



Australian Capital Territory

Children and Young People Amendment Act 2023

A2023-49

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Australian Capital Territory

Children and Young People Amendment Act 2023

A2023-49

An Act to amend the *Children and Young People Act 2008*, and for other purposes

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 2023*.

2 Commencement

- (1) 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)).

- (2) If this Act has not commenced before 31 March 2024, it automatically commences on that day.
- (3) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended

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

Note This Act also amends other legislation (see sch 1).

4 Application of Act to children and young people etc Section 6 (c)

substitute

- (c) about whom a report is made under—
- (i) section 354 (Voluntary reporting of risk of significant harm) arising from something happening in the ACT; or
 - (ii) section 356 (Offence—mandatory reporting of significant harm) arising from something happening in the ACT; or
 - (iii) section 362 (Prenatal reporting of anticipated risk of significant harm) if the pregnant woman ordinarily lives in the ACT or is in the ACT.

**5 Main objects of Act
Section 7 (a) and (b)**

omit

wellbeing, care and protection

substitute

safety, welfare and wellbeing

6 Section 7 (c)

substitute

- (c) providing for children and young people to receive the care and protection necessary to protect them from significant harm by providing whole of government assistance to them, their parents and families, the community and others who have a responsibility for them; and

7 Section 7 (d) (i)

omit

wellbeing, care and protection

substitute

safety, welfare and wellbeing

8 Section 7 (d) (ii)

substitute

- (ii) providing for Aboriginal and Torres Strait Islander children and young people to receive the care and protection necessary to protect them from significant harm; and

9 Section 7 (e)

omit

wellbeing, care and protection

substitute

safety, welfare and wellbeing

10 Section 10

substitute

10 Aboriginal and Torres Strait Islander children and young people—placement principles

In making a decision under this Act in relation to an Aboriginal or Torres Strait Islander child or young person, the decision-maker must take into account the following principles (the *Aboriginal and Torres Strait Islander children and young people placement principles*) in addition to the matters in section 8 and section 9:

- (a) the principle (the *prevention principle*) that children and young people should be brought up within their own family, community and culture;
- (b) the principle (the *partnership principle*) that Aboriginal and Torres Strait Islander community representatives should be given opportunities to participate in—
 - (i) the design and delivery of services for children and young people; and
 - (ii) decisions under this Act about children and young people;
- (c) the principle (the *placement principle*) that a child or young person who is to be placed with an out-of-home carer must be placed in accordance with the priorities for placement set out in section 513;

- (d) the principle (the *participation principle*) that a child or young person, their parents and other family members should be given opportunities to participate in decision-making processes about care arrangements for the child or young person, including placement and contact;
- (e) the principle (the *connection principle*) that children and young people should have their connections to family, community, culture and country supported and maintained.

Note In making a decision under this Act in relation to an Aboriginal or Torres Strait Islander child or young person, the decision-maker must also consider the child or young person's rights under the [Human Rights Act 2004](#), s 27 (Cultural and other rights of Aboriginal and Torres Strait Islander peoples and minorities) (see that [Act](#), s 40B).

10A Aboriginal and Torres Strait Islander children and young people—other principles

The following principles are to be applied in administering this Act:

- (a) Aboriginal and Torres Strait Islander people should participate in the care and protection of their children and young people with as much self-determination as is possible;
- (b) the government has a responsibility to protect and promote Aboriginal and Torres Strait Islander children and young people's cultural identity.

