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

CHILDREN AND YOUNG PEOPLE AMENDMENT BILL 2023

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
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CHILDREN AND YOUNG PEOPLE AMENDMENT BILL 2023

The Children and Young People Amendment Bill 2023 is a significant Bill. Significant bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the Human Rights Act 2004.

OVERVIEW OF THE BILL

The object of the Children and Young People Amendment Bill 2023 (the Bill) is to provide for the safety, welfare and wellbeing of, and the provision of services to, children and young persons and establish principles and key responsibilities governing child protection intervention.

The Australian Capital Territory's *Children and Young People Act 2008* (CYP Act) is a landmark legislation that has played a critical role in shaping the care, protection and rights of children and young people in the ACT. The CYP Act stands as one of the Territory's most extensive and intricate pieces of legislation. Since its commencement in 2008, the CYP Act has been subject to regular amendments, leading to a progressive increase in complexity. Recent inquiries, reviews and research, combined with feedback from system users and developments in other jurisdictions, have identified the need for substantial reform of the CYP Act and the way it operates in practice.

These reforms are intended to be delivered in two tranches, with this Bill delivering early changes to some fundamental parameters and definitions that will support changes in practice while further detailed work is completed.

Key policy objectives of the legislative reform include:

- Shift the focus to early support and intervention for children, young people and their families, aiming to facilitate positive life outcomes and ensure long-term wellbeing within our community.
- Establish effective diversion pathways from the statutory child protection system to earlier support services, providing a more proactive approach to addressing issues before they escalate.
- Implement targeted measures to redress the over-representation of Aboriginal and Torres Strait Islander Children and Young People in the statutory child protection and the out-of-home care system.
- Enhance data gathering and information sharing mechanisms to enable a comprehensive understanding of issues, trends and challenges within the child protection system, leading to more informed decision-making.

- Establish a responsive approach to reflect the ACT Government’s commitment to previous recommendations and adapt policies to align with modern policy settings and emerging needs.

The Bill will clarify what the government and other professionals must and can do, to keep children safe and families together. It will ensure that people who are making decisions about child safety and family wellbeing are fully supported to make decisions that are fair and lead to good outcomes.

The amendments proposed in the Bill form part of a comprehensive series of strategic actions aimed at safeguarding and enhancing the welfare of children and young people in the ACT. Alongside policy reform, practice change, professional development and business improvements, these measures collectively seek to reform the child protection system, enhancing the ACT community’s ability to protect children, preserve families, make better decisions and improve the quality-of-life outcomes of vulnerable children and young people in the ACT. This approach will support and enable shifts in policy direction as established in the *Next Steps for Our Kids Strategy 2022-2030* – the ACT’s strategy for strengthening families and keeping children and young people safe.

The amendments proposed in the Bill represent critical and foundational steps toward implementing essential whole-of-system reforms in the child protection sector. The Bill aims to streamline existing child protection processes and practices and, importantly, take actions to address the over-representation of Aboriginal and Torres Strait Islander children, young people and families in the statutory child protection system.

The Bill will achieve these objectives by:

- adjusting the focus of the legislation and functions of the director-general to align with a family support-oriented service system;
- recognising the importance of self-determination for Aboriginal and Torres Strait Islander peoples as Australia's first peoples;
- inserting the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle – prevention, partnership, placement, participation and connection – and including them as 'best interests' considerations for decisions about children and young people;
- reorganising concepts of abuse and neglect toward an overarching concept of 'significant harm', including strengthening the concepts of sexual abuse and domestic violence, revising the term neglect, and explicitly enabling consideration of cumulative harm;
- providing guidance on factors to consider in making a decision about 'best interests', clarifying that in determining the best interests of a child or young

person, the decision-maker must always consider the child's risk of significant harm, in addition to the relevant other best interest factors where relevant; and

- implementing amendments to Chapter 19A (Children and Young People Death Review Committee) that reflect agreed recommendations from the Committee.

The proactive approach will not only bring immediate improvements but also lay the legislative foundation for a system that embraces a more family-focused orientation in the long term. Building a strong legislative foundation now will ensure that our services remain relevant and responsive to the needs of our families now and into the future.

OUTLINE OF PROVISIONS

Chapter 1 Preliminary

Section 7: Main objects of Act

Part 1.2 of chapter 1, section 7 provides the key objects of the Bill, which are to provide for the *safety, welfare and wellbeing* of, and the provision of services to, children and young persons, and the principles that are to be applied in the administration of the Act.

The objects of the Act set the tone and priorities for the Act to ensure children and young people receive the care and protection necessary to protect them from *significant harm*. These changes intend to reorientate and rebalance the CYP Act from a singular child protection focus to a clear focus on supporting families in relation to the safety, welfare and wellbeing of children and young people alongside the protection of children and young people from harm.

The broader purpose aims to reflect the contemporary role of the child protection system, aligned with the director-general's current functions.

This expanded purpose does not seek to increase the scope of the CYP Act, alter the criteria for statutory intervention, or mandate the director-general to offer support to a wider range of families beyond those already covered by the Act.

Chapter 2 Administration

Section 22: Director-general's functions

Part 2.1 of chapter 2, section 22 sets out the general roles of the director-general of the ACT Community Services Directorate, in relation to *safety, welfare and wellbeing* of children and young persons and seeks to ensure the coordinated provision of services generally to children and young persons.

The Bill broadens the functions of the director-general to include providing or assisting in providing support and services to families to reduce the *risk of significant harm* to children and young people and to protect children and young people if a *risk of significant harm has been identified*. This section also inserts a provision on providing, or assisting in providing, information to mandated reporters and people who report to the director-general to help them perform their legal obligation and encourage them to continue their involvement in matters arising from their report. These changes intend to better reflect the intent of the legislation and the functions of the director-general and better align with the reform agenda for the child protection and family support system.

Chapter 1 Preliminary

Section 10: Aboriginal and Torres Strait Islander children and young people

The Bill gives effect to the commitment to embed the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) into the CYP Act as part of the comprehensive system change needed to reverse over-representation. Part 1.2 of chapter 1, section 10 specifies that, when decisions are being made about Aboriginal or Torres Strait Islander children and young people, the five interrelated elements of the Aboriginal and Torres Strait Islander Child Placement Principle: prevention, partnership, placement, participation and connection must be applied. The Bill recognises culture and connection as a source of strength and protection for Aboriginal and Torres Strait Islander children and young people and recognises the continuity of family and community relationships as integral to children's safety, welfare and wellbeing.

The purpose of the ATSICPP is to enhance and preserve Aboriginal and Torres Strait Islander children's connection to family and community, and sense of identity and culture¹. The aim is to ensure that whenever possible and when safe to do so, Aboriginal and Torres Strait Islander children and young people are placed within their biological family, extended family, local Aboriginal community or wider Aboriginal community in accordance with the child placement hierarchy.

