

2023

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Families and Community Services)

Children and Young People Amendment Bill 2023

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2023

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Families and Community Services)

Children and Young People Amendment Bill 2023

A Bill for

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 **1 Name of Act**

2 This Act is the *Children and Young People Amendment Act 2023*.

3 **2 Commencement**

4 (1) This Act commences on a day fixed by the Minister by written notice.

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

7 *Note 2* A single day or time may be fixed, or different days or times may be
8 fixed, for the commencement of different provisions (see [Legislation Act](#),
9 s 77 (1)).

10 (2) If this Act has not commenced before 31 March 2024, it automatically
11 commences on that day.

12 (3) The [Legislation Act](#), section 79 (Automatic commencement of
13 postponed law) does not apply to this Act.

14 **3 Legislation amended**

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

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

17 **4 Application of Act to children and young people etc**
18 **Section 6 (c)**

19 *substitute*

20 (c) about whom a report is made under—

21 (i) section 354 (Voluntary reporting of risk of significant
22 harm) arising from something happening in the ACT; or

23 (ii) section 356 (Offence—mandatory reporting of significant
24 harm) arising from something happening in the ACT; or

25 (iii) section 362 (Prenatal reporting of anticipated risk of
26 significant harm) if the pregnant woman ordinarily lives in
27 the ACT or is in the ACT.

1 **5 Main objects of Act**
2 **Section 7 (a) and (b)**

3 *omit*
4 wellbeing, care and protection
5 *substitute*
6 safety, welfare and wellbeing

7 **6 Section 7 (c)**

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

14 **7 Section 7 (d) (i)**

15 *omit*
16 wellbeing, care and protection
17 *substitute*
18 safety, welfare and wellbeing

19 **8 Section 7 (d) (ii)**

20 *substitute*
21 (ii) providing for Aboriginal and Torres Strait Islander
22 children and young people to receive the care and
23 protection necessary to protect them from significant
24 harm; and

1 **9 Section 7 (e)**

2 *omit*

3 wellbeing, care and protection

4 *substitute*

5 safety, welfare and wellbeing

6 **10 Section 10**

7 *substitute*

8 **10 Aboriginal and Torres Strait Islander children and young**
9 **people—placement principles**

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

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

1 (d) the principle (the *participation principle*) that a child or young
2 person, their parents and other family members should be given
3 opportunities to participate in decision-making processes about
4 care arrangements for the child or young person, including
5 placement and contact;

6 (e) the principle (the *connection principle*) that children and young
7 people should have their connections to family, community,
8 culture and country supported and maintained.

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

14 **10A Aboriginal and Torres Strait Islander children and young** 15 **people—other principles**

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

17 (a) Aboriginal and Torres Strait Islander people should participate
18 in the care and protection of their children and young people
19 with as much self-determination as is possible;

20 (b) the government has a responsibility to protect and promote
21 Aboriginal and Torres Strait Islander children and young
22 people's cultural identity.

23 **11 Director-general's functions** 24 **Section 22 (1) (a) and (b)**

25 *substitute*

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

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

7 **12 Section 22 (1) (d) and (e)**

8 *substitute*

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

16 **13 What is *suitability information*?**
17 **Section 65 (1), definition of *suitability information*,**
18 **paragraph (g)**

19 *omit*

20 child concern report

21 *substitute*

22 voluntary report or mandatory report

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

3 *omit*
4 neglect of
5 *substitute*
6 a risk of significant harm to

7 **15 Section 80 (2), example 3**

8 *omit*
9 substantiates the abuse
10 *substitute*
11 identifies a risk of significant harm

12 **16 Application of care and protection chapters**
13 **Part 10.1 heading, note, paragraph (c)**

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

18 **17 What are the *care and protection chapters*?**
19 **Section 336, definition of *care and protection chapters*,**
20 **paragraph (b)**

21 *substitute*
22 (b) Chapter 11 (Care and protection—reporting and assessing risk
23 of significant harm);

