

2016

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Children and Young People)

Children and Young People Legislation Amendment Bill 2016

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J2015-799

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

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Children and Young People Legislation Amendment Bill 2016

A Bill for

An Act to amend legislation about children and young people

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Children and Young People Legislation Amendment*
4 *Act 2016*.

5 **2 Commencement**

6 This Act commences on the day after its notification day.

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

9 **3 Legislation amended**

10 This Act amends the *Adoption Act 1993* and the *Children and Young*
11 *People Act 2008*.

Part 2 Adoption Act 1993

4 Sections 14 to 17

substitute

14 Additional requirements for adoption of child or young person

An adoption order for a child or young person may be made in favour of a person only if—

- (a) the person is on the register of suitable people; and
- (b) for an order to be made in favour of 2 people jointly—
 - (i) they have lived together in a domestic partnership for at least 3 years (whether or not married or in a civil union); and
 - (ii) the court considers they have demonstrated the stability of, and their commitment to, their domestic partnership; and
- (c) for an order to be made in favour of 1 person only—the person either—
 - (i) is a step parent of the child or young person; or
 - (ii) is not in a domestic partnership; and
- (d) if the person is a step-parent of the child or young person—the Family Court of Australia has given the step-parent leave to commence a proceeding for the adoption of the child or young person under the *Family Law Act 1975* (Cwlth), section 60G (Family Court may grant leave for adoption proceedings by prescribed adopting parent); and

- 1 (e) if the person is a relative of the child or young person—the
2 court considers that—
- 3 (i) the family circumstances mean that it would be beneficial
4 for the child or young person if the relationships within
5 the family were redefined in the way the order would
6 redefine them; and
- 7 (ii) it would not be preferable to make an order relating to
8 guardianship or custody of the child or young person.

9 **5 Guardianship before adoption**
10 **Section 36 (2) (a)**

11 *substitute*

- 12 (a) the application for adoption is made by a step-parent and a
13 parent of the child or young person has a continuing role as a
14 parent; or

15 **6 Application for approval**
16 **Section 81 (2)**

17 *omit*

18 resident in the Territory

1 **Part 3** **Children and Young People**
2 **Act 2008**

3 **7 Aspects of parental responsibility may be transferred**
4 **Section 17 (1), new note**

5 *insert*

6 *Note* If parental responsibility for a child or young person is transferred to the
7 director-general, the director-general may delegate the responsibility to
8 a responsible person for an approved kinship and foster care
9 organisation, who may subdelegate it to an approved carer who is a
10 kinship carer or foster carer for the child or young person (see s 503A).
11 However, the director-general is obliged to ensure that the delegated or
12 subdelegated parental responsibility is properly exercised (see
13 [Legislation Act](#), s 238).

14 **8 Aspects of parental responsibility may be shared**
15 **Section 18 (1), new note**

16 *insert*

17 *Note* If parental responsibility for a child or young person is shared with the
18 director-general, the director-general may delegate the responsibility to
19 a responsible person for an approved kinship and foster care
20 organisation, who may subdelegate it to an approved carer who is a
21 kinship carer or foster carer for the child or young person (see s 503A).
22 However, the director-general is obliged to ensure that the delegated or
23 subdelegated parental responsibility is properly exercised (see
24 [Legislation Act](#), s 238).

25 **9 Director-general must give identity cards**
26 **New section 26 (1A)**

27 *insert*

28 (1A) However, this section does not apply to a delegation, or
29 subdelegation, under any of the following sections:

30 (a) section 457A (Care plans—director-general delegations);

Section 10

- 1 (b) section 501A (Annual review report—director-general
2 delegations);
- 3 (c) section 503A (Parental responsibility—director-general
4 delegations);
- 5 (d) section 513A (Placement with out-of-home carer—
6 director-general delegations);
- 7 (e) section 514G (Approved carers—director-general delegations);
- 8 (f) section 529HA (Transition plans—director-general
9 delegations);
- 10 (g) section 529NA (Access to protected information—
11 director-general delegations);
- 12 (h) section 863 (5) (Care teams—sharing safety and wellbeing
13 information).

14 **10 Care plans—director-general delegations**
15 **Section 457A, notes 2 and 3**

16 *omit*

17 **11 Section 495**

18 *substitute*

19 **495 Annual review report—prepared at least annually**

20 The director-general must prepare an annual review report for a
21 reviewable care and protection order—

- 22 (a) at least once every 12 months while the order is in force; or
23 (b) if the order is in force for less than 12 months—when the order
24 expires.

1	12	Section 501A heading
2		<i>substitute</i>
3	501A	Annual review report—director-general delegations
4	13	Section 501A, notes 2 and 3
5		<i>omit</i>
6	14	New section 503A
7		<i>in part 15.1, insert</i>
8	503A	Parental responsibility—director-general delegations
9		If parental responsibility for a child or young person is transferred
10		to, or shared with, the director-general—
11		(a) the director-general may delegate the parental responsibility to
12		a responsible person for an approved kinship and foster care
13		organisation; and
14		(b) the responsible person may subdelegate the parental
15		responsibility to an approved carer who is a kinship carer or
16		foster carer for the child or young person.
17		<i>Note 1</i> Approved kinship and foster care organisation —see s 502.
18		Approved carer —see s 514B.
19		Kinship carer —see s 516 (2).
20		Foster carer —see s 518 (2).
21		<i>Note 2</i> The director-general is obliged to ensure that the delegated or
22		subdelegated parental responsibility is properly exercised (see
23		Legislation Act , s 238). In addition, the director-general may provide
24		that the delegation has effect only in stated circumstances or subject to
25		stated conditions, limitations or directions (see Legislation Act , s 234
26		and s 239). For other provisions about the making of delegations and
27		the exercise of delegated functions, see the Legislation Act , pt 19.4.