These principles recognise the child's right to be raised in their own culture, acknowledges that the participation of family and Aboriginal and Torres Strait Islander community representatives is required in all child protection decision-making, and affirms the importance and value of family, extended family, kinship networks, culture and community in raising Aboriginal and Torres Strait Islander children.

Embedding the child placement principle in legislation is an ACT Government priority, aligned with strong commitments to the Our Booris, Our Way Review², the National

¹ Arney, F., Iannos, M., Chong, A., McDougall, S., & Parkinson, S. (2015). *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: Policy and practice considerations* (CFA Paper No. 34). Melbourne: Child Family Community Australia information exchange.

² Our Booris, Our Way Steering Committee, *Our Booris, Our Way: Final Report*, December 2019, Recommendation 3 at p 75.

Framework for Protecting Australia’s Children³ and the National Agreement on Closing the Gap⁴. This commitment is also reflected in the Parliamentary and Governing Agreement: 10th Legislative Assembly (2020)⁵.

While the incorporation of the ATSICPP in legislation is a critical step toward addressing the over-representation of Aboriginal and Torres Strait Islander children in the child protection and out-of-home care system, achieving full implementation will necessitate improving links between legislation, policy and practice, providing earlier supports for families and recognising and enhancing leadership, participation and decision-making among Aboriginal and Torres Strait Islander peoples⁶.

Section 10A (a)(b): Aboriginal and Torres Strait Islander children and young people—other Principles

The Bill seeks to improve implementation of ATSICPP, including by inserting new section 10A into the CYP Act to more explicitly detail the elements of the principle that must be considered when making best interest decisions for First Nations children and young people.

Section 10A (a) recognises Aboriginal and Torres Strait Islander people should participate in the care and protection of their children and young people with as much self-determination as is possible. This principle emphasises Aboriginal and Torres Strait Islander children, young persons, parents and family members have the right to participate in all child protection decisions affecting them, including intervention, placement and care and judicial decisions⁷.

Section 10A (b) recognises the government’s role to protect and promote an Aboriginal and Torres Strait Islander child’s cultural identity. In the context of statutory services, this principle articulates the need to actively support children in out-of-home care to maintain or re-establish their connections to family, community, culture and country and recognises this as in the child’s best interests.

³ Department of Social Services. *Safe and Supported: The National Framework for Protecting Australia’s Children 2021-2031*, December 2021, Focus Area 2 at p 28.

⁴ *National Agreement on Closing the Gap*, July 2020, Outcome 12 at p 30.

⁵ Australian Labour Party (ACT Branch) and ACT Greens, *Parliamentary and Governing Agreement: 10th Legislative Assembly for the Australian Capital Territory*, November 2020, at paragraph 19.3.

⁶ Arney, F., Iannos, M., Chong, A., McDougall, S., & Parkinson, S. (2015). *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: Policy and practice considerations* (CFCA Paper No. 34). Melbourne: Child Family Community Australia information exchange.

⁷ SNAICC (2019). *The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation*. SNAICC. <https://www.snaicc.org.au/the-aboriginal-and-torres-strait-islander-child-placement-principle-a-guide-to-support-implementation/>

Chapter 10 Care and Protection—General

Section 344: What is significant harm?

The existing definitions of abuse and neglect in the CYP Act are divided into four subtypes: physical abuse, sexual abuse, emotional abuse and neglect. The current division creates an impression that there are strong lines of demarcation between the different abuse and neglect subtypes and that these subtypes occur in isolation.

Abuse and neglect are all concepts under harm and have a predominant focus on the actions and omissions of adults (either the infliction of harm or the failure to act or prevent harm). Under the current arrangement, complexity of abuse and neglect and the range of interactions and nuances between subtypes can be misinterpreted or overlooked.

Across Australia, the focus of child protection systems has increasingly shifted away from focusing on the actions of parents toward the outcomes for the child.⁸ The Standing Committee on Health, Ageing and Community Services (HACS) Interim Report on Child and Youth Protection Services (2020)⁹ recommended the *Children and Young People Act 2008* be amended to better address the identification of cumulative harm and intervention for children and young people at risk of cumulative harm. It also recommended a statutory mechanism be developed to better determine the severity of various types of alleged neglect and abuse.

Part 10.2 of chapter 10, section 344 reorganises concepts of abuse and neglect toward an overarching concept of significant harm. The Bill defines significant harm as *'any detrimental effect of a significant nature on the safety, welfare and wellbeing of the child or young person.'* By restructuring the definitions of abuse and neglect under the concept of significant harm, the Bill intends to provide a broader, less prescriptive definition of when and how statutory child protection services can and should support families. It also allows for greater flexibility to divert families earlier to non-statutory support services, where appropriate to do so.

The balance of probabilities test

Currently, at section 344 of CYP Act, the term 'risk of abuse or neglect' is defined using the 'balance of probabilities' test to determine if there is a significant likelihood of a child or young person experiencing abuse or neglect. In civil court proceedings, the 'balance of probabilities' test is used to establish the likelihood of an event or fact, which differs from the higher standard of proof, 'beyond a reasonable doubt', applied in criminal court proceedings.

⁸ AIHW (Australian Institute of Health and Welfare) (2022) Child protection Australia 2020–21 Appendixes A to C. Child Welfare Series 87, AIHW, Australian Government.

⁹ Recommendation 1, of the Standing Committee on Health, Ageing and Community Services (HACS) Interim Report on Child and Youth Protection Services (2020).

The current definition of 'risk of abuse and neglect' has generated concerns as it introduces the legal concept of 'balance of probabilities' during the early intake assessment phase. The subjective nature and application of this concept can lead to confusion and interference when conducting early risk assessments and providing support to children and families. It is important to recognise that the possibility of significant harm occurring (extending beyond the balance of probabilities test) may justify taking precautions or providing support to mitigate risks for children and young people.

The Bill removes the balance of probabilities test as the standard of proof required when undertaking assessments and providing support to children and families. This is a significant move away from a system focused on the investigation of families to a high legal standard of proof at a very early stage of assessment toward a system that better assesses need and provides supports to at risk children and their families. The CYP Act will still require the civil standard of proof (known as the balance of probabilities) in Childrens Court proceedings at section 711 of the CYP Act.

Redefined concepts of child maltreatment

Under the framework of risk of significant harm, the Bill introduces several important provisions to enhance identification and response to child maltreatment. Firstly, it seeks to incorporate a new provision that takes into account cumulative patterns of harm experienced by a child or young person. This approach recognises that harm may arise from a series of incidents over time, not just isolated events.

