



Australian Capital Territory

# Children and Young People Amendment Act 2018

A2018-24

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J2016-733

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Australian Capital Territory

# Children and Young People Amendment Act 2018

A2018-24

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An Act to amend the *Children and Young People Act 2008*

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

**1 Name of Act**

This Act is the *Children and Young People Amendment Act 2018*.

**2 Commencement**

This Act commences on the day after its notification day.

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

**3 Legislation amended**

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

**4 Aspects of parental responsibility may be transferred  
Section 17 (1) (g), note**

*substitute*

*Note* If parental responsibility for a child or young person is transferred to the director-general, the director-general may delegate the responsibility to a responsible person for an approved kinship and foster care organisation (see s 883A). The responsible person may subdelegate it to a position in the organisation (see s 883B). However, the director-general must ensure that the delegated or subdelegated parental responsibility is properly exercised (see [Legislation Act](#), s 238).

**5 Aspects of parental responsibility may be shared  
Section 18 (1) (d), note**

*substitute*

*Note* If parental responsibility for a child or young person is shared with the director-general, the director-general may delegate the responsibility to a responsible person for an approved kinship and foster care organisation (see s 883A). The responsible person may subdelegate it to a position in the organisation (see s 883B). However, the director-general must ensure that the delegated or subdelegated parental responsibility is properly exercised (see [Legislation Act](#), s 238).

**6 Director-general must give identity cards  
Section 26 (2)**

*substitute*

- (2) However, this section does not apply to a delegation under section 883A (Director-general delegations—approved care and protection organisations) or a subdelegation under section 883B (Subdelegations—approved care and protection organisations).

**7 Director-general action on child protection report  
Section 361 (4) (a)**

*omit*

(Care and protection appraisal—only with agreement or appraisal order)

*substitute*

(Care and protection appraisal—power to carry out)

**8 Section 361 (4) (b)**

*omit*

(Visual examination etc without agreement)

*substitute*

(Care and protection appraisal—visual examination and interview)

**9 Division 11.2.2 heading**

*substitute*

**Division 11.2.2 Appraisal by director-general**

**10 Sections 368 to 371**

*substitute*

**368 Care and protection appraisal—power to carry out**

- (1) The director-general may carry out a care and protection appraisal of a child or young person if the director-general decides that a child concern report about the child or young person is a child protection report under section 360 (5) (Director-general to act on child concern report).

*Note* The director-general must decide that a child concern report is a child protection report if the director-general suspects on reasonable grounds that the child or young person may be in need of care and protection (see s 360 (5)).

- (2) However, the director-general may carry out a care and protection appraisal of the child or young person only if—
- (a) the director-general—
- (i) has the agreement, under section 369 (1), of at least 1 parent or other person who has daily care responsibility for the child or young person; and
  - (ii) has notified, under section 369 (4), any other parent or person who has daily care responsibility for the child or young person (unless, under section 369 (5), notice is not required); or
- (b) an appraisal order in force for the child or young person authorises the carrying out of the appraisal; or

*Note* Appraisal orders are dealt with in s 372.

- (c) section 370 (Care and protection appraisal—obtaining agreement not in best interests of child or young person etc) applies and the appraisal is carried out under section 371 (Care and protection appraisal—visual examination and interview); or

- (d) the director-general has daily care responsibility for the child or young person, or shares it with another person.

**369 Care and protection appraisal—obtaining agreement etc**

- (1) When seeking the agreement of a person for section 368 (2) (a) (i), the director-general must tell the person the following:
  - (a) the purpose of the appraisal;
  - (b) if the appraisal is to include a care and protection assessment of the child or young person—the kind of assessment;
  - (c) that agreement may be refused;
  - (d) if agreement is refused, the kind of appraisal the director-general may carry out under section 371 (Care and protection appraisal—visual examination and interview).
- (2) Agreement to the appraisal may be given orally.
- (3) The director-general must keep a written record of the agreement to the appraisal.
- (4) When notifying a person for section 368 (2) (a) (ii), the director-general must tell the person—
  - (a) the purpose of the appraisal; and
  - (b) if the appraisal is to include a care and protection assessment of the child or young person—the kind of assessment.
- (5) The director-general is not required to notify a person under section 368 (2) (a) (ii) if satisfied that—
  - (a) it would not be in the best interests of the child or young person to notify the person; or

- (b) it is not possible or reasonably practicable in the circumstances to do so.

**Example—par (b)**

despite reasonable efforts, contact details for a parent cannot be found

*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).

**370 Care and protection appraisal—obtaining agreement not in best interests of child or young person etc**

- (1) This section applies if the director-general suspects on reasonable grounds that obtaining agreement to carry out an appraisal from a parent or other person with daily care responsibility for a child or young person—
  - (a) is not in the best interests of the child or young person; or
  - (b) would be likely to jeopardise a criminal investigation.