1 **15 New section 513A**

2 **513A Placement with out-of-home carer—director-general**
3 **delegations**

4 The director-general may delegate any of the director-general's
5 functions under this division to a responsible person for an approved
6 kinship and foster care organisation.

7 **16 Section 514G**

8 *substitute*

9 **514G Approved carers—director-general delegations**

10 The director-general may delegate any of the director-general's
11 functions under this division to a responsible person for an approved
12 kinship and foster care organisation.

13 *Note* For the making of delegations and the exercise of delegated functions,
14 see the [Legislation Act](#), pt 19.4.

15 **17 New section 529BA**

16 *in division 15.5.1, insert*

17 **529BA Who is a *previous out-of-home carer* for a young person**
18 **or young adult?—pt 15.5**

19 In this part:

20 *previous out-of-home carer*, for a young person or young adult,
21 means an out-of-home carer with whom the director-general had
22 placed the young person or young adult when they were a child or
23 young person.

18 New section 529HA

in division 15.5.2, insert

529HA Transition plans—director-general delegations

The director-general may delegate any of the director-general's functions under this division to—

- (a) a responsible person for an approved kinship and foster care organisation; or
- (b) a responsible person for a residential care service.

Note For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

**19 Financial assistance—previous out-of-home carer
Section 529JA (1) (b) to (d)**

substitute

- (b) a transition plan is in force for the young adult which provides for the young adult to live with a previous out-of-home carer; and
- (c) the young adult is in fact living with the previous out-of-home carer.

Note *Previous out-of-home carer*, for a young adult—see s 529BA.

20 Section 529JA (2)

omit

previous carer

substitute

previous out-of-home carer

- 1 **21 Section 529JA (3)**
- 2 *omit*
- 3 previous carer's
- 4 *substitute*
- 5 previous out-of-home carer's
- 6 **22 Section 529JA (5)**
- 7 *omit*
- 8 previous carer
- 9 *substitute*
- 10 previous out-of-home carer
- 11 **23 Entitlement to personal items**
- 12 **Section 529K (b) and note**
- 13 *substitute*
- 14 (b) an approved kinship and foster care organisation; or
- 15 (c) a previous out-of-home carer for the young person or young
- 16 adult.
- 17 *Note 1* **Previous out-of-home carer**, for a young person or young adult—
- 18 see s 529BA.
- 19 *Note 2* Some out-of-home carers are required to keep personal items during
- 20 placements (see div 15.4.3).
- 21 **24 Access to protected information—young person**
- 22 **Section 529L (1) (b) and notes**
- 23 *substitute*
- 24 (b) an approved kinship and foster care organisation; or

1 (c) a previous out-of-home carer for the young person.

2 *Note 1* **Previous out-of-home carer**, for a young person—see s 529BA.
3 **Protected information**—see s 844.

4 *Note 2* Some out-of-home carers are required to keep protected information
5 (see div 15.4.3).

6 **25 Section 529L (2) to (5)**

7 *omit*

8 out-of-home carer

9 *substitute*

10 organisation or carer

11 **26 Access to protected information—young adult**
12 **Section 529M (b) and notes**

13 *substitute*

14 (b) an approved kinship and foster care organisation; or

15 (c) a previous out-of-home carer for the young adult.

16 *Note 1* **Previous out-of-home carer**, for a young adult—see s 529BA.
17 **Protected information**—see s 844.

18 *Note 2* Some out-of-home carers are required to keep protected information
19 (see div 15.4.3).

- 1 **27** **New section 529NA**
- 2 *in division 15.5.4, insert*
- 3 **529NA** **Access to protected information—director-general**
- 4 **delegations**
- 5 The director-general may delegate any of the director-general's
- 6 functions under this division to—
- 7 (a) a responsible person for an approved kinship and foster care
- 8 organisation; or
- 9 (b) a responsible person for a residential care service.
- 10 *Note* For the making of delegations and the exercise of delegated functions,
- 11 see the [Legislation Act](#), pt 19.4.
- 12 **28** **Annual report**
- 13 **Section 727S**
- 14 *omit*
- 15 financial year
- 16 *substitute*
- 17 calendar year
- 18 **29** **Care teams—sharing safety and wellbeing information**
- 19 **Section 863 (5), notes 2 and 3**
- 20 *omit*

30 New chapter 30*insert***Chapter 30 Transitional—Children and Young People Legislation Amendment Act 2016****986 CYP death review committee—annual report 2016**

(1) If the commencement day is on or before 30 June 2016, the CYP death review committee's annual report under section 727S for 2016 must also report about deaths included on the register during the period 1 July 2015 to 31 December 2015.

(2) If the commencement day is on or after 1 July 2016—

(a) the CYP death review committee need not report to the Minister under section 727S for 2016; but

(b) the committee's annual report for 2017 must also report about deaths included on the register during the period 1 July 2016 to 31 December 2016.

(3) In this section:

commencement day means the day the *Children and Young People Legislation Amendment Act 2016*, section 28 commences.

(4) This chapter expires on 30 June 2018.

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).

- 1 **31 Dictionary, new definition of *previous out-of-home carer***
- 2 *insert*
- 3 *previous out-of-home carer*, for a young person or young adult, for
- 4 part 15.5 (Transition to adulthood)—see section 529BA.
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Endnotes

- 1 **Presentation speech**
Presentation speech made in the Legislative Assembly on 3 May 2016.
- 2 **Notification**
Notified under the [Legislation Act](#) on 2016.
- 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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