The Bill proposes to expand the definition of sexual abuse to include grooming and sexual exploitation. By doing so, it addresses the broader range of harmful behaviours and actions that can cause significant harm to children and young people in these contexts. Grooming behaviour involves the perpetrator manipulating a child to gain their trust, build rapport, and exert power over them, which is a serious criminal offense in the ACT punishable by law¹⁰ but is not specifically addressed under existing child protection legislation. It is expected that a wider statutory definition of sexual abuse unified alongside other forms of abuse and risk will reflect and allow for a more progressive and responsive policy approach to child sexual abuse and meets ACT Government's commitments to improving systemic responses to child sexual abuse.

The Bill introduces a revised definition of neglect that includes circumstances where a child or young person's '*basic physical, emotional, developmental, or psychological needs are not being met*'. This broader definition aims to avoid unhelpful stigmatisation and create an environment where families are more likely to seek and receive the necessary help and support to ensure the wellbeing of their children.

¹⁰ Crimes Act 1900 s 66.

The Bill also aligns the definition of family violence with the *Family Violence Act 2016*, ensuring consistency and comprehensive coverage in addressing family violence concerns related to child protection. The existing legislative requirement that a child must have 'seen' or 'heard' incidences of violence, and that it must have caused a significant impact on them, is problematic¹¹. Extensive research has challenged the notion that children are passive and unaffected by family violence if it is not directly witnessed. Research has shown that the pattern of coercive control used by perpetrators is directed at both adult-survivors and children, disrupts global family functioning and has long-term impacts on the normal development of children and young people¹².

Combined with strong policy and practice alignment, the restructuring of the 'risk of significant harm' definition in section 344 holds the potential of strengthening child protection efforts through enhanced clarity, broader inclusion of risks, preventive measures, collaborative approaches and adaptation to evolving societal trends.

The reorganisation toward significant harm does not change the threshold for statutory intervention or impose a requirement for the director-general to support a broader cohort of families beyond those currently captured under the CYP Act.

Section 349 What is in best interests of child or young person?

Best interests are the paramount considerations at section 8 of the CYP Act and ensure that in making a decision in relation to a particular child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration.

Part 10.3 of chapter 10, section 349(1) specifies that, in determining the best interests of a child or young person, the decision-maker must always consider the child's risk of significant harm, in addition to the relevant other best interest factors where applicable. This approach strikes a balance by emphasising a child's safety in all decision-making while acknowledging the importance of considering other factors contributing to their overall best interests.

Chapter 11 Care and Protection—reporting and assessing risk of significant harm

Section 353: Definition of child concern report

Part 11.1.1 of chapter 10, section 353 omits the definition of a child concern report and substitutes with the terms voluntary report or mandatory report. This is a consequential amendment to the removal of the two-stage risk assessment at chapter 10, section 360, as described below.

¹¹ Heward-Belle, S., Healey, L., Isobe, J., Roumeliotis, A., Link, E., Mandel, D., Tsantfski, M., Young, A. & Humphreys, C. (2020). Working at the intersections of domestic and family violence, parental substance misuse and/or mental health issues. Practice Guide from the STACY Project: Safe & Together Addressing Complexity. Melbourne, University of Melbourne and Sydney.

¹² Ibid.

There is no difference between how the CYP Act considers and acts on a voluntary report versus a mandated report.

Section 360: Assessing risk of significant harm

The CYP Act currently outlines a complex, multi-stage process for the assessment of children and young people. The CYP Act requires that the director-general must consider every child concern report received and carry out a two-stage assessment to decide if the child is in need of care and protection. The only significant difference between the stages is the information gathering activities. The range of possible actions available to the director-general in these stages extends from referral to police to taking no action. This suggests the legislation was intended to allow the widest possible degree of discretion and flexibility in the assessment process rather than the prescriptive and complex two-stage assessment process that has evolved.

Part 11.1.2 of chapter 10, section 360 collapses the two-stage child concern report and child protection report assessment process into one assessment provision. It also removes the legislative threshold of *in need of care and protection* section 360(b) and replaces with *risk of significant harm*. This change will allow for the implementation of an evidence-based assessment tool and associated policy development and implementation. It also serves to provide greater opportunity to provide alternative support and resources to children, young people and families at an earlier stage where previously concerns may have not met the statutory threshold of in need of care and protection.

Section 360(4) stipulates that the director-general must make diligent efforts to determine whether a child or young person is an Aboriginal or Torres Strait Islander child or young person at the earliest opportunity. This provision acknowledges the importance of and protects a child's connections to family, culture and community, recognising this as being in their best interest and crucial to their safety and wellbeing throughout all phases of child protection intervention¹³. It also acknowledges that early identification is a critical component for the full implementation of all five elements of the ATSICPP.

Chapter 19A Children and Young People Death Review Committee

Section 727B Functions of committee

Part 19A.1 of chapter 19A, section 727B, sets out the functions and responsibilities of the ACT Child and Young Person Death Review Committee based on the Committee's annual reporting.

¹³ SNAICC (2019). *The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation*. SNAICC.

In 2021, the ACT Child and Young People Death Review Committee completed the *Review of Children and Young People Who Have Died as a Result of Intentional Self-Harm*¹⁴ (the Review) in response to an increase in deaths by suicide in 2018. The Bill addresses recommendations from the 2021 Review, as well as findings from a review into the Committee's effectiveness in 2019. The 2021 recommendations are echoed by the findings in the *Review of Children and Young People in the ACT (2020)* by the ACT Government's Office for Mental Health and Wellbeing¹⁵.

The Bill retains the core functions of the Committee while expanding its scope to include the 18 to 24-year age group and review of 'serious injuries.' The amendments support efforts to reduce preventable deaths of children and young people in the ACT and systemic changes to improve support and services to children and their families.

The Bill also makes a range of minor amendments to improve the functioning of the Committee.

CONSISTENCY WITH HUMAN RIGHTS

The preamble to the *Human Rights Act 2004 (ACT)* (the Human Rights Act) states that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. This is further reflected in section 28 of the Human Rights Act with subsection (2) stating that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- a) the nature of the right affected;
- b) the importance of the purpose of the limitation;
- c) the nature and extent of the limitation;
- d) the relationship between the limitation and its purposes; and
- e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The Bill actively engages with and supports several human rights as outlined and described below.

- **Section 8:** Recognition and equality before the law
- **Section 10:** Protection from torture and cruel, inhuman and degrading treatment etc
- **Section 11:** Protection of the family and children
- **Section 21:** Right to fair trial

¹⁴ ACT Children and Young People Death Review Committee (2020) *Review of ACT children and young people who have died as a result of intentional self-harm: 2017-2019*. Canberra: ACT Children and Young People Death Review Committee.

¹⁵ *Review of Children and Young People in the ACT (2020)* Office of Mental health and Wellbeing. Australian Capital Territory, Canberra.

- **Section 27:** Cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities.

The Bill does not impose any limitations on human rights.