11 Director-general's functions Section 22 (1) (a) and (b)

substitute

- (a) providing, or assisting in providing, services directed to strengthening and supporting families in relation to the safety, welfare and wellbeing of their children and young people;

- (b) providing, or assisting in providing, support and services to families to—
 - (i) reduce the risk of significant harm to children and young people; and
 - (ii) protect children and young people if a risk of significant harm has been identified;

12 Section 22 (1) (d) and (e)

substitute

- (d) providing, or assisting in providing, information to mandated reporters to help them perform their legal obligation;
- (e) providing, or assisting in providing, information to people who report to the director-general under part 11.1 (Care and protection—reporting risk of significant harm) and encouraging them to continue their involvement in matters arising from their report;

**13 What is *suitability information*?
Section 65 (1), definition of *suitability information*,
paragraph (g)**

omit

child concern report

substitute

voluntary report or mandatory report

**14 Family group conferences—criteria
Section 80 (2), example 1**

omit

neglect of

substitute

a risk of significant harm to

15 Section 80 (2), example 3

omit

substantiates the abuse

substitute

identifies a risk of significant harm

**16 Application of care and protection chapters
Part 10.1 heading, note, paragraph (c)**

substitute

- (c) about whom a report is made under s 354 (Voluntary reporting of risk of significant harm) or s 356 (Offence—mandatory reporting of significant harm) arising from something happening in the ACT.

**17 What are the *care and protection chapters*?
Section 336, definition of *care and protection chapters*,
paragraph (b)**

substitute

- (b) Chapter 11 (Care and protection—reporting and assessing risk of significant harm);

18 **Definitions—care and protection chapters**
Section 341 (1), definitions of *abuse* and *neglect*

omit

19 **Section 341 (1), new definition of *significant harm***

insert

significant harm—see section 344.

20 **Section 341 (2), definitions of *at risk of abuse or neglect***
and *significant harm*

omit

21 **Sections 342 and 343**

omit

22 **Section 344**

substitute

344 **What is *significant harm*?**

(1) In this Act:

significant harm to a child or young person means any detrimental effect of a significant nature on the safety, welfare or wellbeing of the child or young person.

(2) Without limiting subsection (1), significant harm may be caused by 1 or more of the following circumstances:

- (a) the child or young person experiencing—
 - (i) sexual abuse, grooming or sexual exploitation; or
 - (ii) physical or emotional abuse;

- (b) the child or young person’s basic physical, emotional, developmental or psychological needs not being met;
 - (c) the child or young person being exposed to family violence.
- (3) A circumstance mentioned in subsection (2) may relate to—
- (a) a single act, omission or circumstance; or
 - (b) a combination or accumulation of acts, omissions or circumstances.
- (4) In this section:
- family violence*—see the *Family Violence Act 2016*, section 8.

23 **When are children and young people *in need of care and protection*?**
Section 345 (1)

substitute

- (1) For the care and protection chapters, a child or young person is *in need of care and protection* if—
- (a) the child or young person is at risk of significant harm; 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 the risk of significant harm.

24 **Section 346**

substitute

346 **Circumstances need not have arisen in ACT**

For the care and protection chapters, a belief or suspicion that a child or young person is at risk of significant harm may be based on circumstances that arose wholly or partly outside the ACT.

25 Section 349

substitute

349 What is in best interests of child or young person?

- (1) For the care and protection chapters, in deciding what is in the best interests of a child or young person, the need to ensure the child or young person is not at risk of significant harm must always be considered.
- (2) The decision-maker must also consider each of the following matters that are relevant to the child or young person:
 - (a) any views or wishes expressed by the child or young person;
 - (b) the nature of the child or young person's relationship with each parent and anyone else;
 - (c) the likely effect on the child or young person of changes to the child or young person's circumstances, including separation from a parent or anyone else with whom the child or young person has been living;
 - (d) the practicalities of the child or young person maintaining contact with each parent and anyone else with whom the child or young person has been living or with whom the child or young person has been having substantial contact;
 - (e) the capacity of the child or young person's parents, or anyone else, to provide for the child or young person's needs including emotional and intellectual needs;
 - (f) for an Aboriginal or Torres Strait Islander child or young person—the Aboriginal and Torres Strait Islander children and young people placement principles set out in section 10;
 - (g) that it is important for the child or young person to have settled, stable and permanent living arrangements;

- (h) for decisions about placement of a child or young person—the need to ensure that the earliest possible decisions are made about a safe, supportive and stable placement;
 - (i) the attitude to the child or young person, and to parental responsibilities, demonstrated by each of the child or young person’s parents or anyone else;
 - (j) any significant harm to the child or young person, or a family member of the child or young person;
 - (k) any court order that applies to the child or young person, or a family member of the child or young person.
- (3) The decision-maker may also consider any other fact or circumstance the decision-maker considers relevant.