**Examples par (a)—not in the best interests of child or young person**

- 1 the parent or other person with daily care responsibility is the subject of an allegation of abuse or neglect of the child or young person
- 2 the parent's contact with the child or young person is not allowed, or is limited, under a court order (under this Act or another law in force in the Territory)

*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).

- (2) The director-general may carry out a care and protection appraisal under section 371.



**371 Care and protection appraisal—visual examination and interview**

- (1) If section 370 applies in relation to a child or young person, the director-general may carry out an appraisal that consists only of—
  - (a) a visual examination of the child or young person; and
  - (b) an interview of the child or young person.
- (2) If the child or young person is a student at a school, a patient at a health facility or being cared for by a childcare service, the director-general—
  - (a) may enter the school, health facility or childcare service to visually examine or interview the child or young person; and
  - (b) if entering the school, health facility or childcare service, must—
    - (i) produce the director-general's identity card; and
    - (ii) tell the person in charge of the school, health facility or childcare service the purpose of the entry.
- (3) After the director-general visually examines or interviews the child or young person, the director-general must take reasonable steps to tell at least 1 parent or other person who has daily care responsibility for the child or young person that the examination or interview has been carried out.
- (4) Subsection (3) does not apply in relation to a person if the director-general suspects on reasonable grounds that telling the person—
  - (a) is not in the best interests of the child or young person; or
  - (b) would be likely to jeopardise a criminal investigation.

- (5) This section does not affect the director-general's capacity to—
- (a) do anything mentioned in section 360 (4) (Director-general to act on child concern report) or section 361 (3) (Director-general action on child protection report); or
  - (b) take emergency action in relation to the child or young person under section 406 (Emergency action—criteria for taking emergency action); or
  - (c) apply to the Childrens Court for a care and protection order under section 424 (Care and protection order—application by director-general); or
  - (d) give information under part 25.3 (Sharing protected information).

**11 Appraisal orders—application by director-general  
Section 376 (b) and notes**

*substitute*

- (b) either—
- (i) the director-general sought agreement under section 369 (Care and protection appraisal—obtaining agreement etc) but no parent or other person with daily care responsibility agreed to the appraisal; or
  - (ii) section 370 (Care and protection appraisal—obtaining agreement not in best interests of child or young person etc) applies.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

**12 Appraisal orders—criteria for making  
Section 382 (a)**

*substitute*

(a) either—

- (i) no parent or other person with daily care responsibility agreed to the appraisal when the director-general sought agreement under section 369 (Care and protection appraisal—obtaining agreement etc); or
- (ii) section 370 (Care and protection appraisal—obtaining agreement not in best interests of child or young person etc) applies; and

**13 Care plans—director-general delegations  
Section 457A**

*omit*

**14 Annual review report—director-general delegations  
Section 501A**

*omit*

**15 Parental responsibility—director-general delegations  
Section 503A**

*omit*

**16 Placement with out-of-home carer—director-general  
delegations  
Section 513A**

*omit*

**17 Approved carers—director-general may approve  
Section 514B (1), note**

*omit*

**18 New section 514EA**

*insert*

**514EA Approved carers—revocation of approval**

- (1) The director-general may revoke a person's approval as an approved carer if satisfied that the person—
  - (a) is no longer an appropriate person to care for children or young people; or
  - (b) has not adequately cared for or protected a child or young person; or
  - (c) has failed to comply with a direction of the director-general in exercising daily care or long-term care responsibility for any child or young person.

*Note* **Fail** includes refuse, see the [Legislation Act](#), dict, pt 1.

- (2) The director-general may also revoke a person's approval if the person asks the director-general to revoke the approval.
- (3) Before revoking a person's approval under subsection (1), the director-general must—
  - (a) give the person written notice of the director-general's intention to revoke the approval, including the director-general's reasons; and
  - (b) tell the person that the person may make a submission, in writing, to the director-general about the notice not later than 14 days after the day the notice is given to the person; and
  - (c) if the person makes a submission—consider the submission.

- (4) After considering any submission, the director-general may consider any other relevant matter and must decide to either—

- (a) revoke the approval; or

*Note* A decision under this paragraph is a reviewable decision (see s 839).

- (b) revoke the notice of intention to revoke.

- (5) This section is in addition to the [Legislation Act](#), section 180 (Power to make decision includes power to reverse or change).

*Note* Under the [Legislation Act](#), s 180, power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision.

