

2015

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

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

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
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Minister for Children and Young People**

Overview

This Supplementary Explanatory Statement relates to the Government amendments to the Children and Young People Bill 2015 (No.2). The amendments proposed arise in consequence to:

1. the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) Scrutiny Report No. 33 (Scrutiny Report) which recommended some changes to the complaints and intervention clauses in the Children and Young People Bill 2015 (No. 2). These amendments either:
 - expand on the complaints and intervention processes to align with procedural fairness; and
 - clarify natural justice processes for the subject of a complaint, and
2. amend the commencement date;
3. include an additional amendment to section 525 – Approval of places of care - of the Children and Young People Act 2008, as agreed to by the Chief Minister on 29 May 2015; and
4. include transitional arrangements for current service providers approved and authorised under the *Children and Young People Act 2008* prior to the commencement of the Children and Young People Amendment Bill 2015 (No.2).

The *Human Rights Commission Act 2005* was used as a source to inform the Government amendments relating to procedural fairness and natural justice.

Amendment 1, refers to Clause 2, page 2, line 5

This provision amends the provision for the Commencement date from the day after its notification day to 1 July 2015. The delayed commencement will provide time to prepare a regulation to prescribe care and protection purposes under the proposed new section 352 B (a) for services that will commence on 1 July 2015.

Amendment 2, refers to Clause 8, proposed new section 352H (3), page 7, line 22

This amendment relates to being able to receive and consider an oral complaint and an anonymous complaint. This amendment clarifies that the Director-General:

- may receive an oral and/or anonymous complaint if satisfied on reasonable grounds that exceptional circumstances justify that the complaint is not put in writing and/or that a person's does not provide their name or address;
- may assist a person to put an oral complaint in writing; and
- will make a written record of all oral complaints,

in response to the Committee's Scrutiny Report. Issues raised by the Committee included clarification on the ability to make and receive anonymous and/or oral complaints, if the receipt of an anonymous complaint limited the rights of the respondent to the complaint and if the Director-General would keep a written record of an oral complaint. It is noted that a complaint under this part of the Children and Young People Amendment Bill 2015 (No.2) is a complaint against an organisation and not an individual therefore section 38 of the *Human Rights Act 2004* does not apply. The ability to make and receive an anonymous complaint is retained in the amendment as the complainant may be a vulnerable person who has a real or perceived fear of adverse consequences arising from making the complaint (for example a child in a foster care service or a parent working with a placement prevention service).

Amendment 3, refers to Clause 8, proposed new section 352K (2), (3) and (4), page 9, line 3

This amendment relates to being able to receive and consider an oral complaint and an anonymous complaint. This amendment requires the Director-General to notify the subject of a complaint that a complaint has been received, details of the complaint, that it will be investigated, that the organisation may make a submission in response to the complaint and that the complainant will receive a report on the progress of the investigation into the complaint. The amendment also allows the Director-General to withhold information that may identify the complainant if it is considered that identifying the complainant may have an adverse effect on them. The issue raised by the committee was the absence of clear processes consistent with the principles of natural justice.

Amendment 4, refers to Clause 8, proposed new section 352M (2) note, page 10, line 4

This amendment adds a note that says the Director-General does not have to notify an anonymous complainant what the outcome of an investigation into a complaint was.

Amendment 5, refers to Clause 8, proposed new section 352N (3) (e), page 10, line 26

Amendment 6, refers to Clause 8, proposed new section 352O (3) (e), page 11, line 25

These amendments relate to the inclusion of the term 'reasonable' as it relates to a 'due date' and 'time', respectively, in response to the Committee's comments in the Scrutiny Report. The concept of 'reasonable' will be determined by the issue and the level of assessed risk the issue presents. Additional guidance on the processes associated with statutory intervention will be in the intervention guidelines (a disallowable instrument).

Amendment 7, refers to Clause 8, proposed new section 352O (3) (f), page 11, line 25

This amendment relates to an organisations ability to make a submission in response to receiving a noncompliance direction. This amendment adds that an organisation may make an oral or written submission about their noncompliance in response to the Committee's comments in the Scrutiny Report. The addition of this subsection makes it consistent with the proposed new sections 352N and 352Q. Additional guidance on the processes associated with statutory intervention will be in the intervention guidelines (a disallowable instrument).

Amendment 8, refers to Clause 8, proposed new section 352P (2) and (3), page 12, line 14

Amendment 9, refers to Clause 8, proposed new section 352P (3)(a), page 12, line 26

This amendment relates to the suspension of an organisation's approval as a suitable entity. This amendment removes reference to the safety of an individual child or young person as being the reason for a suspension and clarifies that what is suspended is the organisations approval for a care and protection purpose. A care and protection purpose is defined in the proposed section 352B of the Bill and will include foster care services and residential care services in addition to other services for vulnerable people being procured under the strategy *A Step Up for Our Kids* (for example a placement prevention service, a supported contact service, a reunification service, an advocacy service for birth parents). The Territory could suspend an organisation's approval for one or more purposes (or services) the organisation is approved for. This could also mean that an organisation's approval for one purpose (or service) may be suspended whilst they retain approval for one or more other purposes (or services).

The amendment also relates to an organisations ability to make a submission in response to a suspension of an approval for a purpose. This amendment clarifies that an organisation may make a written submission following a suspension in response to the Committee's comments in the Scrutiny Report. The addition of this subsection makes it consistent with the proposed new sections 352N, 352O and 352Q. Additional guidance on the processes associated with statutory intervention will be in the intervention guidelines (a disallowable instrument).

Amendment 10, refers to Clause 21, proposed new section 525(1), page 22, line 14

This amendment requires that the approval of places of care must be in writing. Approving a place of care provides the authority for the Official Visitor to have oversight of the residential care facility. The Chief Minister gave approval for the addition of this amendment on 29 May 2015.

Amendment 11, refers to a proposed new Clause 21A, page 22, line 18

This amendment removes the requirement for the approval of places of care to be a notifiable instrument. The reason for this change is to prevent the addresses of children and young people living in a residential care service being published on the

legislation register. The publication of the address would be a breach of section 12 of the *Human Rights Act 2004* (ACT) – privacy and reputation. Publication of the addresses could also have an adverse impact on the safety of a child or young person who is in the care and protection of the Territory. The Chief Minister gave approval for the addition of this amendment on 29 May 2015.

Amendment 12, proposed new clause 25A, page 24, line 12

This amendment adds a new chapter to provide transitional arrangements for current providers that are approved as suitable entities and authorised under the current *Children and Young People Act 2008* (organisations providing foster care services and residential care services) and the assessment process that was in place at the time of their approval and authorisation. These organisations will continue to provide foster care and residential care services until the commencement of new services procured under the strategy *A Step Up for Our Kids* (the Strategy). As children and young people may need to be transitioned to a new provider, there is an over-lap between current providers ceasing to provide services and new service providers commencing. Approvals and authorisations issued before the implementation of the Strategy will expire on or before 30 June 2016.

Amendment 13, refers to Clause 27, proposed new dictionary definition of due date, page 25, line 11

This amendment adds a new dictionary definition to support the Government amendments in response to the Committee's comments in the Scrutiny Report.