

2015

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CHILDREN AND YOUNG PEOPLE AMENDMENT BILL 2015 (No. 2)

EXPLANATORY STATEMENT

**Presented by
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Introduction

This Explanatory Statement relates to the *Children and Young People Amendment Bill 2015 (No 2)* as presented 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 Legislative Assembly.

The Statement must 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 principle objective of this Bill is to enable the Territory to monitor the ongoing suitability of organisations providing services through the strategy *A Step Up for Our Kids* (the Strategy) and to give a range of powers to the Territory to intervene when there are instances of non-compliance with an organisation's performance against the suitability criteria. It will build on an existing requirement in the *Children and Young People Act 2008* that certain people or organisations must be approved as suitable entities for certain purposes by the Director-General before they can undertake those functions.

The organisations that will be affected by the introduction of the regulatory system have been consulted on a proposed model and have provided in-principle agreement to its introduction.

Currently the Territory's oversight in this sector is focussed on the service contracted for rather than the whole organisation. The Territory is also restricted in its engagement with the organisation to that enabled through the terms and conditions of a contract. Managing an organisation's performance through the contract can lead to a reactive response to significant issues rather than a timely, proactive response when risks emerge. The introduction of a system of regulatory oversight is intended to enable proactive responses to emerging issues.

The primary purpose of regulation in this sector is to safeguard vulnerable children, young people and families who are involuntary recipients of services, and to establish benchmarks for the provision of services in the sector that focus on safety, quality practice and continual improvement.

On 3 June 2013, Cabinet agreed to implement a system of regulatory oversight in 13/100/CAB. This was further endorsed by Cabinet when the system of regulatory oversight was included in the Strategy announced by the Chief Minister and Minister for Children and Young People on 22 January 2015. The Strategy endorsed by Cabinet (14/056/CAB) agreed that the regulation of organisations was a key strategy in strengthening accountability and ensuring a high functioning care system, and to provide ongoing oversight when responsibility for children and young people is transferred to the community sector.

The Bill includes a consequential amendment to the *Working with Vulnerable People (Background Checking) Act 2011*.

The Bill's compatibility with the *Human Rights Act 2004* (ACT)

The *Human Rights Act 2004* (ACT) does not apply to organisations however it does apply to the vulnerable people who are involuntary service recipients and to people working in a paid or voluntary capacity with the regulated organisations. The regulatory system provided through this Bill will have ongoing oversight of the organisations and whether they are meeting their obligations as Public Authorities under the *Human Rights Act 2004*

The Bill holds the protection of vulnerable people – children, young people and their families involved in the child protection system – as the paramount consideration of the regulatory system. Particularly as these people have had, or are at risk of having, their rights breached (e.g. an abused child or young person) or limitations being placed on their rights (e.g. removing a child from a family). In particular the Bill supports vulnerable peoples' right to:

- Recognition and equality before the law (section 8),
- "...not to be treated or punished in a cruel, inhuman or degrading way."(subsection 10(1)(b)),
- Protection of the family and children (section 11),
- Privacy and reputation (section 12),
- Freedom of thought, conscience, religion and belief (section 14),
- Freedom of expression (section 16),
- Everyone has the right to liberty and security of person. In particular, no-one may be arbitrarily arrested or detained. (subsection 18(1)),
- Rights of minorities,
- Right to education (section 27A).

The Bill introduces the identification of a person who is responsible for the organisation's service provision in the ACT. This person will be responsible for the engagement and supervision of people who will have direct contact with vulnerable people and for the quality of services provided to them. The *responsible person* in an out-of-home care service is also likely to hold delegation of parental responsibility for the children and young people the organisation provides care to. The Bill requires this person to be an approved entity for this purpose consistent with what is currently required for foster carers and kinship carers. The person seeking approval as a *responsible person* will provide consent for the assessment. The Bill introduces an additional protection for this person by making the decision of their suitability a reviewable decision.

The regulatory oversight of organisations through this Bill also supports the ACT Government's obligations under the Convention on the Rights of the Child. In particular Article 19.1:

“...to protect the child from all forms of physical and mental violence, injury or abuse, neglect and negligent treatment, maltreatment or exploitation, including sexual abuse...”