- 1 **18** **Definitions—care and protection chapters**
2 **Section 341 (1), definitions of *abuse* and *neglect***
3 *omit*
- 4 **19** **Section 341 (1), new definition of *significant harm***
5 insert
6 *significant harm*—see section 344.
- 7 **20** **Section 341 (2), definitions of *at risk of abuse or neglect***
8 **and *significant harm***
9 *omit*
- 10 **21** **Sections 342 and 343**
11 *omit*
- 12 **22** **Section 344**
13 *substitute*
- 14 **344** **What is *significant harm*?**
15 (1) In this Act:
16 *significant harm* to a child or young person means any detrimental
17 effect of a significant nature on the safety, welfare or wellbeing of the
18 child or young person.
19 (2) Without limiting subsection (1), significant harm may be caused by
20 1 or more of the following circumstances:
21 (a) the child or young person experiencing—
22 (i) sexual abuse, grooming or sexual exploitation; or
23 (ii) physical or emotional abuse;

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

10 **23** **When are children and young people *in need of care and***
11 ***protection*?**
12 **Section 345 (1)**

13 *substitute*

- 14 (1) For the care and protection chapters, a child or young person is *in*
15 *need of care and protection* if—
- 16 (a) the child or young person is at risk of significant harm; and
- 17 (b) no-one with parental responsibility for the child or young person
18 is willing and able to protect the child or young person from the
19 risk of significant harm.

20 **24** **Section 346**

21 *substitute*

22 **346** **Circumstances need not have arisen in ACT**

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

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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;

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

13 **26 Care and protection principles**
 14 **Section 350 (1) (b)**

15 *omit*

16 wellbeing, care and protection

17 *substitute*

18 safety, welfare and wellbeing

19 **27 Section 350 (2)**

20 *omit*

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

23 *substitute*

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

1	28	Chapter 11 heading
2		<i>substitute</i>
3	Chapter 11	Care and protection—reporting
4		and assessing risk of
5		significant harm
6	29	Part 11.1 heading
7		<i>substitute</i>
8	Part 11.1	Care and protection—reporting
9		risk of significant harm
10	30	Definitions—Act
11		Section 353, definition of <i>child concern report</i>
12		<i>omit</i>
13	31	Division 11.1.2 heading
14		<i>substitute</i>
15	Division 11.1.2	Reporting risk of significant harm to
16		children and young people
17	32	Section 354 heading
18		<i>substitute</i>
19	354	Voluntary reporting of risk of significant harm

- 1 **33 Section 354 (1)**
- 2 *substitute*
- 3 (1) This section applies if a person believes or suspects that a child or
4 young person is at risk of significant harm.
- 5 **34 Section 356 heading**
- 6 *substitute*
- 7 **356 Offence—mandatory reporting of significant harm**
- 8 **35 Reports made to public advocate or Aboriginal and
9 Torres Strait Islander children and young people
10 commissioner
11 Section 359 (1) (a)**
- 12 *substitute*
- 13 (a) a person believes or suspects that a child or young person is at
14 risk of significant harm; and
- 15 **36 Sections 360 and 361**
- 16 *substitute*
- 17 **360 Assessing risk of significant harm**
- 18 (1) This section applies if the director-general—
- 19 (a) receives a voluntary report or a mandatory report about a child
20 or young person; or
- 21 (b) otherwise believes or suspects that a child or young person may
22 be at risk of significant harm.
- 23 (2) The director-general must carry out the assessment the
24 director-general considers necessary to decide whether the child or
25 young person is at risk of significant harm.