**26 Care and protection principles
Section 350 (1) (b)**

omit

wellbeing, care and protection

substitute

safety, welfare and wellbeing

27 Section 350 (2)

omit

section 10 (Aboriginal and Torres Strait Islander children and young people principle)

substitute

section 10 (Aboriginal and Torres Strait Islander children and young people—placement principles)

28 Chapter 11 heading

substitute

Chapter 11 Care and protection—reporting and assessing risk of significant harm

29 Part 11.1 heading

substitute

Part 11.1 Care and protection—reporting risk of significant harm

**30 Definitions—Act
Section 353, definition of *child concern report***

omit

31 Division 11.1.2 heading

substitute

Division 11.1.2 Reporting risk of significant harm to children and young people

32 Section 354 heading

substitute

354 Voluntary reporting of risk of significant harm

33 Section 354 (1)

substitute

- (1) This section applies if a person believes or suspects that a child or young person is at risk of significant harm.

34 Section 356 heading

substitute

356 Offence—mandatory reporting of significant harm

**35 Reports made to public advocate or Aboriginal and Torres Strait Islander children and young people commissioner
Section 359 (1) (a)**

substitute

- (a) a person believes or suspects that a child or young person is at risk of significant harm; and

36 Sections 360 and 361

substitute

360 Assessing risk of significant harm

- (1) This section applies if the director-general—
- (a) receives a voluntary report or a mandatory report about a child or young person; or
 - (b) otherwise believes or suspects that a child or young person may be at risk of significant harm.
- (2) The director-general must carry out the assessment the director-general considers necessary to decide whether the child or young person is at risk of significant harm.

- (3) While carrying out the assessment, the director-general may also provide, or assist in providing, services to strengthen and support the safety, welfare and wellbeing of the child or young person and their family.
- (4) The director-general must, as soon as practicable, attempt to identify whether the child is an Aboriginal or Torres Strait Islander child or young person.
- (5) The director-general may refer a matter raised in a report, or that the director-general otherwise becomes aware of, to the chief police officer if the director-general suspects that it relates to a criminal offence.

37 Division 11.1.3 heading

substitute

Division 11.1.3 Prenatal reporting of anticipated risk of significant harm

38 Section 362 heading

substitute

362 Prenatal reporting—anticipated risk of significant harm

39 Section 362 (1)

omit

in need of care and protection

substitute

at risk of significant harm after the child is born

**40 How prenatal reports may be used in evidence
Section 364 (2) (b)**

omit

chapter 11 (Care and protection—reporting, investigating and appraising abuse and neglect)

substitute

chapter 11 (Care and protection—reporting and assessing risk of significant harm)

**41 Care and protection appraisal—power to carry out
Section 368 (1) and note**

substitute

- (1) The director-general may carry out a care and protection appraisal of a child or young person if, after considering a voluntary report or a mandatory report about the child or young person, the director-general believes the child or young person may be at risk of significant harm.

**42 Care and protection appraisal—obtaining agreement not
in best interests of child or young person etc
Section 370 (1), example 1**

substitute

- 1 the parent or other person with daily care responsibility is the subject of an allegation of causing significant harm to the child or young person

**43 Care and protection appraisal—visual examination and
interview
Section 371 (5) (a)**

substitute

- (a) do anything mentioned in section 360 (3) (Assessing risk of significant harm); or

**44 Public advocate etc to be told about action following appraisals
Section 507 (1) (a) and (b)**

substitute

- (a) the director-general receives a voluntary report or a mandatory report about a child or young person; and
- (b) because of the report, the director-general believes the child or young person is at risk of significant harm; and

