

2010

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**CHILDREN AND YOUNG PEOPLE (DEATH REVIEW)
AMENDMENT BILL 2010**

EXPLANATORY STATEMENT

**Circulated by the authority of
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OVERVIEW

The purpose of the Children and Young People Death Review Amendment Bill 2009 (the Bill) is to establish a committee to; maintain a register of deaths of children and young people in the ACT, identify trends and patterns in relation to the deaths of children and young people, undertake research with the aim of prevention or reduction of child and young people deaths, and provide advice to the Territory and non-government bodies about programs and strategies that can prevent or reduce the likelihood of child or young people deaths. The committee will be an independent, multidisciplinary ministerial advisory body.

This Bill brings the ACT into line with other Australian jurisdictions. This Bill has been developed in line with NSW *Commission for Children and Young People Act 1998* and the Victorian *Child Wellbeing and Safety Act 2005*.

The death of any child or young person in the ACT is a tragedy and sometimes is not preventable. However the purpose of a Children and Young People Death Review Committee (CYP death review committee) is to review all child and young people deaths, to consider the circumstances and make recommendations to address systemic social and environmental issues which are associated with children and young people. The objective of the Bill is to work towards prevention of child and young people deaths through recommendations that target the trends and patterns within the ACT context.

Currently the ACT has three existing mechanisms which review the deaths of children and young people. These include the ACT Coroner's Court, the Clinical Review Committee (a privileged committee) within ACT Health and an internal review process within the Department of Housing and Community Services which reviews the deaths of children and young people who are or were known to the Office for Children, Youth and Family Support. The CYP death review committee would be the last mechanism of review, once all other review processes have been completed.

Each of these processes serves an integral and discreet function. The CYP death review committee process will be a broader ranging and comprehensive review. The CYP death review committee has:

- a multidisciplinary panel of experts from a range of professions and backgrounds including medical, child development, child safety, the Aboriginal and Torres Strait Islander and general community;
- authority to review all deaths of children and young people that occur in the ACT each year and of children and young people who die interstate;
- the ability to analyse the administrative or clinical issues as well as the wider social or contextual circumstances underlying the death;
- a systemic and preventative approach that includes analysis of the factors that contributed to the death and identification of possible strategies or means which might be used to address and prevent future deaths;

- an independent governance structure with legislated appointment and terms of reference; and
- transparency of process and de-identified public reporting of the outcomes of the reviews.

HUMAN RIGHTS

The Bill potentially engages the right -

- a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- (b) not to have his or her reputation unlawfully attacked.

Consistent with other child and young people death review teams throughout Australia, the CYP death review committee established by the Bill aims to identify strengths and weaknesses in systemic responses to child and young people deaths and future preventative action. The CYP death review committee does not determine culpability or comment on individual performance, nor does it investigate the causes of child and young people deaths; that role is left to the police and coroner. The CYP death review committee does not conduct interviews of persons connected to the deceased, rather they rely on documented material and analysis.

The Bill does give the committee the power to compel a person to provide information where they consider, on reasonable grounds, that the information is necessary for the exercise of its functions. To the extent that this may engage the right to privacy it must be noted that the information disclosed to the committee remains confidential and that the Bill provides for the de-identification of any material to ensure that individuals are not named or identified as a result of the committee review process.

The extent to which the Bill engages the right to privacy identified in Section 12 of the *Human Rights Act 2004* must also be balanced against the extent to which the Bill recognises and promotes the right to the protection needed by a child established by Section 11 of the *Human Rights Act 2004*.

Given the gravity of the issue, the death of children and young people in our community, and the task being performed by the committee, the identification of measures to reduce those deaths, any potential impingement on the right to privacy is considered reasonable, proportionate and demonstrably justified consistent with Section 28 of the *Human Rights Act 2004*.

REASONS FOR THE DELEGATION OF LEGISLATIVE POWER

The Bill delegates legislative power to the Minister for Children and Young People to allow the CYP death review committee to perform their functions. It is not practical for the Legislative Assembly of the ACT to fulfil the functions delegated to the Minister. The delegated authority is minor and technical in nature and does not involve any substantive policy matters. Rather it is limited to the administration and practical functioning of the committee.

SUMMARY OF CLAUSES

Clause 1 Name of the Act

This clause is a technical clause and sets out the name of the proposed Act as the *Children and Young People (Death Review) Amendment Act 2010*.

Clause 2 Commencement

This clause is a technical clause setting out when commencement of the Act will occur. It is intended that commencement will occur 3 months after its notification day.

Clause 3 Legislation amended

This clause identifies the Act to be amended, namely the *Children and Young People Act 2008*.

Clause 4 Chapter 19A

This clause inserts a new chapter into the *Children and Young People Act 2008*, which establishes and sets out the functions, powers and processes of the Children and Young People Death Review Committee (CYP death review committee).

Section 727A – **Establishment of the committee** - provides for the establishment of the CYP death review committee.

Section 727B – **Functions of the committee** - sets out the functions of the committee. These functions include keeping a register of death of the children and young people that occur in the ACT and the deaths that occur outside of the ACT of children and young people who normally live in the ACT. The CYP death review committee will also identify trends and patterns in relation to the deaths of children and young people and undertake research that aims to prevent or reduce the likelihood of the death of children and young people.

The CYP death review committee is required to make recommendations about legislation, policies, practices and services for implementation by the Territory and non-government bodies to help prevent or reduce the likelihood of death of children and young people and also to monitor the implementation of the committee's recommendations.

The committee is also given the function to report to the Minister through an annual report each financial year and any other function given to committee under Chapter 19A.