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

12 **37 Division 11.1.3 heading**

13 *substitute*

14 **Division 11.1.3 Prenatal reporting of anticipated risk**
15 **of significant harm**

16 **38 Section 362 heading**

17 *substitute*

18 **362 Prenatal reporting—anticipated risk of significant harm**

19 **39 Section 362 (1)**

20 *omit*

21 in need of care and protection

22 *substitute*

23 at risk of significant harm after the child is born

1 **40 How prenatal reports may be used in evidence**
 2 **Section 364 (2) (b)**

3 *omit*

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

6 *substitute*

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

9 **41 Care and protection appraisal—power to carry out**
 10 **Section 368 (1) and note**

11 *substitute*

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

17 **42 Care and protection appraisal—obtaining agreement not**
 18 **in best interests of child or young person etc**
 19 **Section 370 (1), example 1**

20 *substitute*

- 21 1 the parent or other person with daily care responsibility is the subject of an
 22 allegation of causing significant harm to the child or young person

23 **43 Care and protection appraisal—visual examination and**
 24 **interview**
 25 **Section 371 (5) (a)**

26 *substitute*

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

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

4 *substitute*

5 (a) the director-general receives a voluntary report or a mandatory
6 report about a child or young person; and

7 (b) because of the report, the director-general believes the child or
8 young person is at risk of significant harm; and

9 **45 Sections 644 (b) and 651 (1) (b)**

10 *omit*

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

13 *substitute*

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

16 **46 Functions of committee**
17 **Section 727B (1)**

18 *substitute*

19 (1) The CYP death review committee has the following functions:

20 (a) to keep a register of deaths of children and young people under
21 part 19A.3;

22 (b) to report to the Minister in relation to deaths of children and
23 young people under part 19A.4;

24 (c) to identify patterns and trends in relation to deaths or serious
25 injuries of children, young people and young adults;

26 (d) to identify areas requiring further research, by the committee or
27 another entity, that arise from the identified patterns and trends;

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

12 **47 New section 727B (3)**

13 *insert*

- 14 (3) In this section:

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

16 **48 Appointment of committee members**
17 **New section 727D (2) (a) (xiii)**

18 *insert*

- 19 (xiii) coronial law and practice; or

20 **49 New section 727D (2) (d)**

21 *insert*

- 22 (d) is a public servant working in the administrative unit responsible
23 for the *Education Act 2004*.

1 **50 Appointment of advisers**
2 **Section 727G**

3 *omit*

4 **51 New section 727IA**

5 *in part 19A.1, insert*

6 **727IA Appointment of advisers**

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

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

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

12 **52 Children and young people deaths register**
13 **Section 727N (2) (d)**

14 *substitute*

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

18 **53 Section 727N (4)**

19 *omit*

20 **54 Obtaining information from certain entities**
21 **Section 727O (4)**

22 *omit*

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

4 *omit*

5 section 727G

6 *substitute*

7 section 727IA

8 **56 Part 19A.4 heading**

9 *substitute*

10 **Part 19A.4 Reporting by committee**

11 **57 Section 727S heading**

12 *substitute*

13 **727S Biennial reporting**

14 **58 Section 727S (1)**

15 *omit*

16 calendar year

17 *substitute*

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

1 **59 Section 727S (1)**

2 *omit*

3 the year

4 *substitute*

5 the reporting period

6 **60 Section 727S (1) (b)**

7 *substitute*

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

12 **61 Section 727S (1) (c) (ii)**

13 *substitute*

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

17 **62 Section 727S (4)**

18 *omit*

19 **63 Other reports**
20 **New section 727T (1A)**

21 *insert*

22 (1A) The CYP death review committee must give the report to the Minister
23 and may also give the report to any other Minister who is responsible
24 for a matter dealt with in the report.

1 **64 Section 727T (4)**

2 *substitute*

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

7 **65 What is a *research project*?**
8 **Section 806 (1), definition of *research project*,**
9 **paragraph (b) (iii)**

10 *substitute*

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

13 **66 Section 806 (2) (a)**

14 *omit*

15 (including a person who made a child concern report)

16 *substitute*

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

18 **67 What is *sensitive information*?**
19 **Section 845 (2), definition of *care and protection report***
20 ***information*, paragraphs (a) and (b)**

