

WORKING WITH CARE AND PROTECTION

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The objects of this Act include—

- (a) providing for, and promoting, the wellbeing, care and protection of children and young people in a way that—
 - (i) recognises their right to grow in a safe and stable environment; and
 - (ii) takes into account the responsibilities of parents, families, the community and the whole of government for them; and
- (b) ensuring that children and young people are provided with a safe and nurturing environment by organisations and people who, directly or indirectly, provide for their wellbeing, care and protection; and
- (c) preventing abuse and neglect of children and young people by providing whole of government assistance to children and young people, their parents and families, the community, and others who have responsibility for them; and
- (d) ensuring that Aboriginal and Torres Strait Islander people are included and participate in—
 - (i) providing for, and promoting, the wellbeing, care and protection of Aboriginal and Torres Strait Islander children and young people; and
 - (ii) preventing the abuse and neglect of Aboriginal and Torres Strait Islander children and young people; and
 - (iii) rehabilitating and reintegrating Aboriginal and Torres Strait Islander young offenders; and
- (e) ensuring that services provided by, or for, government for the wellbeing, care and protection of children and young people—
 - (i) are centred on the needs of children and young people; and
 - (ii) are informed by processes which engage children and young people, wherever possible, and take their views and wishes into account; and
 - (iii) foster and promote the health, education, developmental needs, spirituality, self-respect, self-reliance and dignity of children and young people; and
 - (iv) respect the individual race, ethnicity, religion, disability, sexuality and culture of children and young people; and
- (f) ensuring that young offenders—
 - (i) receive positive support and opportunities to become rehabilitated and reintegrated community members; and
 - (ii) share responsibility for rehabilitation and reintegration with their parents and families, the community and the government in partnership; and
- (g) imposing standards that must be complied with for the delivery of services to children and young people; and
- (h) ensuring the protection of children and young people in employment.

8 Best interests of children and young people paramount consideration

(1) In making a decision under this Act 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.

(2) In making a decision under this Act otherwise than in relation to a particular child or young person, the decision-maker must consider the best interests of children and young people.

Note 1 For the criminal matters chapters (see s 91), there are further provisions about how a decision-maker decides what is in the best interests of a child or young person, see s 94 (Youth justice principles).

Note 2 For the care and protection chapters (see s 336), there are further provisions about how a decision-maker decides what is in the best interests of a child or young person (see s 349).

(3) To remove any doubt, a reference in any section of this Act to the best interests of a child or young person does not limit this section.

9 Principles applying to Act

(1) In making a decision under this Act in relation to a child or young person, a decision-maker must have regard to the following principles where relevant, except when it is, or would be, contrary to the best interests of a child or young person:

- (a) the child's or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced;
- (b) the child's or young person's education, training or lawful employment should be encouraged and continued without unnecessary interruption;
- (c) the child's or young person's age, maturity, developmental capacity, sex, background and other relevant characteristics should be considered;
- (d) delay in decision-making processes under the Act should be avoided because delay is likely to prejudice the child's or young person's wellbeing.

Note In addition to these general principles, the following principles also apply:

- (a) for the care and protection chapters—care and protection principles (see s 350);
 - (b) for ch 20—childcare services principles (see s 730).
- (2) A decision-maker exercising a function under this Act must, where practicable and appropriate, have qualifications, experience or skills suitable to apply the principles in subsection (1) in making decisions under the Act in relation to children and young people.

10 Aboriginal and Torres Strait Islander children and young people principle

In making a decision under this Act in relation to an Aboriginal or Torres Strait Islander child or young person, in addition to the matters in section 8 and section 9, the decision-maker must take into account the following:

- (a) the need for the child or young person to maintain a connection with the lifestyle, culture and traditions of the child's or young person's Aboriginal or Torres Strait Islander community;
- (b) submissions about the child or young person made by or on behalf of any Aboriginal or Torres Strait Islander people or organisations identified by the director-general as providing ongoing support services to the child or young person or the child's or young person's family;
- (c) the traditions and cultural values (including kinship rules) of Aboriginal and Torres Strait Islander people as identified by reference to the child's or young person's family and kinship relationships and the community with which the child or young person has the strongest affiliation.

