

2001

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health, Housing and Community Services)

Children and Young People Amendment Bill 2001

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Act amended	2
4 Chapter 1, part 1 to chapter 8, part 1	2
5 Definitions for ch 8	
Section 299 (1), definition of <i>child care and protection order</i>	2
6 Section 299 (1), new definition of <i>welfare body</i>	2
7 Chapter 8, parts 2 to 5	3
8 New part 8.6	3
9 Chapter 9, parts 1 to 4	7
10 Review of decisions	
New section 384 (1) (aa)	7
11 Dictionary, new definition of <i>declaration</i>	7
12 Dictionary, new definition of <i>interstate order</i>	8
13 Dictionary, new definition of <i>non-participating State</i>	8
14 Dictionary, definition of <i>parental responsibility</i>	8
15 Dictionary, new definition of <i>welfare body</i>	8

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(Minister for Health, Housing and Community Services)

Children and Young People Amendment Bill 2001

A Bill for

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

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

2001 012

1 Name of Act

This Act is the *Children and Young People Amendment Act 2001*.

2 Commencement

5 This Act commences on the day it is notified in the Gazette.

3 Act amended

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

4 Chapter 1, part 1 to chapter 8, part 1

renumber as part 1.1 to part 8.1

**5 Definitions for ch 8
Section 299 (1), definition of *child care and protection order***

10

substitute

15

child care and protection order, in relation to a child or young person, means an order (other than an interim order) under a child welfare law in relation to the child or young person that relates to an aspect of parental responsibility (however that responsibility is described) if the order is in favour of a welfare body.

6 Section 299 (1), new definition of *welfare body*

20

insert

welfare body, for a State, means—

25

- (a) a Minister of the State; or
- (b) a government department or statutory authority of the State; or
- (c) a person who is the chief executive of a government department or statutory authority of the State or otherwise holds an office or position in, or is employed in, a government department or statutory authority of the State; or

- (d) an organisation, or the chief executive (however described) of an organisation, in the State.

7 Chapter 8, parts 2 to 5

renumber as parts 8.2 to 8.5

8 New part 8.6

insert

Part 8.6 Interstate transfer for non-participating States

323A Definitions for pt 8.6

For this part:

declaration means a declaration under section 323C (2).

interstate order, in relation to a child or young person, means an order about the welfare or protection of a child or young person that relates to an aspect of parental responsibility if the order is in favour of a welfare body of the State.

non-participating State means a State other than a participating State.

parental responsibility, in relation to a non-participating State, means parental responsibility within the meaning of this Act whether or not the words 'parental responsibility' are used in the law of the State.

323B Object of pt 8.6

The object of this part is to facilitate the transfer of—

- (a) interstate orders from non-participating States to the Territory;
and

- (b) orders made under part 7.3 (Care and protection orders and emergency action) to non-participating States.

323C Transfer from non-participating State

- (1) This section applies if—
 - 5 (a) there is an interstate order in relation to a child or young person in favour of a welfare body of a non-participating State; and
 - (b) the child or young person is in the Territory or is about to enter the Territory; and
 - 10 (c) the welfare body asks the chief executive to assume parental responsibility for the child or young person under this section; and
 - (d) either—
 - 15 (i) the time for appealing against the decision to ask the chief executive to assume parental responsibility in the non-participating State has ended; or
 - (ii) if an appeal is made against the decision—the appeal has been decided.
- (2) The chief executive may make a written declaration in relation to the interstate order.
- 20 (3) The declaration must state—
 - (a) that there is a residence order, a final care and protection order or both in relation to the child or young person and in favour of the chief executive; and
 - (b) the terms of each order.
- 25 (4) The chief executive must endeavour to ensure that the effect of the order or orders mentioned in the declaration is as close as possible to the effect of the interstate order, subject to any changes the chief executive considers necessary or desirable to allow the order or orders to operate in the Territory.

323D Effect of declaration

- 5 (1) If a declaration is made in relation to an interstate order, the residence order, final care and protection order or both mentioned in the declaration are taken to have been made under this Act in the terms set out in the declaration.
- (2) The residence order, final care and protection order or both remain in force for the remainder of the period of the interstate order or until the child or young person who is the subject of the order turns 18 years old.

