

1994
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Children's Services (Amendment) Bill
1994**

TABLE OF PROVISIONS

Section

PART I—PRELIMINARY

1. Short title
2. Commencement
3. Principal Act

PART II—AMENDMENTS OF PRINCIPAL ACT

4. Director to provide assistance
5. Childrens Services Council
6. Annual reports
7. Standing Committee of Council
8. Functions of Standing Committee
9. Delegation
10. Transfer of proceedings
11. Power to apprehend under-age children
12. Revocation and variation of certain orders
13. Children in need of care

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Children's Services (Amendment) No. , 1994

TABLE OF PROVISIONS—continued

Section

14. Where person apparently a child
15. Proceedings with respect to children in need of care
16. Children in hospital
17. Direction for release of child
18. Application to Court for detention order
19. Application for declaration that child is in need of care
20. Child care conference
21. Applications by other persons
22. Review of orders on application
23. Service of applications for review
24. Procedure at hearing
25. Procedure where child voluntarily enters a place of safety
26. Notification of children in need of care and of child abuse
27. Record of notifications
28. Protection of persons making notifications
29. Court may direct Minister to make certain determinations

PART III—SAVINGS AND TRANSITIONAL

30. Interpretation
31. Recommendations of Standing Committee
32. Applications pending
33. Orders and directions

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**Children's Services (Amendment) Bill
1994**

**A BILL
FOR
An Act to amend the *Children's Services Act 1986*
and for related purposes**

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

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Children's Services (Amendment) Act 1994*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
- 10 (2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

5 Principal Act

3. In this Act, "Principal Act" means the *Children's Services Act 1986*.¹

PART II—AMENDMENTS OF PRINCIPAL ACT

Director to provide assistance

10 4. Section 8 of the Principal Act is amended by adding at the end of subsection (1) " , and promoting the protection and care of children".

Childrens Services Council

5. Section 13 of the Principal Act is amended—

15 (a) by inserting in subsection (6) "Director or the" before "Community"; and

(b) by omitting from subsection (12) "or a member referred to in paragraph (2) (a), (b) or (c)".

Annual reports

20 6. Section 15 of the Principal Act is amended by omitting from subsection (1) "Community Advocate" and substituting "Director".

Standing Committee of Council

7. Section 16 of the Principal Act is amended—

(a) by omitting from subsection (2) "The Community Advocate" and substituting "A member of the Standing Committee";

25 (b) by omitting from subsection (3) "Community Advocate" and substituting "Director";

(c) by omitting subsection (4) and substituting the following subsection:

30 "(4) If the Director is not present at a meeting of the Standing Committee, the person nominated under subsection (9) to attend in his or her place shall chair the meeting.";

(d) by omitting from subsection (6) "Community Advocate" and substituting "Director"; and

- (e) by omitting subsection (9) and substituting the following subsection:

5 “(9) A member of the Council may nominate a person to attend a meeting of the Standing Committee in the member's place and the person nominated shall, in respect of that meeting, be regarded as a member of the Standing Committee, may vote and shall be taken into account in determining a quorum.”.

Functions of Standing Committee

- 10 8. Section 17 of the Principal Act is amended by omitting “Community Advocate” (wherever occurring) and substituting “Director”.

Delegation

9. Section 19 of the Principal Act is amended by omitting from subsection (1) all the words after “Act”.

Transfer of proceedings

- 15 10. Section 26 of the Principal Act is amended—

(a) by inserting in subsection (1) “Director and the” before “Community”; and

(b) by inserting in subsection (3) “, the Director” after “relates”.

Power to apprehend under-age children

- 20 11. Section 28 of the Principal Act is amended by omitting from paragraph (3) (b) “Community Advocate” and substituting “Director”.

Revocation and variation of certain orders

12. Section 62 of the Principal Act is amended—

25 (a) by omitting from subsection (1) “Community Advocate” and substituting “Director”; and

(b) by omitting paragraph (2) (a) and substituting the following paragraph:

 “(a) if the applicant is—

- 30 (i) the Director—on the Community Advocate;
 (ii) the Community Advocate—on the Director; or
 (iii) a person other than the Director or the Community Advocate—on the Director and the Community Advocate;”.

Children in need of care

13. Section 71 of the Principal Act is amended by omitting from subsection (2) "Community Advocate" and substituting "Director".

Where person apparently a child

5 14. Section 72 of the Principal Act is amended by omitting from paragraph (a) "Community Advocate" and substituting "Director".

Proceedings with respect to children in need of care

15. Section 73 of the Principal Act is amended—

- 10 (a) by inserting in subsection (3) "Director and the" before "Community"; and
- (b) by omitting from subsections (4) and (5) "Community Advocate" and substituting "Director".

Children in hospital

16. Section 74 of the Principal Act is amended—

- 15 (a) by inserting in subsection (3) "Director and the" before "Community"; and
- (b) by omitting from subsections (4) and (5) "Community Advocate" and substituting "Director".