Note For decisions about placement of an Aboriginal or Torres Strait Islander child or young person with an out-of-home carer, see s 513 (Priorities for placement with out-of-home carer—Aboriginal or Torres Strait Islander child or young person).

11 Who is a *child*?

In this Act:

child means a person who is under 12 years old.

12 Who is a *young person*?

In this Act:

young person means a person who is 12 years old or older, but not yet an adult.

Note ***Adult*** is defined in the [Legislation Act](#), dict, pt 1.

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

(1) For the care and protection chapters, in deciding what is in the best interests of a child or young person, a decision-maker must consider each of the following matters that are relevant to the child or young person:

- (a) the need to ensure that the child or young person is not at risk of abuse or neglect;
- (b) any views or wishes expressed by the child or young person;
- (c) the nature of the child's or young person's relationship with each parent and anyone else;
- (d) 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 has been living;
- (e) 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;
- (f) 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;
- (g) for an Aboriginal or Torres Strait Islander child or young person—that it is a high priority to protect and promote the child's or young person's cultural and spiritual identity and development by, wherever possible, maintaining and building the child's or young person's connections to family, community and culture;
- (h) that it is important for the child or young person to have settled, stable and permanent living arrangements;
 - (i) 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;
 - (j) 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;
- (k) any abuse or neglect of the child or young person, or a family member of the child or young person;
- (l) any court order that applies to the child or young person, or a family member of the child or young person.

(2) For the care and protection chapters, in deciding what is in the best interests of a child or young person, a decision-maker may also consider any other fact or circumstance the decision-maker considers relevant.

350 Care and protection principles

(1) In making a decision under the care and protection chapters in relation to a child or young person, a decision-maker must apply the following principles (the ***care and protection principles***) except when it is, or would be, contrary to the best interests of a child or young person—

- (a) the primary responsibility for providing care and protection for the child or young person lies with the child's or young person's parents and other family members;
- (b) priority must be given to supporting the child's or young person's parents and other family members to provide for the wellbeing, care and protection of the child or young person;
- (c) if the child or young person does not live with their family because of the operation of this Act—contact with their family, and significant people, must be encouraged, if practicable and appropriate;
- (d) if the child or young person is in need of care and protection and the child's or young person's parents and other family members are unwilling or unable to provide the child or young person with adequate care and protection (whether temporarily or permanently)—it is the responsibility of the government to share or take over their responsibility;
- (e) if the child or young person does not live with the child's or young person's parents because of the operation of this Act—the safety and wellbeing of the child are more important than the interests of the parents;
- (f) a court should make an order for a child or young person only if the court considers that making the order would be better for the child or young person than making no order at all.

(2) The care and protection principles must be applied in addition to the principles under section 9 (Principles applying to Act) and section 10 (Aboriginal and Torres Strait Islander children and young people principle).

Note The Maori children and young people principle may also apply if an order or proceeding is transferred to the ACT from New Zealand (see s 678).

351 Helping families understand care and protection procedures

(1) A decision-maker making a decision under the care and protection chapters in relation to a child or young person must endeavour to ensure that the relevant people for the decision—

(a) understand what the decision is going to be about; and

(b) understand the decision-making process; and

(c) know that the child or young person, and people with parental responsibility for the child or young person, may take part in the decision-making process and have their views and wishes heard; and

(d) are informed of, and understand, the decision.

Note 1 If a child or young person is the subject of a proceeding under this Act, the director-general must give the child or young person sufficient information about the proceeding, in language and a way that the child or young person can understand, to allow the child or young person to take part fully in the proceeding (see [Court Procedures Act 2004](#), s 74A (Participation of children and young people in proceedings)).