Part 3 Section 8 Recognition and equality before the law

Section 8 of the Human Rights Act provides that everyone is equal before the law and is entitled to the equal protection of the law without discrimination. The purpose is to ensure that all laws and policies are applied equally and do not have a discriminatory effect. The right to recognition and equality before the law is a standalone right that also permeates all human rights.

Section 8 of the Human Rights Act sets out examples of discrimination on the basis of race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or 'other status.' In addition to the grounds identified as examples in the Human Rights Act, section 8 of the *Discrimination Act 1991* (ACT) provides it is unlawful to discriminate based on a person having one or more protected attributes including but not limited to, age, race, colour, sex, sexual orientation, language, religion, disability, or other status.

Direct discrimination occurs where a person treats a person with an attribute unfavourably because of that attribute. Discrimination means any distinction, exclusion, restriction or preference based on any ground which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by everyone, on an equal footing, of all rights and freedoms.¹⁶ It can be taken to include different treatment of persons who are in relevantly similar situations, where there is an absence of an objective and reasonable justification.¹⁷

Indirect discrimination may arise when an unreasonable rule or policy applies to everyone but has the effect of disadvantaging some people because of a personal characteristic they share. The right to equality and the prohibition on discrimination do not prevent special measures or affirmative action aimed at correcting inequalities that arise from facially neutral laws.¹⁸ Sometimes it may be necessary to treat people differently to achieve equality. This is because differences between people (and at times in common with their communities) may make it difficult for them to enjoy their rights without support.

The principle of equality, as it pertains to social justice and human rights, asserts that all individuals should be treated fairly and impartially, without any form of discrimination or bias. However, in certain situations, achieving true equality may require more than just removing existing discriminatory practices. It may necessitate taking affirmative action to

¹⁶ Human Rights Committee, *General Comment 18*[37], HRI/GEN/1/Rev.1 at [7].

¹⁷ *Fredin v Sweden* (1991) 13 EHRR 784 at [60]; *Stubbings v United Kingdom* (1996) 23 EHRR 213 at [70]; *Willis v United Kingdom* (2002) 35 EHRR 21 at [48].

¹⁸ *Griggs v Duke Power Co* (1971) 401 US 424 at 429

address the underlying conditions that contribute to or perpetuate discrimination¹⁹. The need for affirmative action arises from the recognition that historical and systemic discrimination can create deeply entrenched disparities for certain individuals and groups²⁰. These disparities may not be easily rectified by simply ending discriminatory practices, as the effects of past discrimination can continue to permeate and disadvantage certain groups.

Domestic case law confirms that while special measures or affirmative actions do not necessarily have to guarantee equal opportunity in an absolute sense, there must be reasonable acceptance the measures taken are justifiable, rational and reasonably connected to the objective of promoting equality and diminishing discrimination²¹.

The Human Rights Act recognises the special significance of human rights for Aboriginal and Torres Strait Islander peoples, as the First Nations people. The fundamental principle underpinning the various cultural rights protected under section 27 of the Human Rights Act is recognition and respect for the identity of Aboriginal and Torres Strait Islander peoples, both as individuals and in common with their communities.

The Section 10 of the CYP Act embeds the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle. The Aboriginal and Torres Strait Islander Child Placement Principle includes recognition that Aboriginal or Torres Strait Islander persons have:

- the right to participate in significant decisions affecting their children;
- if a child is to be placed in care, the child has a right to be placed with a member of the child's family group in accordance with the placement hierarchy;
- a child has a right to be supported to develop and maintain a connection with their family, community, culture, traditions and language; and
- the child's parents and family members have a right to participate, and been supported to actively participate, in an administrative or judicial process for making a significant decision about the child.

The amendments are intended to be an affirmative action to address the recognition and equality before the law.

Part 3 Section 10 Protection from torture, cruel, inhuman or degrading treatment

Section 10(1)(b) of the Human Rights Act establishes that all individuals must be protected from cruel, inhuman, or degrading treatment. The Australian Government bear a responsibility to take proactive measures to safeguard individuals from such treatment

¹⁹ Human Rights Committee, *General Comment 18[37]*, HRI/GEN/1/Rev.1 at [10].

²⁰ *Belgian Linguistic Case* (1979-80) 1 EHRR 252 at [10]; *Thlimmenos v Greece* (2001) 31 EHRR 15 at [44]; *Stec v United Kingdom* (2006) 43 EHRR 47 at [51].

²¹ *Gerhardy v Brown* (1985) 159 CLR 70 at 87-88 and 105; *Jacomb v Australian Municipal Administrative Clerical and Services Union* (2004) 140 FCR 149 at 160-161[34]; *Catholic Education Office v Clarke* (2004) 138 FCR 121 at 149[130].

including that by private parties.²² This duty extends to protecting children from ill-treatment and preventing such acts, which the authorities should have been aware of, and or could have reasonably foreseen²³.

By reorganising the concepts of abuse and neglect under the definition of 'risk of significant harm' at section 344 of the CYP Act, a more comprehensive approach can be taken to better capture the accumulation of harm experienced by a child. The expanded definition enables authorities to intervene at an earlier stage and implement necessary measures to safeguard the child's safety, welfare and wellbeing, ensuring a more effective protection mechanism. This approach strengthens the safeguarding of children by enhancing the child protection system and community sector's ability to recognise cruel, inhuman, or degrading treatment and enabling a more comprehensive assessment of potential harm.

Part 3 Section 11 Protection of the family and children

The Human Rights Act recognises that children are entitled to special protection. It recognises that children are more vulnerable because of their age. The Human Rights Act does not provide a precise definition of the term 'child'; however, it is widely interpreted as referring to an individual who is below 18 years of age.

Section 11 of the Human Rights Act safeguards two fundamental rights: the right of a family to protection (s 11(1)) and the right of a child to receive necessary protection due to their status as a child (s 11(2)). This is complemented by article 6 of the Convention of the Rights of the Child²⁴ (UNCRC) ratified by Australia in 1990, which recognises that every child has the inherent right to life and that States Parties shall ensure to the maximum extent possible the survival and development of the child.

The right of a child to protection places an obligation on governments to ensure that every child receives the care and safeguarding essential for their overall wellbeing. This is also articulated in article 19(1) of the UNCRC, which emphasises that governments should ensure that children are properly cared for and are protected from violence, abuse and neglect by their parents, or anyone else who looks after them. This obligation is balanced with the rights and responsibilities of parents and caregivers, as articulated in article 18 of the UNCRC.

In the context of child protection, the rights regarding the protection of family and children carry an inherent duty to identify, report and investigate any allegations of abuse or neglect²⁵. Governments and relevant authorities have a crucial obligation to actively take proactive measures to mitigate the risk of abuse or neglect and ensure the safety and

²² A v United Kingdom (1998) 27 EHRR 611 at [22]; M and M v Croatia [2015] ECHR 759 at [136]; DMD v Romania [2017] ECHR 815 at [44].