45 Sections 644 (b) and 651 (1) (b)

omit

section 10 (Aboriginal and Torres Strait Islander children and young people principle)

substitute

section 10 (Aboriginal and Torres Strait Islander children and young people—placement principles)

**46 Functions of committee
Section 727B (1)**

substitute

- (1) The CYP death review committee has the following functions:
 - (a) to keep a register of deaths of children and young people under part 19A.3;
 - (b) to report to the Minister in relation to deaths of children and young people under part 19A.4;
 - (c) to identify patterns and trends in relation to deaths or serious injuries of children, young people and young adults;
 - (d) to identify areas requiring further research, by the committee or another entity, that arise from the identified patterns and trends;

- (e) to undertake research that aims to help prevent or reduce the likelihood of deaths or serious injuries of children, young people and young adults;
- (f) to make recommendations about legislation, policies, practices and services for implementation by the Territory and non-government bodies to help prevent or reduce the likelihood of deaths or serious injuries of children, young people and young adults;
- (g) to monitor the implementation of the committee's recommendations;
- (h) any other function given to the committee under this chapter.

47 New section 727B (3)

insert

- (3) In this section:

young adult means an adult who is younger than 25 years old.

**48 Appointment of committee members
New section 727D (2) (a) (xiii)**

insert

- (xiii) coronial law and practice; or

49 New section 727D (2) (d)

insert

- (d) is a public servant working in the administrative unit responsible for the [Education Act 2004](#).

**50 Appointment of advisers
Section 727G**

omit

51 New section 727IA

in part 19A.1, insert

727IA Appointment of advisers

- (1) The chair of the CYP death review committee may appoint a person as an adviser to assist the committee in the exercise of its functions.

Note For laws about appointments, see the [Legislation Act](#), pt 19.3.

- (2) An appointment may be subject to conditions stated in the appointment.

**52 Children and young people deaths register
Section 727N (2) (d)**

substitute

- (d) whether within 3 years before their death, the child or young person, or a sibling of the child or young person, was the subject of a voluntary report or a mandatory report;

53 Section 727N (4)

omit

**54 Obtaining information from certain entities
Section 727O (4)**

omit

**55 Children and young people deaths register—who may have access?
Section 727R (1) (c)**

omit

section 727G

substitute

section 727IA

56 Part 19A.4 heading

substitute

Part 19A.4 Reporting by committee

57 Section 727S heading

substitute

727S Biennial reporting

58 Section 727S (1)

omit

calendar year

substitute

period of 2 calendar years (the *reporting period*)

59 Section 727S (1)

omit

the year

substitute

the reporting period

60 Section 727S (1) (b)

substitute

- (b) the age and sex of each child or young person who died and whether, within 3 years before their death, the child or young person, or a sibling of the child or young person, was the subject of a voluntary report or a mandatory report;

61 Section 727S (1) (c) (ii)

substitute

- (ii) who, within 3 years before their death, were, or had a sibling who was, the subject of a voluntary report or a mandatory report.

62 Section 727S (4)

omit

**63 Other reports
New section 727T (1A)**

insert

- (1A) The CYP death review committee must give the report to the Minister and may also give the report to any other Minister who is responsible for a matter dealt with in the report.

64 Section 727T (4)

substitute

- (4) Each Minister who receives a report under subsection (1A) must, within 3 months after receiving it, give information to the CYP death review committee about any action the Minister has taken, or will take, in relation to the matters raised in the report.