Note 2 If the decision-maker is a court, the court must also endeavour to ensure that the child or young person, and any other party present at the hearing of the proceeding, understands the nature and purpose of the proceeding and any orders and knows of their appeal rights (see [Court Procedures Act 2004](#), s 74B (Court must ensure children and young people etc understand proceedings)).

(2) The decision-maker must give the relevant people for the decision sufficient information about the decision-making process, in language and a way that they can understand, to allow the child or young person, and people with parental responsibility for the child or young person to take part fully in the decision-making process.

(3) In this section:

relevant people, for a decision in relation to a child or young person, means—

(a) the child or young person or, if the child is represented, the representative of the child or young person; and

Note Representation of children and young people is dealt with in the [Court Procedures Act 2004](#), pt 7A (Procedural provisions—proceedings involving children).

(b) each person with parental responsibility for the child or young person.

Note 1 A child or young person has a right to take part in a proceeding under this Act in relation to the child or young person (see [Court Procedures Act 2004](#), s 74A (Participation of children and young people in proceedings)).

Note 2 A court must also take steps to ensure that the child or young person and other people understand proceedings etc (see [Court Procedures Act 2004](#), s 74B (Court must ensure children and young people etc understand proceedings)).

WHAT IS ABUSE & NEGLECT?

342 What is *abuse*?

In this Act:

abuse, of a child or young person, means—

- (a) physical abuse; or
- (b) sexual abuse; or
- (c) emotional abuse (including psychological abuse) if the child or young person has experienced the abuse or is experiencing the abuse in a way that has caused or is causing significant harm to their wellbeing or development; or
- (d) emotional abuse (including psychological abuse) if—
 - (i) the child or young person has seen or heard the physical, sexual or psychological abuse of a person with whom the child or young person has a domestic relationship, the exposure to which has caused or is causing significant harm to the wellbeing or development of the child or young person; or
 - (ii) if the child or young person has been put at risk of seeing or hearing abuse mentioned in subparagraph (i), the exposure to which would cause significant harm to the wellbeing or development of the child or young person.

343 What is *neglect*?

In this Act:

neglect, of a child or a young person, means a failure to provide the child or young person with a necessity of life if the failure has caused or is causing significant harm to the wellbeing or development of the child or young person.

Examples—necessities of life

- 1 food
- 2 shelter
- 3 clothing
- 4 health care treatment

344 When are children and young people *at risk of abuse or neglect*?

For the care and protection chapters, a child or young person is *at risk of abuse or neglect* if, on the balance of probabilities, there is a significant risk of the child or young person being abused or neglected.

Examples—when a child is at risk of abuse or neglect

1 Jane is 3 months old and the director-general has already received 5 reports about her. Jane's parents are long-term drug users and Jane was born with neonatal withdrawal syndrome. Jane's parents have agreed to work with the director-general to address their drug use. However, they have not actually made the changes they agreed to make. Jane's parents do not have contact with extended family and Jane is not regularly seen by any health practitioners or other community support people.

2 Michael is 7 years old and in the full-time care of his mother. He has never had any contact with his father. Michael's mother has a mental illness characterised by episodes of psychosis. When Michael's mother has been unwell, she has locked Michael and herself in the home for weeks at a time. Michael's mother attempted suicide by driving off a bridge with Michael in the car.

3 Tom is 9 years old and is in the sole care of his father. Since Tom was 6 years old, the director-general has received reports that Tom's father calls him derogatory names and yells at him, often in the presence of other people. Tom's school counsellor reports that Tom appears anxious, is fearful of loud noises in the school environment and regularly cries. Tom is assessed as being at risk of childhood depression by the school counsellor.

4 Amy is 13 years old and regularly goes missing from home to avoid the constant fighting between her mother and stepfather. Amy is engaging in indiscriminate sexual activity and regularly consumes alcohol and illicit drugs which she pays for with money received in exchange for sexual services. Amy has intentionally overdosed on medication 3 times and each overdose has required medical treatment. Amy's parents consider that she is now making her own choices and there is nothing they can do to help her.