Notes on clauses

Clause 1 Name of the Act

This is a technical clause and sets out the name of the new Act as the *Children and Young People Amendment Act 2015 (No 2)*.

Clause 2 Commencement

This clause enables the new Act to commence the day after its notification on the ACT Legislation Register.

Clause 3 Legislation amended

This clause identifies the Act to be amended as the *Children and Young People Act 2008* (the Act) and the *Working with Vulnerable People (Background Checking) Act 2011*.

Clause 4 Who is a suitable entity? Section 61 definition of suitable entity, examples

The Act provides the Director-General with the power to approve an entity as being a *suitable entity for a purpose*. It also provides examples of what positions or services be should be approved as a suitable entity to do certain things. Examples under this provision include family group conference facilitators, kinship carers, childcare service licences – the proposed proprietor and each proposed controlling person for the childcare service, a foster care service and residential care services for any child or young person.

The regulatory system introduced with this Bill will have oversight of all types of services within the Out of Home Care (OOHC) system. This includes services that prevent children and young people from entering the OOHC system, reunifying children and young people in the OOHC system with their families, contact services, services with case management and decision making authority for children and young people in OOHC, advocacy services and therapeutic services. The new, inclusive term for all services provided by community organisations in the OOHC system is *Approved Care and Protection Organisations*.

This clause changes the definition of suitable purposes in the OOHC system to:

- expand the service types included in the examples to be approved as a suitable entity to include all service types in the OOHC system
- change the focus of suitability from the service type to the organisation providing the service in relation to the type of service/s provided.

The addition of a term that is inclusive of different types of services in the list of examples related to the OOHC system means that the examples of foster care service and residential care service do not need to be referred to separately and therefore they are removed from the list of examples.

The regulatory system introduced in this Bill includes the requirement for at least one individual from the approved organisation to be approved as a suitable entity for the delivery of services in the ACT. This is to acknowledge that an approved organisation may have its head office in another State or Territory however a person needs to be responsible for the day-to-day delivery of services in the ACT. This clause adds the example of *responsible person for an approved organisation* to achieve this.

Clause 5 Entity may apply to be suitable entity for purpose
New section 62(2) and (3)

This clause adds the authority for the Director-General to make guidelines for the process of applying, assessing and making the decision on whether a care and protection organisation is approved as a suitable entity. The process currently being undertaken through policy will be able to be described in a Disallowable Instrument under this clause.

Clause 6 Director-general must consider suitability information, etc
New section 64(3)

This clause moves the requirement for care and protection organisations to be capable of complying with standards, and their on-going compliance with standards, from Part 15.4 of the Act to enable inclusion in the assessment of the organisations' suitability and continual assessment of their approval on an on-going basis.

Clause 7 Suitable entities register
Section 72, new note

This clause adds a note to refer to a new section when the register is for approved care and protection organisations.

Clause 8 New part 10.4
Approved care and protection organisations

This clause introduces new sections 352A to 352V, which:

- establish what an approved care and protection organisation is for the purposes of the Act;
- define the meaning of a responsible person for an approved care and protection organisation;
- provide authority for the Territory to monitor the organisation's ongoing suitability; and authority to make monitoring guidelines;
- detail processes for receiving, investigating and finalising complaints against approved organisations;
- provide graduated intervention powers for use by the Territory when significant risks are identified and the use of an intervention power is appropriate to the circumstances, including powers to issue directions to organisations, and suspend or cancel approval as a suitable organisation;
- provides the power to make intervention guidelines in a disallowable instrument;

- provide the authority for an approved organisation to surrender its approval; and
- establish the requirement for the Territory to keep a public register on each approved organisation and describe the type of information that must be included in the register.