21 *substitute*

22 (a) in a voluntary report or a mandatory report; or

23 (b) received by the director-general under section 360; or

- 1 **68 Section 845 (2), definition of *interstate care and***
2 ***protection information, paragraph (a)***
- 3 *omit*
- 4 section 354 (Voluntary reporting of abuse and neglect), section 356
5 (Offence—mandatory reporting of abuse) or section 362 (Prenatal
6 reporting—anticipated abuse and neglect)
- 7 *substitute*
- 8 section 354 (Voluntary reporting of risk of significant harm),
9 section 356 (Offence—mandatory reporting of significant harm) or
10 section 362 (Prenatal reporting—anticipated risk of significant harm)
- 11 **69 Certain identifying information not to be given**
12 **Section 857 (a) (i)**
- 13 *substitute*
- 14 (i) a voluntary report or a mandatory report; or
- 15 **70 What is *safety and wellbeing information*?**
16 **Section 858 (1), definition of *safety and wellbeing***
17 ***information, example 1***
- 18 *substitute*
- 19 1 information needed to assess whether a child or young person is at risk of
20 significant harm
- 21 **71 Investigative entity may divulge protected information etc**
22 **Section 867 (2) (d) (i) (A)**
- 23 *substitute*
- 24 (A) a voluntary report or a mandatory report; or

-
- 1 **72 Section 868 heading**
- 2 *substitute*
- 3 **868 How voluntary reports or mandatory reports may be used**
- 4 **in evidence**
- 5 **73 Section 868 (1)**
- 6 *omit*
- 7 child concern report
- 8 *substitute*
- 9 voluntary report or mandatory report
- 10 **74 Protection of people giving certain information**
- 11 **Section 874 (2) (g) and (h)**
- 12 *substitute*
- 13 (g) a person to the director-general under section 354 (Voluntary
- 14 reporting of risk of significant harm); and
- 15 (h) a person to the director-general under section 356 (Offence—
- 16 mandatory reporting of significant harm); and
- 17 **75 Section 874 (2) (j) to (m)**
- 18 *substitute*
- 19 (j) a person to the director-general under section 360 (1) (a)
- 20 (Assessing risk of significant harm); and
- 21 (l) a person to the director-general under section 362 (Prenatal
- 22 reporting—anticipated risk of significant harm); and
- 23 (m) a person in a report to the director-general under section 362;
- 24 and

1 **76 New chapter 32**

2 *insert*

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

6 **988 CYP death review committee—change from annual to**
7 **biennial reporting**

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

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

17 **989 Expiry—ch 32**

18 This chapter expires 12 months after the day it commences.

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

1 **77 Dictionary, definitions**

2 *omit the definitions of*
3 *abuse*
4 *at risk of abuse or neglect*
5 *child concern report*
6 *neglect*

7 **78 Dictionary, definition of *significant harm***

8 *omit*
9 section 341 (2)
10 *substitute*
11 section 344

1 **Schedule 1 Consequential amendments**

2 (see s 3)

3 **Part 1.1 Criminal Code 2002**

4 **[1.1] Section 712A (5), new definition of *child concern report***

5 *insert*

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

9 **[1.2] Section 712A (5), definition of *childrens proceeding*,**
10 **paragraph (c)**

11 *substitute*

12 (c) the child or young person—

13 (i) was the subject of a child concern report under that Act; or

14 (ii) is or was the subject of a voluntary report or a mandatory
15 report under that Act; or

16 **[1.3] Section 712A (5), new definitions**

17 *insert*

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

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

1 **Part 1.2** **Health Records (Privacy and**
2 **Access) Act 1997**

3 **[1.4] Section 14A (a) (i)**

4 *substitute*

5 (i) a child concern report under the *Children and Young*
6 *People Act 2008*, section 353 as in force immediately
7 before the commencement of the *Children and Young*
8 *People Amendment Act 2023*, section 29; or

9 (ia) a voluntary report or a mandatory report under the
10 *Children and Young People Act 2008*, section 354 (2) or
11 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 2023.

3 Republications of amended laws

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

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