345 When are children and young people *in need of care and protection*?

(1) For the care and protection chapters, a child or young person is *in need of care and protection* if—

(a) the child or young person—

(i) has been abused or neglected; or

(ii) is being abused or neglected; or

(iii) is at risk of abuse or neglect; and

(b) no-one with parental responsibility for the child or young person is willing and able to protect the child or young person from the abuse or neglect or the risk of abuse or neglect.

(2) Without limiting subsection (1), a child or young person is in need of care and protection if—

(a) there is a serious or persistent conflict between the child or young person and the people with parental responsibility for the child or young person (other than the director-general) to the extent that the care arrangements for the child or young person are, or are likely to be, seriously disrupted; or

(b) the people with parental responsibility for the child or young person are dead, have abandoned the child or young person or cannot be found after reasonable inquiry; or

(c) the people with parental responsibility for the child or young person are sexually or financially exploiting the child or young person or not willing and able to keep the child or young person from being sexually or financially exploited.

352 Views and wishes of children and young people

(1) A decision-maker making a decision in relation to a child or young person under the care and protection chapters must give the child or young person a reasonable opportunity to express their views and wishes personally to the decision-maker, unless the decision-maker is satisfied that the child or young person does not have sufficient developmental capacity to express their views or wishes.

(2) A decision-maker may find out the views and wishes of a child or young person—

(a) by having regard to—

(i) anything said personally by the child or young person to the decision-maker; or

(ii) anything said by a representative of the child or young person about the child's or young person's views or wishes; or

Note Representation of children and young people is dealt with in the [Court Procedures Act 2004](#), pt 7A (Procedural provisions—proceedings involving children).

(iii) anything about the child's or young person's views or wishes contained in a report given to the decision-maker; or

(b) in any other way the decision-maker considers appropriate.

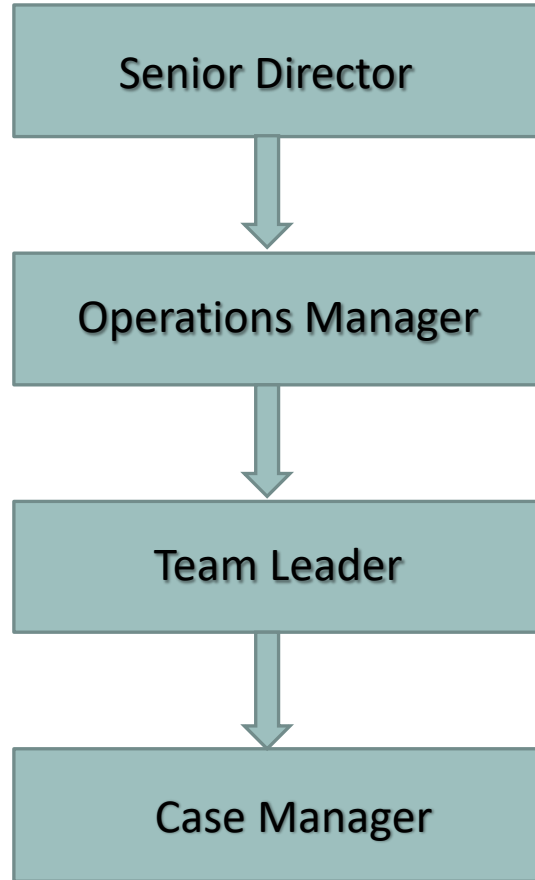
(3) A decision-maker must not require a child or young person to express the child's or young person's views or wishes about anything.

CYPS DECISION MAKING PROCESSES

Child and Youth Protection Services (CYPS)

- Branch of Community Services Directorate.
- Director-General, Community Services Directorate is responsible for administration of *Children and Young People Act 2008* pursuant to *Administrative Arrangements 2022 (No 2)*.
- Solicitor/Client relationship still exists.
- CYPS Legal Services' client is the Territory, more specifically the case managers as delegates of the Director-General.
- Capacity to seek instructions very different to private individuals. Nature of decision will dictate who makes decisions and level of consultation.
- Decisions regarding exercise of parental responsibility vs decisions about litigation and orders sought. Will ultimately be based on delegations.
- Distinction between casework and litigation.
- ARC (Application Review Committee) makes recommendations regarding the orders to be sought for each individual child. Sits weekly and comprises up to 5 senior staff. Considers all matters which may impact on the legal status/situation for a child.
- Intersection with Youth Justice matters.