Direction for release of child

20 17. Section 75 of the Principal Act is amended—

- (a) by omitting from subsection (1) "Community Advocate" (first and second occurring) and substituting "Director";
- (b) by omitting from subsection (1) "Community Advocate shall forthwith notify a magistrate" and substituting "Director shall, as soon as practicable, notify a magistrate and the Community Advocate";
- 25 (c) by inserting after subsection (1) the following subsection:
- 30 "(1A) If before the expiration of 48 hours after a child was taken into care under section 73 or a direction was given for the detention of a child in a hospital under section 74, the Director makes a decision that the child be released from that care or hospital, the Director shall not direct that the child be released until the Director has notified the Community Advocate of that decision.";
- 35 (d) by omitting from subsection (4) "Community Advocate" and substituting "Director";

(e) by inserting after subsection (4) the following subsection:

“(4A) Before the Director gives information to a magistrate for the purposes of subsection (3), the Director shall notify the Community Advocate of his or her intention to do so.”;

5 (f) by inserting in subsection (5) “, the Director” after “person” (last occurring); and

(g) by omitting from paragraph (6) (a) “Community Advocate” and substituting “Director”.

Application to Court for detention order

10 **18. Section 76 of the Principal Act is amended—**

(a) by omitting from subsection (1) “If” and substituting “Subject to subsection (6), if”;

(b) by omitting from subsections (1) and (2) “Community Advocate” and substituting “Director”;

15 (c) by omitting from subsection (5) “Community Advocate” and substituting “Director”; and

(d) by adding at the end the following subsection:

20 “(6) Before the Director makes application under subsection (1) or (5), the Director shall notify the Community Advocate of his or her intention to do so.”.

Application for declaration that child is in need of care

19. Section 78 of the Principal Act is amended by omitting from subsections (1), (2) and (3) “Community Advocate” and substituting “Director”.

25 **Child care conference**

20. Section 82 of the Principal Act is amended—

(a) by omitting from subsection (1) “Community Advocate” and substituting “Director”;

(b) by inserting after subsection (1) the following subsection:

30 “(1A) Where the Court gives a direction under subsection (1), it shall give notice of the making of the direction to the Community Advocate.”;

(c) by omitting from subsection (2) “Community Advocate” and substituting “Director”;

35 (d) by inserting after subsection (2) the following subsections:

“(2A) Where the Community Advocate is notified in accordance with subsection (1A), he or she may attend the conference to which the direction relates.

5 “(2B) Notwithstanding subsection (1), where the Court adjourns an application under section 78, the Community Advocate shall, if requested in writing by the Director, convene a conference to consider the welfare of the child.

 “(2C) A conference convened under subsection (2B) may be attended by 1 or more of the following persons:

- 10 (a) if the Court so orders, the child;
- (b) a parent of the child;
- (c) a person who is or may be concerned with the welfare of the child;
- 15 (d) with the leave of the Court, a barrister and solicitor acting for a person referred to in paragraph (a), (b) or (c).”; and
- (e) by omitting from subsection (3) “Community Advocate” and substituting “Director”.

Applications by other persons

21. Section 87 of the Principal Act is amended—

- 20 (a) by omitting from subsections (1) and (2) “Community Advocate” (wherever occurring) and substituting “Director”;
- (b) by inserting in paragraph (3) (a) “Director and the” before “Community” (first occurring);
- 25 (c) by omitting from paragraph (3) (a) “the Community Advocate” (last occurring) and substituting “each”; and
- (d) by omitting from paragraph (3) (b) “Community Advocate” and substituting “Director”.

Review of orders on application

30 22. Section 88 of the Principal Act is amended by omitting from subsections (1) and (2) “Community Advocate” and substituting “Director”.

Service of applications for review

23. Section 90 of the Principal Act is amended by inserting in paragraph (a) “Director and the” before “Community”.

Procedure at hearing

35 24. Section 93 of the Principal Act is amended—

(a) by inserting before paragraph (5) (a) the following paragraph:

“(aa) the Director;”; and

(b) by omitting from subsection (6) “Community Advocate” (wherever occurring) and substituting “Director”.

5 Procedure where child voluntarily enters a place of safety

25. Section 102 of the Principal Act is amended by omitting from subsections (2), (3), (4) and (5) “Community Advocate” and substituting “Director”.

Notification of children in need of care and of child abuse

10 26. Section 103 of the Principal Act is amended by omitting from subsections (1) and (2) “Community Advocate” (wherever occurring) and substituting “Director”.

Record of notifications

15 27. Section 104 of the Principal Act is amended by omitting “Community Advocate” and substituting “Director”.

Protection of persons making notifications

28. Section 105 of the Principal Act is amended by omitting “Community Advocate” and substituting “Director”.

Court may direct Minister to make certain determinations

20 29. Section 161 of the Principal Act is amended by omitting “Community Advocate” and substituting “Director”.

PART III—SAVINGS AND TRANSITIONAL

Interpretation

30. In this Part—

25 “commencement day” means the day on which this Act (other than sections 1 and 2) commences.

Recommendations of Standing Committee

30 31. Recommendations made by the Standing Committee under section 17 of the Principal Act, in force immediately before the commencement day, to the Community Advocate, shall (except in relation to matters that occurred before that day) be taken to have been made under section 17 to the Director.

Applications pending

- 5 **32.** Where, before the commencement day, an application was made by the Community Advocate under the Principal Act in force immediately before that day but was not determined, the application may be determined under the Principal Act as amended by this Act as if the applicant were the Director.

Orders and directions

- 10 **33.** A reference in an order or direction made by the Court before the commencement day to the Community Advocate shall (except in relation to matters that occurred before that day) be read as a reference to the Director.

NOTE

1. Reprinted as at 31 January 1994. See also No. 5, 1994