided under a residence order (see s 207); or
- (b) taking part in a contact visit with someone and the contact is—
 - (i) allowed under a contact order (see s 206); or
 - (ii) approved by the chief executive.

**20 Chief executive to report
Section 267 (4)**

substitute

- (4) A report under this section for a final care and protection order for a child or young person must be given—
 - (a) each year; or
 - (b) if the order is in force for less than 1 year—at least 1 month, but not earlier than 2 months, before the order expires.

21 Section 403 (5)

substitute

- (5) This section expires on 1 December 2006.

22 Sections 404 and 405

substitute

404 When is information *divulged*?

In this chapter:

divulge includes communicate.

405 Who is an *information holder*?

For this chapter, a person is an *information holder* if—

- (a) the person is or has been—

- (i) the chief executive; or
 - (ii) the public advocate; or
 - (iii) an official visitor; or
 - (iv) someone else exercising a function under this Act; or
 - (v) someone else engaged in the administration of this Act;
or
- (b) the person has been given information under this Act by a person mentioned in paragraph (a).

Note Protected information may be given to people under various provisions of this Act, including:

- s 29 (Power to give and receive information)
- s 45 (Assistance for public advocate)
- s 73 (Powers of court in relation to reports)
- s 189A (Public advocate to be told about some incidents)
- s 405H (Information may be given in best interests of child or young person).

405A What is *protected information*?

- (1) For this chapter, information is *protected information* if it is information about a person that is disclosed to, or obtained by, an information holder because the person is, or has been, an information holder.
- (2) Without limiting subsection (1), *protected information* includes sensitive information.

405B What is *sensitive information*?

- (1) For this chapter, information is *sensitive information* if it is—
 - (a) child abuse information; or
 - (b) child abuse appraisal information; or

- (c) interstate child abuse information; or
- (d) family group conference information; or
- (e) information prescribed by regulation for this section.

(2) In this section:

child abuse information means information—

- (a) in a report (a ***child abuse report***) made under—
 - (i) section 158 (Voluntary reporting); or
 - (ii) section 159 (Mandatory reporting); or
- (b) in a record (a ***child abuse record***)—
 - (i) made under section 162 (a) (Chief executive must record reports); or
 - (ii) that relates to a notification under the *Children's Services Act 1986*, section 103 (as in force at any time); or
- (c) that would allow information in a child abuse report or child abuse record to be worked out; or
- (d) that identifies a person who made a child abuse report or would allow the identity of the person to be worked out.

child abuse appraisal information means information—

- (a) in a record of a child protection appraisal (an ***appraisal record***) made under section 162 (b) (Chief executive must record reports); or
- (b) in a report (an ***incident report***) to the public advocate under section 189A (2) (Public advocate to be told about some incidents); or
- (c) that would allow information in an appraisal record or incident report to be worked out.

interstate child abuse information means information—

- (a) in a report (an ***interstate child abuse report***) made under a provision of a law of a State corresponding (or substantially corresponding) to section 158 or section 159 that is provided to the chief executive under a provision of the law of the State corresponding (or substantially corresponding) to—
 - (i) section 29 (Power to give and receive information); or
 - (ii) section 323 (Disclosure of information); or
- (b) that would allow information in an interstate child abuse report to be worked out; or
- (c) that identifies a person who made an interstate child abuse report or would allow the identity of the person to be worked out.

family group conference information means—

- (a) information about anything said or done in a meeting, or for mediation or conflict resolution, under section 169 (3) (a) (Action by facilitator) for a family group conference (whether or not the conference actually takes place); or
- (b) information, or information in a report, given under section 169 (3) (b) for a family group conference (whether or not the conference actually takes place); or
- (c) information in a signed agreement under section 172 (Agreements arising from conferences); or
- (d) information in a record under section 173 (Outcome of conference); or
- (e) information about anything said or done at a family group conference including information given in a report to the family group conference; or

- (f) information that would allow information mentioned in paragraphs (a) to (e) to be worked out.

405C Offence—secrecy of protected information

- (1) An information holder commits an offence if the information holder—
- (a) makes a record of protected information about someone else; and
 - (b) is reckless about whether the information is protected information about someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) An information holder commits an offence if the information holder—
- (a) does something that divulges protected information about someone else; and
 - (b) is reckless about whether—
 - (i) the information is protected information about someone else; and
 - (ii) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) This section is subject to the following sections:
- (a) section 405D (Exception—information given under this Act);
 - (b) section 405E (Exception—information given under another law);
 - (c) section 405F (Exception—information given with agreement).

405D Exception—information given under this Act

- (1) Section 405C (1) does not apply to the making of a record of protected information if the record is made—
 - (a) under this Act; or
 - (b) in the exercise of a function, as an information holder, under this Act.
- (2) Section 405C (2) does not apply to the divulging of protected information if the information is divulged—
 - (a) under this Act; or
 - (b) in the exercise of a function, as an information holder, under this Act.