CYPS Frontline



CYPS Legal Services
CYPSPLegalServices@act.gov.au
(02) 6205 8025

- Representation: Childrens Court, FCFCOA, ACT Court of Appeal, ACT Supreme Court, Coroners Court, Magistrates Court, ACAT etc.
- Advice: statutory interpretation, information sharing, common law principles, evidence, criminal law & procedure...

CARE AND PROTECTION

VS

FAMILY LAW

Public Law

- Statutory child welfare official
- Parent willing and able? - Parenting Capacity
- Risk assessment different to family law
- Terms of Orders – contact etc

Private Law

- Between individuals
- Risk assessment
- Detailed and specific orders

360 Director-general to act on child concern report

- (1) This section applies if the director-general receives a child concern report about a child or young person.
- (2) The director-general must—
 - (a) consider the report; and
 - (b) carry out an initial assessment of the matters raised in the report to decide if the child or young person may be in need of care and protection; and
 - (c) take the action that the director-general considers appropriate in relation to the initial assessment.
- (3) To carry out an initial assessment of the matters raised in the report, the director-general may take reasonable steps to obtain further information about the matters.

Example—reasonable steps

a home visit to interview family members

- (4) Without limiting subsection (2) (c), the director-general may do any of the following:
 - (a) give advice to the person who made the child concern report about appropriate assistance that the person may consider to protect the child or young person;

Example

contact details for support services

- (b) seek information from an information sharing entity to decide the most appropriate response to the child concern report;
- (c) refer a matter raised in the report to the chief police officer if the director-general suspects on reasonable grounds that it relates to a criminal offence;
- (d) refer the matters raised in the report to a government or community-based service for advice and support services for the child or young person and, if appropriate, the child's or young person's family members;
- (e) provide or arrange support services for the child or young person and, if appropriate, the child's or young person's family members;
- (f) arrange a family group conference in relation to the child or young person;

Note Family group conferences are dealt with in ch 3 and ch 12.

- (g) assist a family member or a significant person to care for the child or young person;

Note Care and protection orders are dealt with in ch 14.

- (h) take no action.

(5) However, if the director-general suspects on reasonable grounds that the child or young person may be in need of care and protection the director-general must decide that the child concern report is a child protection report.

- (6) In this section:

information sharing entity—see section 859.

366 What is a *care and protection appraisal*?

In the care and protection chapters:

care and protection appraisal, of a child or young person—

- (a) means an appraisal of the child's or young person's circumstances; and
- (b) may, but need not, include the director-general carrying out 1 or more of the following activities:
 - (i) a visual examination of the child or young person or someone else;
 - (ii) an interview of the child or young person or someone else;
 - (iii) giving information to someone;
 - (iv) asking someone to give information to the director-general;
 - (v) making inquiries about the child or young person or someone else;
 - (vi) arranging for a care and protection assessment of the child or young person or someone else;
 - (vii) asking the child or young person or someone else to attend a stated place at a stated time for the appraisal or a care and protection assessment;
 - (viii) asking the child or young person or someone else to comply with any arrangement made by the director-general for the appraisal or a care and protection assessment.

367 What is a *care and protection assessment*?

In the care and protection chapters:

care and protection assessment of a person—

(a) means any of the following carried out by an authorised assessor for section 438 (Care and protection assessment—authorisation of assessors):

- (i) a medical examination or test of the person;
- (ii) a dental examination or test of the person;
- (iii) a social assessment of the person;
- (iv) a paediatric or developmental assessment of the person;
- (v) a psychological examination or test of the person;
- (vi) a psychiatric examination or test of the person;
- (vii) if the person is a parent or other person with parental responsibility—an assessment of the person’s parenting capacity; but

(b) does not include an assessment, examination or test that—

- (i) involves surgery; or
- (ii) is prescribed by regulation.