²³ Z v United Kingdom (2001) 34 EHRR 97 at [73]; E v United Kingdom (2002) 36 EHRR 519 at [88].

²⁴ United Nations Convention on the Rights of the Child, (1989).

²⁵ Convention on the Rights of the Child, Art 19(2), Committee on the Rights of the Child, General Comment 13 (2011) at [48]-[51]; MC v Bulgaria (2003) 40 EHRR 20; M and M v Croatia [2015] ECHR 759; DMD v Romania [2017] ECHR 815 at [41].

wellbeing of children. This involves implementing preventative strategies, providing necessary support systems, and promptly intervening in situations where children may be at risk.

Risk of significant Harm

The process of restructuring the definition toward 'risk of significant harm' aims to clarify the criteria for identifying risks that pose a significant risk to children's safety, welfare and wellbeing. This improved clarity will empower child protection agencies, professionals, and the general public to better recognise and respond to various forms of harm that children may face. Additionally, the revised definition is anticipated to place a stronger emphasis on proactive and preventative strategies and shift the focus of assessments towards the experiences of children and young people, rather than solely on the behaviour of parents or caregivers. By highlighting the significance of early intervention and support services for families in vulnerable circumstances, the aim is to reduce the incidence of harm and improve overall protection to vulnerable children and young people.

Under the concept of significant harm, the Bill inserts a new provision that better considers cumulative patterns of harm on a child or young person. The Bill also broadens sexual abuse to include grooming and sexual exploitation, aligning with the Australia's responsibility to protect children from sexual abuse and to prevent it from occurring, under articles 19 and 34 of the UNRC and the Government's commitment to improving systemic responses to child sexual abuse, in the Government Response to the Listen. Take Action to Prevent, Believe and Heal Report²⁶ (2022).

The Bill aligns the definition of family violence with the *Family Violence Act 2016*. This definition recognises the various forms of violence that can occur against a family member, as well as the diverse range of experiences endured by those who suffer from such violence, including:

- sexual violence or abuse;
- emotional, psychological, and economic abuse; and
- coercion or other behaviour that controls or dominates a person and causes them to fear for their safety or wellbeing, such as property damage, stalking or harming an animal.

The Bill also introduces a revised definition of neglect to include significant harm caused when a '*child or young person's basic physical, emotional, developmental or psychological needs are not being met.*' This broader definition and removal of the term neglect aims to foster a more supportive approach for families seeking assistance or support and help to avoid unhelpful stigmatisation.

²⁶ The Government response to the Listen. Take Action to Prevent, Believe and Heal Report (2022).

Best interest of the child

Best interests of the child are fundamental principles that should be considered in all actions affecting a child. The ‘best interest’ of children and young people is the paramount consideration for all decision-making pursuant to section 8 of CYP Act. What will be in each child’s ‘best interests’ will depend on the child’s individual circumstances. This approach reflects the United Nations Committee on the Rights of the Child General Comment 14²⁷ on the implementation of article 3(1) of the UNCRC, that states it is ‘*useful to draw up a non-exhaustive and non-hierarchical list of elements that could be included in a best interests assessment by any decision maker.*’ The Committee’s General Comment acknowledges the best interests principle is complex and must be determined on a case-by-case basis and that the list of best interest considerations should provide ‘concrete guidance, yet flexibility’.

Safeguarding the safety of children and young people forms a fundamental and indispensable aspect of a child protection system that operates in the best interests of every child. In this regard, child protection decision-making differs from decision-making in other contexts where safety may not always be a prominent concern. Considering this, Section 349 of the CYP Act sets out guidance on the factors to consider in making a decision about a child’s best interests and clarifies that the decision-maker must always consider the child’s risk of significant harm, in addition to the other relevant best interests when making a best interests determination. The amendments aim to ensure that children’s safety and best interests are squarely and unequivocally the primary focus of the legislation. By prioritising best interests, emphasising the need to protect from risk of significant harm, the Bill promotes children’s right to life and protection from exploitation, violence, and abuse, as outlined in article 24(1) of the International Covenant on Civil and Political Rights²⁸ and articles 3(2), 6, 19(1), and 34 of the UNCRC.

The Death Review Committee

The amendments to the Child and Young Person Death Review Committee will support the protection of children by expanding their scope to allow consideration of people aged 18 - 24 years and serious injuries. This supports efforts to reduce the preventable deaths of children and young people in the ACT and supports systemic changes to improve support and services to children and their families.

Part 3 Section 27 Aboriginal and Torres Strait Islander culture

Section 27(2) of the Human Rights Act specifies that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights to enjoy, maintain, control, protect and develop their identity and cultural heritage as Australia’s first people. This section is based on two international instruments. First, is the International Covenant on Economic, Social and

²⁷ General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art.3, para. 1).

²⁸ United Nations (General Assembly) (1966). International Covenant on Civil and Political Rights

Cultural Rights²⁹, which Australia ratified in 1975. Second, are articles 25 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples³⁰, adopted by the General Assembly in 2007.

Article 3 of the UNCRC provides all organisations concerned with children should work towards what is best for each child. Article 8 provides that governments should respect a child's right to family ties, with article 7 asserting children have the right to know their parents and, as far as possible, to be cared for by them. Article 20 provides that children who cannot be looked after by their own family must be looked after properly by people who respect their religion, culture and language.

Section 10 of the CYP Act incorporates the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP), which safeguards the rights of Aboriginal children and young people, their families and communities within the statutory child protection system. It prioritises preserving the family unit, working in collaboration with the community, involving children and families in decision-making processes, maintaining connections to family, community, culture, and country, and ensuring children who are placed in out of home care are done so in accordance with the child placement principle hierarchy.

Section 360(4) affirms the director-general's duty to promptly determine if a child is of Aboriginal or Torres Strait Islander identity. This acknowledgment prioritises preserving the child's cultural and community connections, essential for their wellbeing and safety throughout all phases of child protection involvement. Early identification is pivotal in effectively implementing all five elements of the ATSICPP.

The Bill also recognises and promotes the importance of self-determination. Section 10 A(a) recognises Aboriginal and Torres Strait Islander people should participate in the care and protection of their children and young people with as much self-determination as is possible. This principle recognises Aboriginal and Torres Strait Islander children, parents and family members have the right to participate in all child protection decisions affecting them, including intervention, placement and care and judicial decisions³¹. While self-determination is not specifically protected by the *Human Rights Act 2004*, it is closely related to other rights that are protected and articulated at article 1 of the United Nations Declaration on the Rights of Indigenous Peoples.

²⁹ United Nations (General Assembly). (1966). International Covenant on Civil and Political Rights.

³⁰ United Nations (General Assembly). (2007). Declaration on the Rights of Indigenous People.