Section 727C – **Committee membership** - provides for the membership of the committee. The CYP death review committee is to be made up of the Chief Executive of the Department of Disability, Housing and Community Services, the Children and Young People’s Commissioner and members appointed by the Minister. This section also defines that the chair of the CYP death review committee must have an appointed chair who is an independent member of the committee without the right to vote.

Section 727D - **Appointment of committee members** - sets out the criteria for the appointment of committee members and skills, experience, qualifications and positions that members of the committee must hold. The representation of this committee aims to broadly embody a variety of professions and fields that work with or have an interest in the safety and well-being of children and young people in the ACT.

The Bill provides that where it is not practicable to appoint a person described the Minister need not do so. The exercise of the functions of the committee will not be affected by the reduced membership. The Minister may, when practicable, appoint a person under subsection 727C to provide the committee with a full complement of members.

Section 727E - **Appointment of chair of committee** - provides that the Minister must appoint someone as the chair of the CYP death review committee.

The role of the independent chair established by this section is modelled on the Management Assessment Panel (MAP) which operates in the office of the Public Advocate of the ACT. The independent chair is intended to ensure that the panel operates in a clear and transparent manner. This model is preferred to ensure that the committee operates in a manner that takes into account the sensitive and potentially confidential nature of the subject matter and the need for all parties and members of the committee to be transparent in ensuring that the functions of the committee are fulfilled. The chair will facilitate the committee’s exercise of its functions and chair all meetings of the CYP death review committee (see section 727I)

Section 727F - **Ending member appointments** - provides that the Minister may end the appointment of a member of the CYP death review committee in a defined set of circumstances.

Section 727G - **Arrangements for staff** - provides that the Chief Executive must on request of the CYP death review committee, make arrangements with the committee to use public servants in the administrative unit under the Chief Executive’s control.

This section also provides that the relationship between the committee and public servants under this section are governed by the *Public Sector Management Act 1994*.

Section 727H - **Meetings** - requires the CYP death review committee to meet at least 4 times each year.

Section 727I - **Presiding member at meetings** - requires the independent chair of the CYP death review committee to preside at all meetings. The chair must call meetings with a two week notice period.

Section 727J - **Quorum at meetings** – requires that $\frac{3}{4}$ of the voting members of the CYP death review committee must be present to carry out business of the CYP death review committee. It is not intended that the chair forms part of the quorum.

Members of the CYP death review committee must not be represented at a meeting by anyone else. The seriousness and potentially confidential nature of the CYP death review committee means that only members appointed by the minister may participate in the exercise of committee functions.

Section 727K - **Voting at meetings** – sets out that each member of the CYP death review committee other than the chair has a vote on each question to be decided and that a question is decided by a majority of votes.

Section 727L - **Children and young people deaths register** - establishes the children and young people deaths register which must be maintained by the CYP death review committee. The register contains information on the cause of death, the age and sex of the child or young person and whether the child or young person is of a Torres Strait Islander background. The register will also include whether the child or young person or the sibling of a child or young person was identified under the *Children and Young People Act 2008* as being in need of care and protection within 3 years before his or her death and anything else prescribed by regulation.

The register may also contain any other demographic data available to the CYP death review committee and any information about a child or young person or the circumstances of the child or young person's death that the committee considers relevant. For example information that would provide a qualitative narrative or contextual understanding of the circumstances surrounding the death of a child or young person.

This section also specifies that the CYP death review committee must index the deaths on the register according to cause of death, age and sex of the children and young people and that the CYP death review committee

Section 727M - **Power to ask for information, documents and other things** - provides that the CYP death review committee has the power to require people to provide it with written information and documents relevant to the consideration of a review of a death. This power is one that is commonly given to investigative bodies and is consistent with the powers currently available under the *Discrimination Act 1991*, *Community and Health Services Complaints Act 1993* and the *Human Rights Commission Act 2005*.

Section 727N - **Children and young people deaths register—who may have access?** - provides that the committee must ensure that the children and young people deaths register is accessed only by CYP death review committee members, staff who are assisting in the administration of the committee as outlined in Section 727G or someone authorised by the committee to have access to the register. Such an authorisation is a notifiable instrument. Discretion to grant access to the register is given to the committee as deemed necessary, such as the case of requiring an advisor to the committee; however a record of any access must be kept and publicised through a notifiable instrument.

Section 727O - **Annual report** – provides that the CYP death review committee must report annually to the Minister on following matters:

- the number of deaths of children and young people;
- the age and sex of the child or young person who died and if under the *Children and Young People Act 2008* this child or young person has been in need of care and protection within a three year period before their death;
- or is a sibling of a child or young person identified under this Act as being in need of care and protection;
- the patterns or trends identified in relation to the death of children and young people both generally and for those children or young people who under the *Children and Young People Act 2008* have been in need of care and protection within a three year period before their death.

The CYP death review committee may also include in the annual report;

- its recommendations about legislation, policies, practices and services for implementation by the Territory and non-government bodies to prevent future deaths of children and young people;
- information about the implementation of any previous recommendations of the committee; and
- any other matters considered relevant.

The report must be presented to the Minister within 4 months of the end of the financial year. The Minister is required to present the report to the Legislative Assembly within 6 sitting days after the report is given to the Minister.

The Minister may amend the report to prevent the disclosure of the identity of a child or young person who has died or information that may allow the identity of a child or young person who has died to be worked out.

Clause 5 Dictionary, new definitions

Inserts two new definitions in to the *Children and Young People Act 2008* that relate to the children and young people deaths register and the CYP death review committee.