Note A person authorised under s 438 (Care and protection assessment—authorisation of assessors) must be suitably qualified for the assessment (see s 438 (2)).

403 When are children and young people *in need of emergency care and protection*?

For the care and protection chapters, a child or young person is *in need of emergency care and protection* if the child or young person—

- (a) is in immediate need of care and protection; or
- (b) is likely to be in immediate need of care and protection if emergency action is not taken.

Note *In need of care and protection* is defined in s 345.

405 What is *emergency action*?

In this Act:

emergency action, taken by the director-general or a police officer, for a child or young person—

- (a) means transferring daily care responsibility for the child or young person to the director-general or police officer; and
- (b) includes arranging for the child's or young person's care and protection by keeping the child or young person at a place or by moving the child or young person from a place to another place.

Note An authorised person or police officer may at any time enter premises if the authorised person or police officer believes on reasonable grounds that a child or young person at the premises is in need of emergency care and protection and the purpose of the entry is to take emergency action for the child or young person (including using force that is reasonable and necessary to obtain entry to safeguard the wellbeing of the child or young person) (see s 814).

424 Care and protection order—application by director-general

425 Care and protection order—application by others

428 Care and protection order—cross-application for different provisions

430 Care and protection order—court to consider application and cross-application promptly (5 Working Days)

433 Interim matters—interim care and protection orders

(1) The Childrens Court may, on application or on its own initiative, make an order (an *interim care and protection order*) for a child or young person if—

- (a) an application for a care and protection order for the child or young person has been made to the court but not finally decided; and
- (b) the court believes on reasonable grounds that the child or young person is in need of care and protection or would be in need of care and protection if the interim care and protection order was not made.

(2) The Childrens Court must include in an interim care and protection order any of the following provisions that the Childrens Court is satisfied is in the best interests of the child or young person:

- (a) a contact provision;
- (b) a drug use provision;
- (c) an ACAT mental health provision;
- (d) a residence provision;
- (e) a supervision provision;
- (f) a parental responsibility provision;
- (g) a specific issues provision.

(3) The length of an interim care and protection order must be stated in the order and the order must end on, or before, the day the application or cross application is decided.

(4) Before making an interim care and protection order for a child or young person, the Childrens Court may require the director-general to give the court a care plan for the child or young person for the period of the interim order.

Note Care plans are dealt with in s 455.

435 Interim care and protection orders—revocation or amendment

436 What is an assessment order?

437 Care and protection assessment—terms of reference for care and protection assessment

448 Assessment orders—criteria for making

449 Assessment orders—length

450 Assessment orders—extension application

455 What is a *care plan*?

In this Act:

care plan, for a child or young person who is, or is proposed to be, subject to a care and protection order or interim care and protection order—

- (a) means a written plan for meeting the child's or young person's protection or care needs; and
- (b) may include proposals for the purposes of case planning about the following:
 - (i) who the director-general considers would be the best person to have a stated aspect of parental responsibility for the child or young person;
 - (ii) for an Aboriginal or Torres Strait Islander child or young person—the preservation and enhancement of the identity of the child or young person as an Aboriginal or Torres Strait Islander person;
 - (iii) if the director-general proposes to place the child or young person in kinship care or foster care—the kind of placement that will be sought or provided for the child or young person including any interim placement arrangements;
- (iv) how the director-general proposes to ensure the living arrangements for the child or young person are as stable as possible;
- (v) contact arrangements for the child or young person with family members and significant people as appropriate;
- (vi) services to be provided for the child or young person.

Note Placement of children and young people in kinship care and foster care is dealt with in div 15.4.1.