³¹ SNAICC (2019). The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation. SNAICC

CHILDREN AND YOUNG PEOPLE AMENDMENT BILL 2023

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Children and Young People Amendment Bill 2023**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Children and Young People Amendment Bill 2023

Detail

Part 1 – Preliminary

Clause 1 — Name of Act

This is a technical clause that names the short title of the Act.

Clause 2 — Commencement

This clause provides that the Act will commence on a day fixed by the Minister by written notice. If the Act has not commenced before 31 March 2024, it will automatically commence on that day.

Clause 3 — Legislation Amended

This clause lists the legislation amended by this Bill. This Bill will amend the *Children and Young People Act 2008*.

Clause 4 – Application of Act to children and young people etc Section 6 (c)

This clause amends section 354 (i)(ii) and (iii) by omitting abuse and neglect and substituting risk of significant harm.

Clause 5 – Main objects of Act

This clause amends section 7 (a) and (b) to omit ‘*wellbeing, care and protection*’ to substitute the words ‘*safety, welfare and wellbeing*’. The objects of the Act set the tone and priorities for the Act, and this change allows for following provisions to build on providing for and promoting the safety, welfare and wellbeing of children and young people.

Clause 6 – Section 7 (c)

This clause substitutes the existing section 7 (c) which defines an object of the Act as ‘preventing abuse and neglect of children and young people’ and replaces it with the object to provide children and young people with the care and protection necessary to protect them from significant harm.

Clause 7 – Section 7 (d) (i)

This clause omits the words ‘wellbeing, care and protection’ and substitutes ‘safety, welfare and wellbeing’ for consistency purposes.

Clause 8 – Section 97 (d) (ii)

This clause substitutes the reference to preventing abuse and neglect of Aboriginal and Torres Strait Islander children and young people with a clause that states we must provide for Aboriginal and Torres Strait Islander children and young people to receive the care and protection necessary to protect them from significant harm. This is consistent with the removal of the concept of ‘abuse and neglect’ and replacement with ‘risk of significant harm’.

Clause 9 – Section 7 (e)

This clause omits the reference to ‘wellbeing, care and protection’ and substitutes a reference to ‘safety, welfare and wellbeing’. This is consistent with other changes to the legislation in a move towards protecting children and young people’s ‘safety, welfare and wellbeing’.

Clause 10 – Section 10

This clause substitutes a new clause, introducing the Aboriginal and Torres Strait Islander Child Placement Principle.

It provides that when making a decision under the Act in relation to an Aboriginal or Torres Strait Islander child or young person, the decision maker must take into account the Aboriginal and Torres Strait Islander Child Placement Principle as set out in this new section 10, as well as the matters set out in sections 8 (best interests of children and young people as the paramount consideration) and 9 (the principles applying to Act).

The Aboriginal and Torres Strait Islander child placement principles are that Aboriginal and Torres Strait Islander:

- children should be brought up within their own family, community and culture (the prevention principle)
- community representatives should be given opportunities to participate in design and delivery of services for children and young people, as well as decisions under this Act about children and young people (the partnership principle)
- children and young people placed with out-of-home carers must be placed in accordance with the priorities for placement set out later in the Act at section 513 (the placement principle)

- children and young people, their parents and other family members, should be given opportunities to participate in decision making processes about care arrangements (the participation principle), and
- children and young people should have connections to family, community, culture and country supported and maintained (the connection principle).

Additionally, a new Section 10A specifies that the following principles are to be applied in administering this Act:

- Aboriginal and Torres Strait Islander people should participate in the care and protection of their children and young people with as much self-determination as possible
- that government has a responsibility to protect and promote Aboriginal and Torres Strait Islander children and young people's cultural identity.

Clause 11 – Director-general's functions Section 22 (1) (a) and (b)

This clause substitutes clauses (a) and (b) in defining the director-general's functions. It clarifies the move towards 'safety, welfare and wellbeing'. It also clarifies that the director-general must provide assistance to families in reducing the incidence of significant harm to children and young people and to protect children and young people where a risk of significant harm has been identified.

Clause 12 – Section 22 (1) (d) and (e)

This clause simplifies the reference to mandated reporters shifting towards assisting mandated reporters to perform their legal obligations and clarifies the way in which work can be done alongside reporters throughout the reporting process.

Clause 13 – What is *suitability information*? Section 65(1), definition of suitability information, paragraph (g)

This clause substitutes 'child concern report' for 'voluntary report or mandatory report', aligned with the reporting provisions throughout the Act.

Clause 14 – Family group conferences – criteria Section 80 (2), example 3

This clause substitutes a reference to 'substantiated abuse' for where the director-general identifies a risk of significant harm. This is consistent with the introduction of significant harm to the Act.

Clause 15 – Section 80 (2), example 3

This clause omits ‘substantiates the abuse and substitutes with ‘identifies a risk of significant harm.’ This is consistent with the introduction of significant harm to the Act.

Clause 16 – Application of care and protection chapters Part 10.1 heading, note, paragraph (c)

This clause omits ‘substantiates the abuse and substitutes with ‘identifies a risk of significant harm.’ This is consistent with the introduction of significant harm to the Act.

Clause 17 –What are the *care and protection chapters*? Section 336, definition of *care and protection chapters*, paragraph (b)

This clause omits abuse and neglect and substitutes with risk of significant harm. This is consistent with the introduction of significant harm to the Act.

Clause 18 – Definitions – care and protection chapters Section 341 (1), definitions of *abuse and neglect*

This clause is omitted.

Clause 19 – Section 341 (1), new definition of *significant harm*

This clause inserts significant harm.

Clause 20– Section 341 (2), definitions of *at risk of abuse or neglect* and *significant harm*

This clause is omitted.

Clause 21 – Sections 342 and 343.

This clause is omitted.

Clause 22 – Section 344

This clause introduces the definition and concepts of significant harm, replacing the concept of ‘abuse and neglect’.

The clause defines significant harm to mean ‘*any detrimental effect of a significant nature on the safety, welfare or wellbeing of the child or young person.*’ At section 344 (2) sets out examples of significant harm as 1 or more of the following circumstances being either experienced:

- sexual abuse, grooming or sexual exploitation; or

- physical or emotional abuse;
- the child or young person’s basic physical, emotional, developmental or psychological needs are not being met
- the child or young person is being exposed to family violence as defined at section 344(4).

Section 344(3) set out that the above may relate to a single act, omission or circumstance, or a combination or accumulation of acts, omissions or circumstances.

Clause 23 – When are children and young people in need of care and protection? Section 345(1)

This clause substitutes the concept of significant harm into relevant provisions, where a child is in need of care and protection where they are at risk of significant harm, and the person/s with parental responsibility are not willing and able to protect them.

Clause 24 – Section 346

This clause collapses section 346, specifying that for the care and protection chapters, the circumstances may have arisen wholly or partly outside the ACT where a belief or suspicion arises that a child is at risk of significant harm.

