

**EXPLANATORY STATEMENT**  
**AUSTRALIAN CAPITAL TERRITORY**

**CHILDREN'S SERVICES (AMENDMENT) ORDINANCE (NO. 2) 1987**

No. 53 of 1987

**Issued by Authority of the Minister of State for the Arts, Sport,  
the Environment, Tourism and Territories**

The Children's Services Ordinance 1986 (the Principal Ordinance) provides a scheme for the provision of children's services and the administration of juvenile justice in the ACT.

The Children's Services (Amendment) Ordinance (No. 2) 1987 (the Amending Ordinance) gives effect to an undertaking to the Senate Standing Committee on Regulations and Ordinances following its consideration of the Principal Ordinance.

The Amending Ordinance introduces new provisions dealing, in particular, with the appointment of the Youth Advocate, the determination of criminal jurisdiction by reference to age, criteria for bail, probation orders and the taking of identifying material from the body of a child. A number of technical problems are also remedied by the Amending Ordinance.

Details of the Amending Ordinance are outlined in the Attachment.

**ATTACHMENT**

**CHILDREN'S SERVICES (AMENDMENT) ORDINANCE (NO. 2) 1987**

Section 1 cites the Amending Ordinance as the Children's Services (Amendment) Ordinance (No. 2) 1987.

Section 2 defines the "Principal Ordinance" as the Children's Services Ordinance 1986.

Section 3 deals with interpretation.

Section 4 amends section 9 of the Principal Ordinance by:

- (a) omitting paragraph 2(b) and substituting a provision whereby additional functions can be conferred on the Youth Advocate by regulation; thereby facilitating Parliamentary scrutiny;
- (b) introducing a new sub-section 9(6) which provides that the Youth Advocate may resign his or her office by notice in writing delivered to the Minister;
- (c) introducing a new sub-section 9(7) which provides that the Youth Advocate shall be paid such remuneration and allowances as are prescribed by regulation;
- (d) introducing new sub-sections 9(8) and (9) which provide that sub-section 9(7) does not apply where there is already a determination of the Remuneration Tribunal relating to the remuneration or the allowance to be paid to the Youth Advocate;

Section 5 amends section 13 of the Principal Ordinance by omitting sub-section (12) and introducing the requirement that where a member of the Children's Services Council, other than the Director, the Chief Magistrate and the Youth Advocate, is unable to attend a meeting of the Council, then the person or body nominating or appointing him or her may appoint another person to attend in the member's place.

Section 6 amends sub-section 24(3) of the Principal Ordinance to give the Court a discretion to treat as a child a person who commits an offence while under the age of 18 years but does not appear in Court until he or she is over the age of 18 years and 6 months.

Section 7 amends sub-section 30(2) of the Principal Ordinance by requiring a police officer who is interviewing a child to have a reasonable belief that a person is an accomplice of the child, before excluding that person from the interview or not taking steps to procure the presence of the person.

Section 8 amends section 33 of the Principal Ordinance by removing from sub-section (7) the requirement that where a child is under restraint an authorised officer should decide whether he or she will consent to a prosecution within 48 hours. The effect of this amendment is to require the authorised officer to decide whether or not to prosecute as soon as practicable.

Section 9 amends section 35 of the Principal Ordinance to require the person who charges a child with an offence to notify the parent of the child of the child's location.

Section 10 amends section 36 of the Principal Ordinance by:

- (a) introducing a new sub-section (2A) which provides that identifying material shall only be taken from the body of a child by a medical practitioner; and
- (b) introducing a new sub-section (6) which requires an officer who takes identifying material of a child pursuant to sub-section (2) to take all reasonable steps as soon as practicable to notify a parent of the child.

Section 11 amends section 37 of the Principal Ordinance to provide for the admission of a child to bail to be considered by the authorised officer after determining whether to give his or her consent to a prosecution under sub-section 33(1) by:

- (a) omitting paragraph 37(1)(b) and substituting a requirement that where a child has not been admitted to bail the question of whether the child should be admitted to bail should be considered by the Court when the child comes before the Court in connection with the offence;
- (b) introducing a new sub-section 37(1A) which requires the police officer who has charged the child and has determined that the child should not be admitted to bail to record the reasons for the determination in writing and forward them to the authorised officer who gave his or her consent under sub-section 33(1);
- (c) introducing a new sub-section 37(1B) which requires the authorised officer to review the decision of the police officer that the child not be admitted to bail and;
  - (i) confirm the decision and record his or her reasons in writing; or
  - (ii) if the authorised officer determines the child should be admitted to bail the police officer who charges the child must admit the child to bail.

Section 12 amends section 39 of the Principal Ordinance by removing from sub-section (1) the requirement that where a child has been charged with an offence and is in custody, the police officer shall bring the child before the Court within 48 hours of arrest. The effect of this amendment is to leave the requirement that the police officer should do so as soon as practicable unqualified by a reference to time.