464 Care and protection order—criteria for making

- (1) The Childrens Court may make a care and protection order for a child or young person if the court—
 - (a) is satisfied that the child or young person is in need of care and protection; and
 - (b) has considered the care plan prepared by the director-general for the child or young person; and
 - (c) is satisfied that—
 - (i) the provisions included in the order are necessary to ensure the care and protection of the child or young person; and
 - (ii) making the order is in the best interests of the child or young person.
 - (2) The Childrens Court must include in a care and protection order, on application or its own initiative, any of the following provisions that the Childrens Court is satisfied is in the best interests of the child or young person:
 - (a) a contact provision;
 - (b) a drug use provision;
 - (c) an enduring parental responsibility provision;
 - (d) an ACAT mental health provision;
 - (e) a residence provision;
 - (f) a short-term parental responsibility provision;
 - (g) a long-term parental responsibility provision;
 - (h) a specific issues provision;
 - (i) a supervision provision.
 - (3) However, the Childrens Court must not include in a care and protection order an enduring parental responsibility provision unless satisfied that the criteria mentioned in section 482 (Enduring parental responsibility provision—criteria for making) are met.
 - (4) Unless the Childrens Court orders otherwise, the director-general must give a copy of a care plan provided for a proceeding to each other party to the proceeding.
 - (5) The Childrens Court—
 - (a) must not merely accept the admission of the parties to the proceeding that the child or young person is in need of care and protection; but
 - (b) must satisfy itself that the child or young person is in need of care and protection.
- Note 1* In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).
- Note 2* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).
- (6) The Childrens Court may include a provision in a care and protection order on application by a party to the proceeding or on its own initiative.
 - (7) If the Childrens Court intends someone to make decisions about where the child or young person lives, the court must include a residence provision in the care and protection order.

470 Care and protection order—court to consider extension, amendment and revocation applications promptly

471 Care and protection order—criteria for extensions and amendments

- (1) The Childrens Court may, by order, extend or amend a provision in a care and protection order if satisfied that extending or amending the order as proposed is in the best interests of the child or young person.
- (2) The court may extend a provision in a care and protection order for as long as the court considers appropriate.
- (3) The court may amend a provision in a care and protection order in any way the court considers appropriate, including—
 - (a) substituting a provision with a different provision; or
 - (b) including an additional provision.

Note 1 The length of a care and protection order may be extended if the Childrens Court makes an annual review report order about an annual review report for a child or young person who is subject to a care and protection order (see pt 14.3).

Note 2 In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).

Note 3 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

- (4) This section is subject to section 477 (Short-term parental responsibility provision—extension).

472 Care and protection order—criteria for revocation

- (1) The Childrens Court may, by order, revoke a care and protection order, or a provision in a care and protection order, if satisfied that—
 - (a) the child or young person would not be in need of care and protection if the order, or the provision in the order, was revoked; or
 - (b) the order cannot be administered effectively because of the child or young person’s persistent refusal to comply with the residence provision of the order; or
 - (c) it is otherwise in the best interests of the child or young person to revoke the order or the provision in the order.

Note In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).

- (2) Before revoking a care and protection order, or a provision in a care and protection order, the Childrens Court must consider the following matters:
 - (a) the age and maturity of the child or young person;
 - (b) the views and wishes of the child or young person;
 - (c) the living arrangements of the child or young person;
 - (d) the risk to the child or young person of harm if the order, or the provision of the order, is revoked.

Other sections worth noting

508 Who is an *out-of-home carer*?

In this Act:

out-of-home carer, for a child or young person, means—

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

Note *Kinship carer*—see s 516 (2).

Foster carer—see s 518 (2).

Residential care service—see s 520 (2).

513 Priorities for placement with out-of-home carer—Aboriginal or Torres Strait Islander child or young person

(1) If the director-general is placing an Aboriginal or Torres Strait Islander child or young person with an out-of-home carer under section 512, the director-general must place the child or young person with the first of the options mentioned in subsection (2) that—

- (a) is available; and
- (b) to which the child or young person does not object; and
- (c) is consistent with any Aboriginal or Torres Strait Islander cultural plan in force for the child or young person.

