

2005

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CHILDREN AND YOUNG PEOPLE AMENDMENT BILL 2005

EXPLANATORY STATEMENT

Circulated with the authority of
Ms Katy Gallagher MLA
Minister for Children, Youth and Family Support

CHILDREN AND YOUNG PEOPLE AMENDMENT BILL 2005

OVERVIEW OF THE BILL

The Children and Young People Amendment Bill 2005 (the Bill) amends the *Children and Young People Act 1999* (the Act), to provide for the making of Standing Orders for places of detention, expands the regulation making power under the Act, and gives retrospective statutory effect for a number of instruments made under the Act.

The need for the Bill has arisen out of an ongoing statutory compliance work being undertaken by the Office for Children, Youth and Family Support within the Department of Disability, Housing and Community Services. This work has identified a number of anomalies relating to the statutory basis of Quamby Youth Detention Centre and its Standing Orders, Marlow Cottage and Attendance Centres declared under the Act. For the most part, these anomalies date back to the beginning of self-government in the Australian Capital Territory. The Bill also confirms the appointment of the Official Visitors under the Act, who were appointed using the incorrect instrument in 2003.

REVENUE/COST IMPLICATIONS

There are no cost implications.

SUMMARY OF CLAUSES

Formal Clauses

1 Name of the Act

This section sets out the name of the Act

2 Commencement

This section provides for the commencement of the Act on the day after it is notified on the Legislation Register.

3 Legislation amended

This section identifies the Act being amended as the *Children and Young People Act 1999*.

4 New Chapter 14

This section expands Chapter 14 of the Act to include new Definitions at section 401A, to describe an "exempt provision" and "place of detention". A 'place of detention' under the new Definitions for this Chapter means "an attendance centre, institution, shelter or other place that children and young people may be detained under this Act, but does not include a remand centre".

This section also replicates the existing powers to make standards, and provides that Standing Orders can be made under the Act. Section 402 substitutes the existing section 402 in the same terms.

New section 403, allows the Minister to make Standing Orders for the Act, in relation to places of detention.

Standing Orders may be made for the following matters:

- safety, management and good order (including security);
- welfare, health and safety;
- powers of search, including of anyone entering, leaving or inside a place of detention;
- use of force;
- personal property;
- education;
- visits;
- mail and phone calls;
- medical care and examinations;
- use of technology, including video surveillance and other monitoring devices;
- discipline, including penalties and the withdrawal of entitlements;
- behaviour management strategies; and
- anything else prescribed by regulation.

In relation to video surveillance and other monitoring devices, the *Listening Devices Act 1992*, does not apply to the use of these devices in accordance with a Standing Order made under this section.

Standing Orders are Disallowable Instruments.

Section 403 expires one year after it commences. This provision relates to the broader review of the Act and the inclusion of these matters in that process.

New section 403A allows for the Minister to certify that particular stated provisions of the Standing Orders, as they relate to security matters, may be exempt from publication on the Legislation Register, presentation in, or subject to disallowance, or amendment, by the ACT Legislative Assembly (new section 403A (4)).

A 'stated provision' under the Act is a Standing Order that applies to:

- the security of a place of detention;
- the safety of people at a place of detention; or
- anything else prescribed by regulation.

The Minister may certify that some stated provisions are exempt on the ground that the publication of the provision would be contrary to the public interest.

A certificate made by the Minister under this section must state in general terms the matter to which the exempt provision applies.

New section 403B states that the Chief Executive must ensure that a copy of the Standing Orders made under section 403, including any exempt provisions, must always be available for inspection at an Attendance Centre, Institution and Shelter, by:

- a judge or magistrate;
- the Community Advocate;
- the Human Rights Commissioner;

- an Official Visitor; or
- the ACT Ombudsman.

5 Amendment to Section 417 (2) (b)

This section expands the existing provisions about which regulations can be made under the Act, to include:

- at (b) (ii) - medical examinations of children, young people and other people at places of detention;
- at (b) (iv) - the discipline and security at or in relation to places of detention (including use of force, inspection of mail, video surveillance and other monitoring devices); and
- at (b) (v) - the safety, management and good order of places of detention.

6 New Chapter 17

This is a transitional chapter relating to the Standing Orders and certain Instruments made under the Act. The chapter expires four months after the day on which it commences (new section 424).

Section 418 provides, within a 28 day period from the commencement of the section, for a Standing Order (or a provision of a Standing Order) made under section 403 to be made retrospective to the commencement of the *Children and Young People Act 1999* on 10 May 2000.

This section also provides for the Standing Order to have effect as if it were made by an Act, despite anything in the Act or any other territory law, but subject to the *Human Rights Act 2004*.

The effect that the retrospective validation of the Standing Orders is not inconsistent with the *Human Rights Act 2004* because its purpose is to correct a technical defect and promote legal certainty. Moreover, it does not leave individuals without any remedy for acts or omissions which constituted a breach of human rights.

Section 419 provides that a review of the Standing Orders referred to in section 418, must be undertaken by the Chief Executive and a report provided to the Minister for Children, Youth and Family Support, within three months of the commencement of the section. This will allow for any human rights implications of the Standing Orders to be reviewed and addressed, in accordance with advice provided by the Human Rights Commissioner.

Section 420 provides for the Attendance Centre declared in Notifiable Instrument NI 2005-179 (and the Centre at previous locations) to be declared as Attendance Centres under relevant legislation since self-government in the ACT.

Section 421 provides for Quamby Youth Detention Centre, as declared in Notifiable Instruments NI 2005-180 and 181 to be declared as a shelter and institution under relevant legislation since self-government in the ACT.

Section 422 provides for Marlow Cottage, as declared in Notifiable Instrument NI 2005-222 to be declared as a shelter under relevant legislation since its establishment on 6 November 1995.

Section 423 removes any doubt that the approval made under the *Children's Services Act 1986*, by the Associate Secretary, ACT Administration, (Delegate of the Minister of State for the Arts and Territories) on 22 April 1988, regarding Quamby as an Attendance Centre, Shelter and Institution, was in force from the period beginning from self government to 24 March 1994.

Section 424 removes any doubt as to the effect of the appointment of the Official Visitors, through Disallowable Instrument DI2005-89.