Clause 25 – Section 349 What is in best interests of child or young person? Section 349 (1) and (2)

Section 349 outlines the matters that are relevant to the ‘best interest’ of a child or young person.

This amendment clarifies that in deciding what is in the best interests of a child or young person, the need to ensure the child or young person is not at risk of significant harm must always be considered.

This clause revises the best interest principles as:

1. For the care and protection chapters, in deciding what is in the best interests of a child or young person, the need to ensure the child or young person is not at risk of significant harm must always be considered.
2. The decision-maker must also consider each of the following matters that are relevant to the child or young person:
 - a) any views or wishes expressed by the child or young person;
 - b) the nature of the child’s or young person’s relationship with each parent and anyone else;

- c) the likely effect on the child or young person of changes to the child's or young person's circumstances, including separation from a parent or anyone else with whom the child or young person has been living;
 - d) the practicalities of the child or young person maintaining contact with each parent and anyone else with whom the child or young person has been living or with whom the child or young person has been having substantial contact;
 - e) the capacity of the child's or young person's parents, or anyone else, to provide for the child's or young person's needs including emotional and intellectual needs;
 - f) for an Aboriginal or Torres Strait Islander child or young person—the Aboriginal and Torres Strait Islander children and young people placement principles set out in section 10;
 - g) that it is important for the child or young person to have settled, stable and permanent living arrangements;
 - h) for decisions about placement of a child or young person—the need to ensure that the earliest possible decisions are made about a safe, supportive and stable placement;
 - i) the attitude to the child or young person, and to parental responsibilities, demonstrated by each of the child's or young person's parents or anyone else;
 - j) any significant harm to the child or young person, or a family member of the child or young person;
 - k) any court order that applies to the child or young person, or a family member of the child or young person.
3. The decision-maker may also consider any other fact or circumstance the decision-maker considers relevant.

Section 349(f): This clause provides that the placement principles set out in section 10 are in the best interest of an Aboriginal or Torres Strait Islander child or young person.

Clause 26 – Care and protection principles Section 350 (1) (b)

This clause omits the reference to 'wellbeing, care and protection' and substitutes a reference to 'safety, welfare and wellbeing.' This is consistent with other changes to the legislation in a move towards protecting children and young people's 'safety, welfare and wellbeing'.

Clause 27 – Section 350 (2)

This clause revises wording from 'section 10 (Aboriginal and Torres Strait Islander children and young people principle)' to 'section 10 (Aboriginal and Torres Strait Islander children and young people—placement principles)'.

Clause 28 – Chapter 11 heading

This clause revises the heading to ‘care and protection—reporting and assessing risk of significant harm’. This is consistent with the introduction of significant harm to the Act.

Clause 29 – Part 11.1 heading

This clause revises the heading to ‘care and protection—reporting of significant harm’. This is consistent with the introduction of significant harm to the Act.

Clause 30 – Definitions—Act Section 353, definition of *child concern report*

This clause is omitted.

Clause 31 – Division 11.1.2 heading

This clause revises the heading to ‘reporting risk of significant harm to children and young people’. This is consistent with the introduction of significant harm to the Act.

Clause 32 – Section 354 heading

This clause omits the reference to abuse and neglect substitutes risk of significant harm. This is consistent with the introduction of significant harm to the Act.

Clause 33 – Section 354 (1)

This clause omits the reference to abuse and neglect substitutes risk of significant harm. This is consistent with the introduction of significant harm to the Act.

Clause 34 – Section 356 heading

This clause omits the reference to abuse and neglect substitutes risk of significant harm. This is consistent with the introduction of significant harm to the Act.

Clause 35 – Reports made to public advocate or Aboriginal and Torres Strait Islander children and young people commissioner Section 359 (1) (a)

This clause substitutes clause (a) providing for where a person believes or suspects that a child or young person is at risk of significant harm. This is consistent with the introduction of significant harm to the Act.

Clause 36 – Sections 360 and 361

This clause substitutes current section 360 and 361 to require and empower the director-general to undertake specific actions in assessing risk of significant harm to a child or young person.

At present, section 360 applies if the director-general receives a child concern report about a child or young person. At present section 361 describes the actions the director-general must take if the director-general decides that a child concern report is a child protection report.

This clause includes the provision for the director-general to assess risk of significant harm where a person believes or suspects that a child or young person is at risk of significant harm (s 360 (1)(b)), not just when the director-general receives a child concern report about a child or young person.

Section 360 (2) requires the director-general to carry out the assessment the director-general considers necessary to decide whether the child or young person is at risk of significant harm.

Section 360 (3) enables the director general, carrying out the assessment, to provide, or assist in providing, services to strengthen and support the safety, welfare and wellbeing of the child or young person and their family.

Section 360 (4) requires the director-general as soon as practicable, must attempt to identify whether the child is an Aboriginal or Torres Strait Islander child or young person.

Section 360 (5) enables the director-general to refer a matter to the chief police officer if the director-general suspects that it relates to a criminal offence.

Clause 37 – Division 11.1.3 heading

This clause revises the heading to ‘prenatal reporting of anticipated risk of significant harm.’ This is consistent with the introduction of significant harm to the Act.

Clause 39 – Section 362 heading

This clause revises the heading to ‘prenatal reporting - anticipated risk of significant harm.’ This is consistent with the introduction of significant harm to the Act.

Clause 39 – Section 362 (1)

This clause omits ‘in need of care and protection’ substitutes with ‘at risk of significant harm after the child is born.’ This is consistent with the introduction of significant harm to the Act.

Clause 40 – How prenatal reports may be used in evidence Section 364 (2) (b)

This clause omits the reference ‘reporting, investigating and appraising abuse and neglect and substitutes risk of significant harm ‘reporting and assessing risk of significant harm.’ This is consistent with the introduction of significant harm to the Act.

Clause 41 – Care and protection appraisal—power to carry out Section 368 (1) and note

This clause clarifies that the director-general may carry out a care and protection appraisal of a child or young person if, after considering a voluntary report or a mandatory report about the child or young person, the director-general believes the child or young person may be at risk of significant harm. This is consistent with the introduction of significant harm to the Act.

Clause 42 – Care and protection appraisal—obtaining agreement not in best interests of child or young person etc Section 370 (1), example 1

This clause clarifies the parent or other person with daily care responsibility is the subject of an allegation of causing significant harm to the child or young person. This is consistent with the introduction of significant harm to the Act.

Clause 43 – Care and protection appraisal—visual examination and interview Section 371 (5) (a)

This clause in accordance with section 360, omits the term child concern report and replaces with risk of significant harm. This is consistent with the introduction of significant harm to the Act.