(2) The director-general may place an Aboriginal or Torres Strait Islander child or young person with any of the following out-of-home carers:

- (a) a kinship carer;
- (b) a foster carer who is a member of the child's or young person's Aboriginal or Torres Strait Islander community in a relationship of responsibility for the child or young person according to local custom and practice;
- (c) a foster carer who is a member of the child's or young person's community;
- (d) an Aboriginal or Torres Strait Islander foster carer;
- (e) a non-Aboriginal or Torres Strait Islander foster carer who—
 - (i) the director-general believes on reasonable grounds is sensitive to the child's or young person's needs; and
 - (ii) the director-general believes on reasonable grounds is capable of promoting the child's or young person's ongoing contact with the child's or young person's Aboriginal or Torres Strait Islander family, community and culture; and
 - (iii) if family reunion or continuing contact with the child's or young person's Aboriginal or Torres Strait Islander family, community or culture is a consideration in the placement—lives near the child's or young person's Aboriginal or Torres Strait Islander family or community.

(3) In this section:

Aboriginal or Torres Strait Islander cultural plan, for an Aboriginal or Torres Strait Islander child or young person, means a care plan developed for the child or young person by the director-general under section 455 (*What is a care plan?*) that includes proposals for the preservation and enhancement of the identity of the child or young person as an Aboriginal or Torres Strait Islander person.

- Applications – Section 695-699
- Parties – Section 700-710
- Witnesses and Evidence –
 - Procedures to hearings to be informal – Section 712
 - Court not bound by rules of evidence – Section 716
- Orders-Statements of Reason – Section 722
- Service including dispensing with service – Section 723
- Costs – Section 724-727- no limitation in 727(3)

What happens if I disagree with a decision CYPS has made?

- Contact Case manager
- Ask for Decision-Making Statement
- Complaints and Client Services team: CSDCYFComplaints@act.gov.au or call 6207 5294
- Only someone directly involved and affected by a decision can request a Decision Making Statement or decision review. This includes a child, young person, birth parent or carer.
- CYPS must make all reasonable efforts to find a solution with you. This includes providing you with a Decision Making Statement which will explain:
 - the decision
 - who made the decision
 - what information was considered
 - how the decision is in your child's best interests.
- CYPS must provide you with a Decision Making statement within 7 days of your request.
- You will also be offered a meeting with the CYPS Case Manager, a Team Leader, Operations Manager or Senior Manager to:
 - hear the reasons why a decision was made
 - have the opportunity to provide new information
 - challenge or explain the information.
 - You are encouraged to bring a support person to this meeting.

When a meeting is being organised, you have the right to:

- Tell CYPS what time and place work best for you and your support person.
- Ask CYPS to provide information in writing if you do not want to have a face-to-face meeting.
- CYPS must meet with you within 7 days after providing a Decision Making Statement.

- If you still disagree with the decision after reading the Decision Review Statement and meeting with CYPS, you can ask for a review of the decision. A decision review means that a decision will be reviewed by senior officers within CYPS and the Community Services Directorate. The review looks at the information closely to decide if a decision was correct or needs to be changed. You will be able to share your perspective during a decision review. The original decision makers will not be the people reviewing the decision.

- SUMMARY: Two stages to a decision review:
 - 1. Senior Officer within CYPS will review the decision. This person will not have been involved in the original decision and will be unbiased. Decision to be reviewed within 30 days.
 - 2. If you are still unhappy after this first review, the decision may be reviewed by a Decision Review Panel.

GROUNDS FOR REVIEW OF DECISION

1. The decision made by CYPS was based on an error of law, fact or policy
2. The decision was based on incomplete information
3. The decision maker has incorrectly interpreted the information; and/or
4. New information exists that was not available at the time the decision was originally made

LEGISLATIVE REFORM & FUTURE DEVELOPMENTS

- **Review of Children & Young People Act**
- **External Review of Decisions by ACAT**

QUESTIONS....?

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