Note Various provisions of this Act provide for protected information to be given to people, including:

- s 29 (Power to give and receive information)
- s 45 (Assistance for public advocate)
- s 73 (Powers of court in relation to reports)
- s 189A (Public advocate to be told about some incidents)
- s 405H (Information may be given in best interests of child or young person).

405E Exception—information given under another law

- (1) Section 405C (1) does not apply to the making of a record of protected information if—
 - (a) the information is not sensitive information; and
 - (b) the record is made—
 - (i) under another territory law; or
 - (ii) in the exercise of a function, as an information holder, under another territory law.

-
- (2) Section 405C (2) does not apply to the divulging of protected information if—
- (a) the information is not sensitive information; and
 - (b) the information is divulged—
 - (i) under another territory law; or
 - (ii) in the exercise of a function, as an information holder, under another territory law.

Note Other legislation may provide for information to be given to people, including:

- *Freedom of Information Act 1989*, s 10 (Right of access) (but see s 38)
- *Health Records (Privacy and Access) Act 1997*, s 10 (Statement of principle regarding right of access) (but see s 14).

405F Exception—information given with agreement

Section 405C (2) does not apply to protected information if the information—

- (a) is not sensitive information; and
- (b) is about a person; and
- (c) is divulged with the person's agreement.

405G Giving protected or sensitive information to a court

- (1) An information holder need not divulge protected information, that is not sensitive information, to a court unless it is necessary to do so for this Act or another territory law.
- (2) An information holder need not produce a document containing protected information, that is not sensitive information, to a court unless it is necessary to do so for this Act or another territory law.
- (3) An information holder need not divulge sensitive information to a court unless it is necessary to do so for this Act.

(4) An information holder need not produce a document containing sensitive information to a court unless it is necessary to do so for this Act.

(5) In this section:

court includes a tribunal, authority or person with power to require the production of documents or the answering of questions.

produce includes allow access to.

405H Information may be given in best interests of child or young person

(1) The chief executive may give someone protected information (including sensitive information) about a child or young person if the chief executive considers that the giving of the information is in the best interests of the child or young person.

(2) A facilitator may give the chief executive protected information (including sensitive information) about a child or young person if the facilitator considers that the giving of the information is in the best interests of the child or young person.

Note A person who is given information under this section must comply with s 405C (Offence—secrecy of protected information).

23 **New chapter 18***insert*

Chapter 18 **Transitional—Children and Young People Amendment Act 2006**

450 **Transitional—references to public advocate**

(1) In this Act:

public advocate includes a person who is, or has at any time been, the community advocate under the *Community Advocate Act 1991*, as in force at any time.

- (2) Subsection (1) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (3) This section expires on the day it commences.

451 **Transitional—work experience not employment**

(1) For section 368 (Employing a child or young person), a child or young person is taken not to be employed by a person if—

- (a) the engagement of the child or young person by the person is arranged by an educational institution where the child or young person is enrolled; and
- (b) the engagement is part of a work experience program (however described) conducted by the educational institution.

(2) In this section:

educational institution means—

- (a) a school, college or other educational institution established or maintained on behalf of the Territory; or

(b) an approved educational entity.

(3) The Minister may approve an entity (an *approved educational entity*) for subsection (2) (b).

(4) An approval is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

(5) Subsections (1) to (4) are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

(6) This section expires on 30 December 2006.

24 Dictionary, new definition of *at risk of abuse or neglect*

insert

at risk of abuse or neglect, for chapter 7 (Children and young people in need of care and protection)—see section 151B.

25 Dictionary, definition of *best interests principle*

substitute

best interests principle—see section 11 (1).

26 Dictionary, new definition of *divulge*

insert

divulge, for chapter 15 (Confidentiality and immunity)—see section 404.

27 Dictionary, definition of *facilitator*

substitute

facilitator means a person who is appointed as a facilitator under section 166.

28 Dictionary, definition of *indigenous placement principle*

omit

29 Dictionary, new definitions of *information holder* and *in need of care and protection*

insert

information holder, for chapter 15 (Confidentiality and immunity)—see section 405.

in need of care and protection, for chapter 7 (Children and young people in need of care and protection)—see section 156.

30 Dictionary, definition of *neglect*

substitute

neglect, for chapter 7 (Children and young people in need of care and protection)—see section 151A.

31 Dictionary, new definitions of *protected information* and *sensitive information*

insert

protected information, for chapter 15 (Confidentiality and immunity)—see section 405A.

sensitive information, for chapter 15 (Confidentiality and immunity)—see section 405B.

32 Public Advocate Act 2005, amendments 1.4 to 1.6

omit

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 15 December 2005.

2 Notification

Notified under the Legislation Act on 16 March 2006.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Children and Young People Amendment Bill 2006, which originated in the Legislative Assembly as the Children and Young People Amendment Bill 2005 (No 2) and was passed by the Assembly on 9 March 2006.

Clerk of the Legislative Assembly

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