10 **323E Notice of declaration**

- (1) After making the declaration in relation to the child or young person, the chief executive must—
- 15 (a) give a copy of the declaration to anyone the chief executive knows about with parental responsibility for the child or young person and explain the effect of the declaration; and
- (b) give a copy of the declaration to the community advocate.
- (2) However, subsection (1) (a) does not require the chief executive to give a copy of the declaration to someone who cannot, after reasonable inquiry, be found.
- 20 (3) Also, the chief executive may, before giving a copy of the declaration to someone (the *receiver*) other than the community advocate, omit material from the copy if—
- 25 (a) the chief executive believes on reasonable grounds that it would not be in the best interests of the child or young person who is the subject of the declaration for the receiver to be given the material; and
- (b) the omission does not prevent the receiver being given adequate notice of the declaration.

323F Effect of State becoming participating State

- (1) This section applies if—
- (a) a declaration is made in relation to an interstate order; and
 - (b) after the declaration is made, the State that made the interstate order becomes a participating State.
- (2) The order or orders in the declaration are not affected by the State becoming a participating State.

323G Transfer to non-participating State

- (1) This section applies if the chief executive proposes (the *proposal*) to ask a welfare body in a non-participating State to assume parental responsibility for a child or young person for whom the chief executive has parental responsibility.
- (2) The chief executive may ask the welfare body to assume parental responsibility for the child or young person only if the chief executive has given written notice of the proposal to the following people:
- (a) the child or young person;
 - (b) anyone (other than the chief executive) with parental responsibility for the child or young person;
 - (c) if the child is in the care of a carer who has moved or is moving to the non-participating State—the carer.
- (3) The notice must state the following:
- (a) the reason for the proposal, including any relevant fact giving rise to the reason;
 - (b) that the person given the notice may, within the period stated in the notice, make a written submission to the chief executive about why the proposal should not go ahead.
- (4) The period for making submissions stated in the notice must be at least 14 days after the person is given the notice.

- 5 (5) If, after considering any written submission made within the time for making submissions, the chief executive considers an adequate ground for going ahead with the proposal exists, the chief executive may ask the welfare body to assume parental responsibility for the child or young person.
- (6) However, the chief executive may give parental responsibility to the welfare body only when—
- (a) the time for appealing against the decision to go ahead with the proposal has ended; or
- 10 (b) if an appeal is made against the decision—the appeal is decided.

15 *Note* Under s 384, a person whose rights are affected by the decision of the chief executive to ask the welfare body to assume parental responsibility for the child or young person has a right to appeal to the administrative appeals tribunal.

323H Expiry of pt 8.6

This part and section 384 (1) (aa) expire on the day after the last non-participating State becomes a participating State.

9 Chapter 9, parts 1 to 4

20 *renumber as parts 9.1 to 9.4*

10 Review of decisions New section 384 (1) (aa)

before paragraph (a) insert

- 25 (aa) under section 323G (5) (Transfer to non-participating State) to ask a welfare body in a non-participating State to assume parental responsibility for a child or young person; or

11 Dictionary, new definition of *declaration*

insert

declaration, for part 8.6 (Interstate transfer for non-participating States), means a declaration under section 323C (2) (Transfer from non-participating States).

5

12 Dictionary, new definition of *interstate order*

insert

interstate order, for part 8.6 (Interstate transfer for non-participating States)—see section 323A (Definitions for pt 8.6).

10

13 Dictionary, new definition of *non-participating State*

insert

non-participating State, for part 8.6 (Interstate transfer for non-participating States) means a State other than a participating State.

14 Dictionary, definition of *parental responsibility*

15

substitute

parental responsibility—

- (a) see section 17; and
- (b) for part 8.6 (Interstate transfer for non-participating States)—see section 323A (Definitions for pt 8.6).

20

15 Dictionary, new definition of *welfare body*

insert

welfare body, for chapter 8 (Transfer of child care and protection orders and proceedings)—see section 299 (1) (Definitions for ch 8).

Endnote

Act amended

- 1 Republished as in force on 10 May 2000 (Republication No 1). See also SL 2000 Nos 41 and 49; Act 2000 No 80.

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