

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

CHILDREN AND YOUNG PEOPLE AMENDMENT BILL 2013

EXPLANATORY STATEMENT

Circulated by
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Introduction

This explanatory statement relates to the Children and Young People Amendment Bill 2013 as presented by Mr Shane Rattenbury MLA in the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview

The Bill is designed to address some uncertainty in the interpretation of the *Children and Young People Act 2008* that has come about because of advice provided by the Solicitor General.¹ The advice was in response to an incident and subsequent report into the incident by the Public Advocate that occurred in 2011.² The Bill relates to part 15.4 of the Act and ensures that the obligations placed on the Director-General when giving care responsibility for a child or young person in out of home care are mandatory.

The Bill articulates all the possible daily care arrangements that can be put in place for children and young people in the care of the Territory. The Bill provides that children and young people in the care of the Territory must be placed with an out of home carer, as defined in the Act, unless one of four defined circumstances applies. This means that when a child or young person is placed in the care of someone else that person must fulfil the criteria of an 'out of home carer' in the Act, unless one of the stated exceptions applies. In the case of care entities this means that the Director-General must have undertaken the assessment process necessary to ensure that the entity is a suitable entity to care for the child or young person.

Human Rights

The Bill improves the protection of the right of a child to the protection needed by the child because of being a child (see section 11 of the *Human Rights Act 2004*). As a result of the advice provided by the Solicitor General that the scheme in place is not mandatory there is a reduction in the level of protection provided by the Act for the welfare of children and young people in the care of the Director-General. By clarifying that the protections in place in the Act for this particularly vulnerable group are mandatory and clearly articulating the options

¹ *ACT Government Response to The Report of the Public Advocate of the ACT Review of the Emergency Response Strategy for Children in Crisis in the ACT*, Attachment B, 2011, Available at http://www.dhcs.act.gov.au/_data/assets/pdf_file/0006/262374/Government_response_to_the_PA_Interim_Report_Nov212011.pdf.

² *Review of the Emergency Response Strategy for Children in Crisis in the ACT*, Interim Report, Public Advocate of the ACT, 2011. Available at http://cdn.justice.act.gov.au/resources/uploads/PAACT/publications/Interim_Report_FINAL.pdf.

for the care of children and young people in the Territory's care, the Bill improves the protections and safeguards in place for the welfare of those children and young people.

Delegation of legislative power

The Bill does not delegate any legislative power to any other person or body.

Notes on Clauses

Clauses 1-3 Name of Act, Commencement, Legislation amended

These are formal clauses setting out the name of the Act and its commencement date; 30 days after notification day, as well as the Act it amends; the *Children and Young People Act 2008*.

Clauses 4 and 5 Notes

These clauses omit 2 existing notes to the Act. The notes are not necessary and provide limited if any assistance to the reader and as such will be removed from the Act.

Clause 6 Section 512 heading

This clause inserts a new heading to section 512, this is because of the substantive change to the section set out below in clause 7. The new heading sets out that the Director-General must place a child or young person in out of home care. Under the current Act the heading provides that the Director-General may place child or young person in out of home care.

Clause 7 Section 512 (1)

This clause amends section 512(1) of the Act to address any uncertainty around whether or not the requirements for placing children and young people in out of home care are mandatory. The clause provides that whenever the Director-General has daily care responsibility for the child or young person the Director-General **must** place the child or young person with an out of home carer. An out of home carer is defined in section 508 as either:

- (a) a kinship carer for the child or young person; or
- (b) a foster carer for the child or young person; or
- (c) a residential care service for the child or young person.

Sections 509-511 then define the requirements for each of these categories. In relation to a residential care service the amendment ensures that the entity must have previously been determined to be a suitable entity (see section 520) for a child or young person to be placed in their care.

However in a defined range of limited circumstances the Director-General may also place the child or young person in another arrangement if certain conditions are fulfilled. These are the only circumstances where a child or young person may be placed in another arrangement.

These circumstances are:

1. A child or young person may be placed in a health facility (defined in the dictionary as a hospital or other facility where health services are provided) only if a doctor (see Legislation Act Dictionary Part 1) states in writing that it is necessary for the wellbeing of the child or young person for daily care to be provided in the facility and the Director-General is satisfied that appropriate support services can continue to be provided to the child or young person and further that those aspects of the child or

young person's care plan that can be followed while the child or young person is in the health facility will be followed. These requirements are intended to ensure that should a child or young person be placed in a health facility the Director-General must ensure that support services continue to be provided to the child or young person in the Territory's care while the child or young person is in the health facility.

2. A young person who is at least 16 years of age may be placed in an independent living arrangement if the Director-General is satisfied that such an arrangement is appropriate for the young person, that the accommodation and support services available best meet the needs of the young person and that the arrangement is consistent with the young person's care plan.

This provision recognises that there will be circumstances where the young person is nearly an adult, capable of looking after themselves and they do not want to live with an out of home carer. As a result the most appropriate arrangement that can be put in place for them may be for them to live independently. In this circumstance the Director-General may place the young person in an independent living arrangement only if the arrangement, including both the physical accommodation and the support services available, best meet the needs of the young person. Similar to the requirements when a child or young person is placed in a health facility the clause seeks to ensure that the Director-General continues to play an active role in the care of the young person and recognises that even though it may be appropriate for them to live independently they will not be completely independent and will still require a significant level of support to be provided to them.

3. A child or young person may also be placed with their parent if the Director-General considers it appropriate. Where a parent can provide daily care for the child or young person and it is in the best interests of the child or young person to live with their parent it is appropriate that the system facilitate the return of children and young people to their family. This is consistent with other provisions of the Act that encourage changes to be made so that children and young people who have come into the care and protection system can be returned to their parents.
4. New subsection 1A clarifies that the requirements for placing children and young people in out of home care are subject to a court order that provides otherwise. That is where a court orders that a child is to reside in a place the Director-General must give effect to that order and there is no conflict with any of the Director-General's obligations under the section.

The clause imposes appropriate safeguards to ensure that the decision on how the child or young person is to be cared for, no matter how short that period of time is, is made having properly assessed the person or entity that will be entrusted with the care of the child or young person. Alternatively if another arrangement is required for the provision of daily care that best suits the young persons needs, that arrangement must meet the criteria required to ensure the wellbeing of the child or young person.

Clause 8

Similar to clauses 4 and 5 this clause also removes a note to section 731(1)(3) that was unnecessary and did little to assist the reader.