**65 What is a *research project*?
Section 806 (1), definition of *research project*,
paragraph (b) (iii)**

substitute

- (iii) the person is a child or young person the subject of a voluntary report or a mandatory report; or

66 Section 806 (2) (a)

omit

(including a person who made a child concern report)

substitute

(including a person who made a voluntary report or mandatory report)

**67 What is *sensitive information*?
Section 845 (2), definition of *care and protection report information*, paragraphs (a) and (b)**

substitute

- (a) in a voluntary report or a mandatory report; or
(b) received by the director-general under section 360; or

68 Section 845 (2), definition of *interstate care and protection information*, paragraph (a)

omit

section 354 (Voluntary reporting of abuse and neglect), section 356 (Offence—mandatory reporting of abuse) or section 362 (Prenatal reporting—anticipated abuse and neglect)

substitute

section 354 (Voluntary reporting of risk of significant harm), section 356 (Offence—mandatory reporting of significant harm) or section 362 (Prenatal reporting—anticipated risk of significant harm)

**69 Certain identifying information not to be given
Section 857 (a) (i)**

substitute

(i) a voluntary report or a mandatory report; or

**70 What is *safety and wellbeing information*?
Section 858 (1), definition of *safety and wellbeing information*, example 1**

substitute

1 information needed to assess whether a child or young person is at risk of significant harm

**71 Investigative entity may divulge protected information etc
Section 867 (2) (d) (i) (A)**

substitute

(A) a voluntary report or a mandatory report; or

72 Section 868 heading

substitute

868 How voluntary reports or mandatory reports may be used in evidence

73 Section 868 (1)

omit

child concern report

substitute

voluntary report or mandatory report

**74 Protection of people giving certain information
Section 874 (2) (g) and (h)**

substitute

- (g) a person to the director-general under section 354 (Voluntary reporting of risk of significant harm); and
- (h) a person to the director-general under section 356 (Offence—mandatory reporting of significant harm); and

75 Section 874 (2) (j) to (m)

substitute

- (j) a person to the director-general under section 360 (1) (a) (Assessing risk of significant harm); and
- (l) a person to the director-general under section 362 (Prenatal reporting—anticipated risk of significant harm); and
- (m) a person in a report to the director-general under section 362; and

76 **New chapter 32**

insert

Chapter 32 **Transitional—Children and
Young People Amendment
Act 2023**

988 **CYP death review committee—change from annual to
biennial reporting**

- (1) Section 727S, as in force after the commencement day, applies for reporting by the CYP death review committee for the 2024 and 2025 calendar years, and each subsequent period of 2 calendar years.
- (2) Section 727S, as in force before the commencement day, continues to apply for reporting by the CYP death review committee for the 2023 calendar year.
- (3) In this section:

commencement day means the day the *Children and Young People Amendment Act 2023*, section 60 commences.

989 **Expiry—ch 32**

This chapter expires 12 months after the day it commences.

Note A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

77 Dictionary, definitions

omit the definitions of

abuse

at risk of abuse or neglect

child concern report

neglect

78 Dictionary, definition of *significant harm*

omit

section 341 (2)

substitute

section 344

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Criminal Code 2002

[1.1] Section 712A (5), new definition of *child concern report*

insert

child concern report—see the *Children and Young People Act 2008*, section 353 as in force immediately before the commencement of the *Children and Young People Amendment Act 2023*, section 29.

[1.2] Section 712A (5), definition of *childrens proceeding*, paragraph (c)

substitute

- (c) the child or young person—
- (i) was the subject of a child concern report under that Act; or
 - (ii) is or was the subject of a voluntary report or a mandatory report under that Act; or

[1.3] Section 712A (5), new definitions

insert

mandatory report—see the *Children and Young People Act 2008*, section 356 (1) (e).

voluntary report—see the *Children and Young People Act 2008*, section 354 (2).

Part 1.2 Health Records (Privacy and Access) Act 1997

[1.4] Section 14A (a) (i)

substitute

- (i) a child concern report under the *Children and Young People Act 2008*, section 353 as in force immediately before the commencement of the *Children and Young People Amendment Act 2023*, section 29; or
- (ia) a voluntary report or a mandatory report under the *Children and Young People Act 2008*, section 354 (2) or section 356 (1) (e); or

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 29 August 2023.

2 Notification

Notified under the [Legislation Act](#) on 15 November 2023.

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 2023, which was passed by the Legislative Assembly on 2 November 2023.

Acting Clerk of the Legislative Assembly

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