Clause 44 – Public advocate to be told about action following appraisals Section 507 (1) (a) and (b)

This clause substitutes current section 507 (1) (a) and (b) with a provision for the director-general to tell the public advocate about action following appraisals where:

- a) the director-general receives a voluntary report or a mandatory report about a child or young person; and
- b) because of the report, the director-general believes the child or young person is at risk of significant harm.

Clause 45 – Sections 644 (b) and 651 (1) (b)

This clause revises wording from ‘section 10 (Aboriginal and Torres Strait Islander children and young people principle)’ to ‘section 10 (Aboriginal and Torres Strait Islander children and young people—placement principles)’.

Clause 46 – Functions of committee Section 727B (1)

This clause substitutes current section 727B (1) which identifies the functions of the CYP death review committee.

Clause 47 – New section 727B (3)

This clause is a new clause, inserting the definition of a young adult, as an adult who is younger than 25 years old.

Clause 48 – Appointment of committee members New Section 727D (2) (a) (xiii)

This clause inserts a specification that a person may be appointed to the Children and Young People Death Review Committee if they have qualifications, experience or expertise in coronial law and practice.

Clause 49 – New section 727D (D) (d)

This clause inserts a new provision, allowing the Minister to appoint a person to the Children and Young People Death Review Committee if they are a public servant working in the administrative unit responsible for the *Education Act 2004*.

Clause 50 – Appointment of advisers Section 727G

This clause is omitted.

Clause 51 – New Section 727IA

This clause inserts in part 19A.1 a new section 727IA on appointment of advisers. It allows for the chair of the Children and Young People Death Review Committee to appoint a person as an adviser to assist the committee in the exercise of its functions. The appointment may be subject to conditions stated in the appointment.

Clause 52 – Section 727N (2) (d)

This clause omits ‘child protection report’ and substitutes that the child and young person death review committee must keep a register of information in relation to the death of a child where within 3 years before their death, the child or young person, or a sibling of the child or young person, was the subject of a voluntary report or a mandatory report.

Clause 53 – Section 727N (4)

This clause omits section 727N (4) that the child and young person death review committee must not include any information on the register about the cause or circumstances of death of a child or young person until any coronial inquest or review by the Territory has ended.

Clause 54 – Section 727O (4)

This clause omits the requirement that information mentioned section 727N(4) must be given to the child and young person death review committee as soon as practicable after the end of the inquest or review.

Clause 55 – Section 727R (1) (c)

This clause omits that the child and young people death review register is only accessed by staff mentioned at section 727I and substitutes this with ‘committee members’.

Clause 56 – Part 19A.4 heading

This clause substitutes the Chapter 19A.4 heading for Children and Young People Act 2008 for ‘Reporting by committee’.

Clause 57 – Section 727S heading

This clause substitutes the section 727S heading to ‘Biennial reporting’.

Clause 58 – Section 727S(1)

This clause substitutes section 727S(1) to require a report to the Minister to be prepared each period of 2 calendar years.

Clause 59 – Section 727S(1)

This clause substitutes section 727S(1) to reference the biennial reporting period.

Clause 60 – Section 727 S(1)(b)

This clause substitutes subsection (b) to reference children and young people who died or their siblings were the subject of a voluntary or mandatory report not a child protection report within 3 years before their death.

Clause 61 – Section 727S (1)(c)(ii)

This clause substitutes subsection (1)(c)(ii) to reference children and young people who died or their siblings who were subject of a voluntary or a mandatory report not a child protection report, within the 3 years before their death.

Clause 62 – Section 727S(4)

This clause omits subsection (4) to align with biennial reporting.

Clause 63 – Section 727T(1A)

This clause inserts a new section (1A) that requires the CYP death review committee to give reports to the Minister and to any other Ministers that may be responsible for matters within the report.

Clause 64 – Section 727T(4)

This clause substitutes subsection (4) to require any Minister who receives the report to provide information to the CYP death review committee about any action taken within 3 months.

Clause 65 – Section 806(1)(b)(iii)

This clause substitute subsection (1)(b)(iii) to reference children or young people who are the subject of mandatory or voluntary reports not a child concern report within the definition of people that a researcher can recruit through the director-general to take part in a research project.

Clause 66 – Section 806(2)(a)

This clause substitute reference ‘including a person who made a child concern report’ and replaces with ‘including a person who made a voluntary report or mandatory report’.

Clause 67 – What is *sensitive information*? Section 845 (2), definition of *care and protection report information*, paragraphs (a) and (b)

This clause substitutes ‘child concern report’ for ‘voluntary report or mandatory report’, aligned with the reporting provisions throughout the Act.

Clause 68 – Section 845 (2), definition of *care and protection report information*, paragraphs (a)

This clause omits section 354 (Voluntary reporting of abuse and neglect), section 356 (Offence—mandatory reporting of abuse) or section 362 (Prenatal reporting—anticipated abuse and neglect) and *substitutes with* section 354 (Voluntary reporting of risk of significant harm), section 356 (Offence—mandatory reporting of significant harm) or section 362 (Prenatal reporting—anticipated risk of significant harm)

Clause 69 – Certain identifying information not to be given Section 857 (a) (i)

This clause substitutes ‘child concern report’ for ‘voluntary report or mandatory report’, aligned with the reporting provisions throughout the Act.

Clause 70 – What is *safety and wellbeing information*? Section 858 (1), definition of *safety and wellbeing information*, example 1

This clause omits the term at risk of abuse and neglect and substitutes with at risk of significant harm. This is consistent with the introduction of significant harm to the Act.

Clause 71 – Investigative entity may divulge protected information etc Section 867 (2) (d) (i) (A)

This clause substitutes ‘child concern report’ for ‘voluntary report or mandatory report’, aligned with the reporting provisions throughout the Act.

Clause 72 – Section 868 heading

This clause substitutes ‘child concern report’ for ‘voluntary report or mandatory report’, aligned with the reporting provisions throughout the Act.

Clause 73 – Section 868 (1)

This clause substitutes ‘child concern report’ for ‘voluntary report or mandatory report’, aligned with the reporting provisions throughout the Act.

Clause 74 – Protection of people giving certain information Section 874 (2) (g) and (h)

This clause substitutes ‘child concern report’ for ‘voluntary report or mandatory report’, aligned with the reporting provisions throughout the Act.

Clause 75 – Section 874 (2) (j) to (m)

This clause introduces to the concept of ‘significant harm’ as set out in section 360.

Clause 76 – New Chapter 32

This clause inserts a new Chapter 32 to include section 988 titled ‘CYP death review committee – change from annual to biennial reporting’.

This new section will provide a transitional process to move to biennial reporting with annual reporting continuing for the 2023 calendar year and reporting every 2 calendar years from the 2024 calendar year.

Clause 77 – Dictionary

This clause omits the definitions for abuse, at risk of abuse or neglect, child concern report and neglect.

Clause 78 – Dictionary, definition of *significant harm*

This clause omits section 341 and substitutes with section 344.