The primary legislation to enable the implementation of a system of on-going regulatory oversight into this sector will be supported by a number of guidelines. The guidelines will be disallowable instruments, developed in consultation with affected organisations and other key stakeholders. The guidelines will provide detailed information on how the system of regulation will operate on a day-to-day basis. The guidelines will include those on:

- the process of applying and being assessed as an approved care and protection organisation;
- the ongoing process of monitoring the approved organisations' compliance with the conditions of their approval and the roles and responsibilities of all parties involved;
- the Territory's use of intervention powers to require an organisation to address an issue.

- Clause 9** **Definition of foster care service, Section 502**
Clause 10 **Definition of out-of-home carer authorisation, Section 502**
Clause 11 **Meaning of approved foster care organisation, foster care service and foster carer, Section 510**
Meaning of approved residential care organisation and residential care service, Section 511
Clause 12 **Definitions of foster care service and out-of-home carer authorisation, Section 515**

These clauses (9 through 12) rearrange, remove and/or replace terms in these sections of the Bill so that they are consistent with the amendments outlined in clauses 4, 5 and 7. The changes include replacing the term entity with organisation and replacing terms that refer to types of services with *approved organisation* or *approved care and protection organisation*.

They also stated that only an approved organisation, meaning approved as suitable entity, can be authorised to provide services under Chapter 15.4. They remove the reference to complying with Standards as being a condition of being authorised as these amendments make the requirement to comply with Care and Protection Organisation Standards a condition of being an approved organisation (new section 64 (3) referred to in Clause 5).

- Clause 13** **Authorisation of foster care service, Section 517**
Clause 14 **Authorisation of residential care service – general parental authority**
Clause 15 **Revocation of foster care service's authorisation, Section 522 (1) and (2)**
Clause 16 **Revocation of foster care services authorisation, Section 522 (3)**

- Clause 17** **Revocation of foster care services authorisation, Section 522 (3)**
- Clause 18** **Revocation of residential care service’s authorisation, Section 524 (1) and (2)**
- Clause 19** **Revocation of residential care service’s authorisation, Section 524 (3)**
- Clause 20** **Revocation of residential care service’s authorisation, Section 524 (3)**
- Clause 21** **Approval of places of care, Section 525(1)**

These clauses (13 through 21) add a new note to explain that if an organisation’s approval as a suitable entity is suspended under section 352P, the organisation’s authorisation is also suspended.

The clauses also change the term entity to organisation, and adjust wording to be consistent with the changes made through the amendments to the Act in section 62 and 64 and the addition of the new Part 10.4.

- Clause 22** **Meaning of reviewable decision – div 24.1.3 Section 839, definition of *reviewable decision***
- Clause 23** **Section 839, table 839.1**

These clauses (22 through 23) make the decision to not approve, to revoke or to cancel the approval of a care and protection organisation, or the individual who is responsible for the organisation’s service delivery in the ACT, reviewable decisions. That means they can be reviewed by the Administrative and Civil Appeals Committee.

Clause 23 also replaces the terms residential care service and foster care service with *approved residential care organisation* and *approved foster care organisation*.

- Clause 24** **Who is an information sharing entity? Section 859 (1), definition of information sharing entity, paragraph (d), note**

This clause updates the section number a term relates to.

- Clause 25** **Standard-making power, New Section 887 (2) (ab)**

This clause adds *care and protection organisation standards* as a standard the Minister can make under the Act.

Care and protection organisation standards will be notified to support the operation of the system of regulatory oversight enacted through this Bill.

- Clause 26** **Dictionary, note**
- Clause 27** **Dictionary, new definitions**
- Clause 28** **Dictionary, definition of *foster care service* and *intention to cancel notice***
- Clause 29** **Dictionary, new definitions**
- Clause 30** **Dictionary, definition of *out-of-home carer authorisation***
- Clause 31** **Dictionary, definition of responsible person**

These clauses (26 through 32) update the dictionary consistent with the changes made through the amendment.

Schedule 1 Consequential amendments

Part 1.1 Working with Vulnerable People (Background Checking) Act 2011

[1.1] Schedule 1, part 1.1, section 1.1, note

This amendment substitutes terms used in the *Working with Vulnerable People (Background Checking) Act 2011* to define regulated activities relating to child protection services to be consistent with the changes made to these terms in this Bill (refer to clause 11).