**19 Approved carers—director-general delegations  
Section 514G**

*omit*

**20 Transition plans—director-general delegations  
Section 529HA**

*omit*

**21 Access to protected information—director-general delegations  
Section 529NA**

*omit*

**22 Meaning of *reviewable decision*—div 24.1.3  
Section 839, table 839.1A, new item 2A**

*insert*

2A	514EA	revoke person's approval as approved carer	person
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**23 Care teams—sharing safety and wellbeing information  
Section 863 (5) and note**

*omit*

**24 New sections 883A to 883C**

*insert*

**883A Director-general delegations—approved care and protection organisations**

- (1) The director-general may delegate any of the following to a responsible person for an approved kinship and foster care organisation:
  - (a) the director-general's functions under the following provisions:
    - (i) division 14.3.4 (Care plans);
    - (ii) part 14.13 (Annual review reports—parental responsibility provisions and supervision provisions);
    - (iii) division 15.4.1 (Placement with out-of-home carer);
    - (iv) division 15.4.1A (Approval of carers);
    - (v) division 15.5.2 (Transition plans);
    - (vi) division 15.5.4 (Entitlement to personal items and access to protected information);
    - (vii) section 863 (1) (Care teams—sharing safety and wellbeing information);
  - (b) if parental responsibility for a child or young person is transferred to, or shared with, the director-general—the parental responsibility;

- (c) if, for a contact provision, the director-general is authorised to decide with whom a child or young person may have contact and to decide any conditions for the contact—the authority to decide.

*Note 1* The responsible person may subdelegate certain functions in certain circumstances (see s 883B).

*Note 2* The director-general must ensure the delegated or subdelegated function is properly exercised (see [Legislation Act](#), s 238). In addition, the director-general may provide that the delegation has effect only in stated circumstances or subject to stated conditions, limitations or directions (see [Legislation Act](#), s 234 and s 239). For other provisions about the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

- (2) The director-general may delegate any of the director-general's functions under the following provisions to a responsible person for a residential care service:
- (a) division 14.3.4 (Care plans);
  - (b) part 14.13 (Annual review reports—parental responsibility provisions and supervision provisions);
  - (c) division 15.5.2 (Transition plans);
  - (d) division 15.5.4 (Entitlement to personal items and access to protected information);
  - (e) section 863 (1) (Care teams—sharing safety and wellbeing information).
- (3) In this section:  
**contact provision**—see section 485.

**883B Subdelegations—approved care and protection organisations**

- (1) A responsible person who has been delegated a function under section 883A may subdelegate the function to the occupant of a position in the responsible person's organisation.

*Note* The responsible person must ensure the subdelegated function is properly exercised (see [Legislation Act](#), s 238). In addition, the responsible person may provide that the subdelegation has effect only in stated circumstances or subject to stated conditions, limitations or directions (see [Legislation Act](#), s 234 and s 239). For other provisions about the making of subdelegations and the exercise of subdelegated functions, see the [Legislation Act](#), pt 19.4.

- (2) However, a function may be subdelegated under subsection (1) only if the responsible person is satisfied that—
- (a) within the organisation the position has responsibility for the operation or administration of the function; and
  - (b) the occupant of the position—
    - (i) is an employee of the organisation; and
    - (ii) has skills and qualifications appropriate for the function to be exercised.

**883C Register of subdelegations**

- (1) The head of an organisation in which 1 or more responsible person has been delegated a function under section 883A must keep a register of any subdelegation of the function under section 883B.
- (2) For each subdelegation, the register must include—
- (a) the day the subdelegation starts; and
  - (b) each position to which the subdelegation is made; and
  - (c) if the subdelegation has effect only in stated circumstances—the circumstances; and



- (d) if the subdelegation has effect subject to stated conditions, limitations or directions—the conditions, limitations or directions; and
  - (e) the function, or part of the function that is subdelegated; and
  - (f) if the subdelegation is amended—
    - (i) the day the subdelegation is amended; and
    - (ii) the nature of the amendment; and
  - (g) if the subdelegation is revoked—the day the subdelegation ends.
- (3) The head of the organisation must allow the director-general to inspect the register within a reasonable time requested by the director-general.

**25 New chapter 31***insert*

## **Chapter 31 Transitional—Children and Young People Amendment Act 2018**

### **987 Certain director-general delegations**

- (1) This section applies if immediately before the commencement day a delegation is in force under any of the following provisions:
- (a) section 457A (Care plans—director-general delegations);
  - (b) section 501A (Annual review report—director-general delegations);
  - (c) section 503A (Parental responsibility—director-general delegations);

- (d) section 513A (Placement with out-of-home carer—director-general delegations);
  - (e) section 514G (Approved carers—director-general delegations);
  - (f) section 529HA (Transition plans—director-general delegations);
  - (g) section 529NA (Access to protected information—director-general delegations);
  - (h) section 863 (5) (Care teams—sharing safety and wellbeing information).
- (2) The delegation is taken to have been made under section 883A (Director-general delegations—approved care and protection organisations).
- (3) In this section:
- commencement day* means the day the *Children and Young People Amendment Act 2018*, section 3 commences.
- (4) This chapter expires on 31 December 2020.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 10 May 2018.

**2 Notification**

Notified under the [Legislation Act](#) on 8 August 2018.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Children and Young People Amendment Bill 2018, which was passed by the Legislative Assembly on 31 July 2018.

Clerk of the Legislative Assembly

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