

2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Disability, Children and Youth)

Children and Young People Amendment Bill 2018

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(As presented)

(Minister for Disability, Children and Youth)

Children and Young People Amendment Bill 2018

A Bill for

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

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

1 **1 Name of Act**

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

3 **2 Commencement**

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

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

7 **3 Legislation amended**

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

9 **4 Aspects of parental responsibility may be transferred**
10 **Section 17 (1) (g), note**

11 *substitute*

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

19 **5 Aspects of parental responsibility may be shared**
20 **Section 18 (1) (d), note**

21 *substitute*

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

1 **6 Director-general must give identity cards**
2 **Section 26 (2)**

3 *substitute*

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

8 **7 Director-general action on child protection report**
9 **Section 361 (4) (a)**

10 *omit*

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

13 *substitute*

14 (Care and protection appraisal—power to carry out)

15 **8 Section 361 (4) (b)**

16 *omit*

17 (Visual examination etc without agreement)

18 *substitute*

19 (Care and protection appraisal—visual examination and interview)

20 **9 Division 11.2.2 heading**

21 *substitute*

22 **Division 11.2.2 Appraisal by director-general**

1 **10 Sections 368 to 371**

2 *substitute*

3 **368 Care and protection appraisal—power to carry out**

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

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

- 13 (2) However, the director-general may carry out a care and protection
14 appraisal of the child or young person only if—

15 (a) the director-general—

16 (i) has the agreement, under section 369 (1), of at least
17 1 parent or other person who has daily care responsibility
18 for the child or young person; and

19 (ii) has notified, under section 369 (4), any other parent or
20 person who has daily care responsibility for the child or
21 young person (unless, under section 369 (5), notice is not
22 required); or

23 (b) an appraisal order in force for the child or young person
24 authorises the carrying out of the appraisal; or

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

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

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

3 **369 Care and protection appraisal—obtaining agreement etc**

4 (1) When seeking the agreement of a person for section 368 (2) (a) (i),
5 the director-general must tell the person the following:

- 6 (a) the purpose of the appraisal;
- 7 (b) if the appraisal is to include a care and protection assessment
8 of the child or young person—the kind of assessment;
- 9 (c) that agreement may be refused;
- 10 (d) if agreement is refused, the kind of appraisal the
11 director-general may carry out under section 371 (Care and
12 protection appraisal—visual examination and interview).

13 (2) Agreement to the appraisal may be given orally.

14 (3) The director-general must keep a written record of the agreement to
15 the appraisal.

16 (4) When notifying a person for section 368 (2) (a) (ii), the
17 director-general must tell the person—

- 18 (a) the purpose of the appraisal; and
- 19 (b) if the appraisal is to include a care and protection assessment
20 of the child or young person—the kind of assessment.

21 (5) The director-general is not required to notify a person under
22 section 368 (2) (a) (ii) if satisfied that—

- 23 (a) it would not be in the best interests of the child or young
24 person to notify the person; or

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

3 **Example—par (b)**

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

5 *Note* An example is part of the Act, is not exhaustive and may extend,
6 but does not limit, the meaning of the provision in which it
7 appears (see [Legislation Act](#), s 126 and s 132).

8 **370 Care and protection appraisal—obtaining agreement not**
9 **in best interests of child or young person etc**

10 (1) This section applies if the director-general suspects on reasonable
11 grounds that obtaining agreement to carry out an appraisal from a
12 parent or other person with daily care responsibility for a child or
13 young person—

14 (a) is not in the best interests of the child or young person; or

15 (b) would be likely to jeopardise a criminal investigation.

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

17 1 the parent or other person with daily care responsibility is the subject of an
18 allegation of abuse or neglect of the child or young person

19 2 the parent's contact with the child or young person is not allowed, or is
20 limited, under a court order (under this Act or another law in force in the
21 Territory)

22 *Note* An example is part of the Act, is not exhaustive and may extend, but
23 does not limit, the meaning of the provision in which it appears (see
24 [Legislation Act](#), s 126 and s 132).