Section 13 amends section 56 of the Principal Ordinance to provide that where a supervisor of a child subject to a probation order is authorised by a search warrant to enter and inspect premises under sub-section (3) the supervisor may only use such assistance and force as is reasonable and necessary.

Section 14 amends section 65 of the Principal Ordinance by:

- (a) inserting a reference to an institution established or declared under section 157 before the references to a State institution in sub-section (1) and sub-section (3);
- (b) omitting paragraphs (3)(b) and (c); and
- (c) introducing new provisions which give an officer sufficient authority under a committal order to take the child to the institution or to the State institution or, in the case of a child committed to a State institution, to take the child to the State or Territory specified in the order.

Section 15 amends section 72 of the Principal Ordinance to provide that where an authorised person, the Youth Advocate or the Court forms the view that a person appears to be a child and consequently may be dealt with under Part V, the view should be formed on reasonable grounds.

Section 16 amends section 73 of the Principal Ordinance by:

- (a) introducing in sub-section (1) the requirement that where an authorised person forms the opinion that a child is in need of care and immediate action should be taken to protect the child, the opinion should be based on reasonable grounds;
- (b) omitting from sub-section (3) and (5) the words 'is reasonably'.

Section 17 amends section 74 of the Principal Ordinance by:

- (a) introducing in sub-section (1) the requirement that where an authorised person forms the opinion that a child in hospital is in need of care, and urgent action should be taken to protect the child, the opinion should be based on reasonable grounds;
- (b) omitting from sub-sections (3) and (5) the phrase 'is reasonably'.

Section 18 amends section 75 of the Principal Ordinance by:

- (a) introducing a new sub-section (2A) which gives to a parent of a child or other person having custody of the child, the right to apply to a magistrate for the release of the child at any time after the child has been taken into custody under section 73 or detained under section 74;

- (b) introducing a provision in sub-section (5) whereby if a child, parent or another person having custody of the child applies to the Magistrate to be heard whether under sub-section 75(2A) or otherwise, the Magistrate should not act under sub-section (3) without hearing that person and the Youth Advocate;
- (c) omitting from sub-section (6) the phrase 'is reasonably'.

Section 19 amends sub-section 85(3) of the Principal Ordinance to provide that the assistance and force to be used to enforce a warrant to enter and inspect premises should be limited by tests of reasonableness and necessity.

Section 20 amends section 111 of the Principal Ordinance by giving to a parent, or former guardian of a ward, who is dissatisfied with a decision made by the Director about religious matters concerning the ward, a right of appeal to the Court.

Section 21 amends section 112 of the Principal Ordinance by omitting from sub-section (3) the reference to an 'instrument of his or her appointment as an officer' and substituting a reference to an identity card issued to the officer under sub-section (2).

Section 22 amends section 113 of the Principal Ordinance by:

- (a) further limiting the force to be used by an authorised officer when apprehending a ward who has run away by introducing a test of reasonableness;
- (b) further limiting the force to be used by a policeman when assisting an authorised officer by introducing a test of reasonableness.

Section 23 amends section 124 of the Principal Ordinance by:

- (a) deleting the reference to a 'direction' and substituting 'request';
- (b) introducing in new sub-section (2A) a requirement that before a child is removed from unlicensed premises the Director or officer shall notify, in writing, the person providing care for the child and a parent of the child of the proposed removal of the child.

Section 24 amends section 139 of the Principal Ordinance to limit the force to be used by a police officer, medical practitioner or officer when entering any building, place or vehicle to safeguard a child by a test of reasonableness as well as necessity.

Section 25 amends section 144 to permit an appeal to the Supreme Court from a decision of a Magistrate under section 111.

Section 26 amends section 148 of the Principal Ordinance to extend rights of appeal to the Administrative Appeals Tribunal by:

- (a) substituting new paragraphs (1)(c) and (d) to allow review of a decision made under sub-sections 122(2); 123(1) or 123(4) to vary, revoke or include a condition in a child care licence issued under Part VII of the Principal Ordinance;
- (b) permitting an appeal from a decision of the Minister made under section 123 to cancel or suspend a child care centre licence;
- (c) permitting a review of a determination of the Director under sub-section 99(2) of the amount to be contributed by a parent of a child to the cost of the care of the child.

Section 27 amends section 151 of the Principal Ordinance to provide that where the Director or an authorised officer is authorised by search warrant to enter and search land, premises, a vessel or a vehicle, both the assistance obtained and the force used should be limited by tests of necessity and reasonableness.

Section 28 amends section 155 to require the Minister to provide a statement of reasons for a decision of the kind referred to in section 148.

Section 29 amends section 176 of the Principal Ordinance by introducing in new sub-section (2) a requirement that where the Minister enters into an agreement in respect of the transfer, reception or detention of children dealt with under the Principal Ordinance or a similar law of a State or Territory, that agreement should be tabled in Parliament within 15 sitting days of the date of the agreement thereby facilitating Parliamentary scrutiny of the agreement.