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

- 1 **371 Care and protection appraisal—visual examination and**
2 **interview**
- 3 (1) If section 370 applies in relation to a child or young person, the
4 director-general may carry out an appraisal that consists only of—
- 5 (a) a visual examination of the child or young person; and
6 (b) an interview of the child or young person.
- 7 (2) If the child or young person is a student at a school, a patient at a
8 health facility or being cared for by a childcare service, the
9 director-general—
- 10 (a) may enter the school, health facility or childcare service to
11 visually examine or interview the child or young person; and
12 (b) if entering the school, health facility or childcare service,
13 must—
- 14 (i) produce the director-general’s identity card; and
15 (ii) tell the person in charge of the school, health facility or
16 childcare service the purpose of the entry.
- 17 (3) After the director-general visually examines or interviews the child
18 or young person, the director-general must take reasonable steps to
19 tell at least 1 parent or other person who has daily care
20 responsibility for the child or young person that the examination or
21 interview has been carried out.
- 22 (4) Subsection (3) does not apply in relation to a person if the
23 director-general suspects on reasonable grounds that telling the
24 person—
- 25 (a) is not in the best interests of the child or young person; or
26 (b) would be likely to jeopardise a criminal investigation.

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

13 **11 Appraisal orders—application by director-general**

14 **Section 376 (b) and notes**

15 *substitute*

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

24 *Note 1* Statements, documents and reports must be included in the application

25 (see s 696).

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

- 1 **12 Appraisal orders—criteria for making**
2 **Section 382 (a)**
- 3 *substitute*
- 4 (a) either—
- 5 (i) no parent or other person with daily care responsibility
6 agreed to the appraisal when the director-general sought
7 agreement under section 369 (Care and protection
8 appraisal—obtaining agreement etc); or
- 9 (ii) section 370 (Care and protection appraisal—obtaining
10 agreement not in best interests of child or young person
11 etc) applies; and
- 12 **13 Care plans—director-general delegations**
13 **Section 457A**
- 14 *omit*
- 15 **14 Annual review report—director-general delegations**
16 **Section 501A**
- 17 *omit*
- 18 **15 Parental responsibility—director-general delegations**
19 **Section 503A**
- 20 *omit*
- 21 **16 Placement with out-of-home carer—director-general**
22 **delegations**
23 **Section 513A**
- 24 *omit*

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

3 *omit*

4 **18 New section 514EA**

5 *insert*

6 **514EA Approved carers—revocation of approval**

7 (1) The director-general may revoke a person's approval as an approved
8 carer if satisfied that the person—

9 (a) is no longer an appropriate person to care for children or young
10 people; or

11 (b) has not adequately cared for or protected a child or young
12 person; or

13 (c) has failed to comply with a direction of the director-general in
14 exercising daily care or long-term care responsibility for any
15 child or young person.

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

17 (2) The director-general may also revoke a person's approval if the
18 person asks the director-general to revoke the approval.

19 (3) Before revoking a person's approval under subsection (1), the
20 director-general must—

21 (a) give the person written notice of the director-general's
22 intention to revoke the approval, including the
23 director-general's reasons; and

24 (b) tell the person that the person may make a submission, in
25 writing, to the director-general about the notice not later than
26 14 days after the day the notice is given to the person; and

27 (c) if the person makes a submission—consider the submission.

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

3 (a) revoke the approval; or

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

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

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

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

13 **19 Approved carers—director-general delegations**
14 **Section 514G**

15 *omit*

16 **20 Transition plans—director-general delegations**
17 **Section 529HA**

18 *omit*

19 **21 Access to protected information—director-general**
20 **delegations**
21 **Section 529NA**

22 *omit*

23 **22 Meaning of *reviewable decision*—div 24.1.3**
24 **Section 839, table 839.1A, new item 2A**

25 *insert*

2A	514EA	revoke person's approval as approved carer	person
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1 **23 Care teams—sharing safety and wellbeing information**
2 **Section 863 (5) and note**

3 *omit*

4 **24 New sections 883A to 883C**

5 *insert*

6 **883A Director-general delegations—approved care and**
7 **protection organisations**

8 (1) The director-general may delegate any of the following to a
9 responsible person for an approved kinship and foster care
10 organisation:

11 (a) the director-general's functions under the following provisions:

12 (i) division 14.3.4 (Care plans);

13 (ii) part 14.13 (Annual review reports—parental
14 responsibility provisions and supervision provisions);

15 (iii) division 15.4.1 (Placement with out-of-home carer);

16 (iv) division 15.4.1A (Approval of carers);

17 (v) division 15.5.2 (Transition plans);

18 (vi) division 15.5.4 (Entitlement to personal items and access
19 to protected information);

20 (vii) section 863 (1) (Care teams—sharing safety and
21 wellbeing information);

22 (b) if parental responsibility for a child or young person is
23 transferred to, or shared with, the director-general—the
24 parental responsibility;

- 1 (c) if, for a contact provision, the director-general is authorised to
2 decide with whom a child or young person may have contact
3 and to decide any conditions for the contact—the authority to
4 decide.
- 5 *Note 1* The responsible person may subdelegate certain functions in certain
6 circumstances (see s 883B).
- 7 *Note 2* The director-general must ensure the delegated or subdelegated function
8 is properly exercised (see [Legislation Act](#), s 238). In addition, the
9 director-general may provide that the delegation has effect only in
10 stated circumstances or subject to stated conditions, limitations or
11 directions (see [Legislation Act](#), s 234 and s 239). For other provisions
12 about the making of delegations and the exercise of delegated functions,
13 see the [Legislation Act](#), pt 19.4.
- 14 (2) The director-general may delegate any of the director-general's
15 functions under the following provisions to a responsible person for
16 a residential care service:
- 17 (a) division 14.3.4 (Care plans);
- 18 (b) part 14.13 (Annual review reports—parental responsibility
19 provisions and supervision provisions);
- 20 (c) division 15.5.2 (Transition plans);
- 21 (d) division 15.5.4 (Entitlement to personal items and access to
22 protected information);
- 23 (e) section 863 (1) (Care teams—sharing safety and wellbeing
24 information).
- 25 (3) In this section:
26 ***contact provision***—see section 485.

1 **883B Subdelegations—approved care and protection**
2 **organisations**

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

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

13 (2) However, a function may be subdelegated under subsection (1) only
14 if the responsible person is satisfied that—

15 (a) within the organisation the position has responsibility for the
16 operation or administration of the function; and

17 (b) the occupant of the position—

18 (i) is an employee of the organisation; and

19 (ii) has skills and qualifications appropriate for the function
20 to be exercised.

21 **883C Register of subdelegations**

22 (1) The head of an organisation in which 1 or more responsible person
23 has been delegated a function under section 883A must keep a
24 register of any subdelegation of the function under section 883B.

25 (2) For each subdelegation, the register must include—

26 (a) the day the subdelegation starts; and

27 (b) each position to which the subdelegation is made; and

28 (c) if the subdelegation has effect only in stated circumstances—
29 the circumstances; and

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

25 New chapter 31

14 *insert*

15 Chapter 31 Transitional—Children and 16 Young People Amendment 17 Act 2018

18 987 Certain director-general delegations

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

- 1 (d) section 513A (Placement with out-of-home carer—
2 director-general delegations);
- 3 (e) section 514G (Approved carers—director-general delegations);
- 4 (f) section 529HA (Transition plans—director-general
5 delegations);
- 6 (g) section 529NA (Access to protected information—
7 director-general delegations);
- 8 (h) section 863 (5) (Care teams—sharing safety and wellbeing
9 information).
- 10 (2) The delegation is taken to have been made under section 883A
11 (Director-general delegations—approved care and protection
12 organisations).
- 13 (3) In this section:
- 14 *commencement day* means the day the *Children and Young People*
15 *Amendment Act 2018*, section 3 commences.
- 16 (4) This chapter expires on 31 December 2020.
- 17 *Note* Transitional provisions are kept in the Act for a limited time.
18 A transitional provision is repealed on its expiry but continues to have
19 effect after its repeal (see [Legislation Act](#), s 88).

Endnotes

1 Presentation speech

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

2 Notification

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

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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