

Overview of Key Changes Children and Young People Act 2008

Key Change	Refer to
Preliminary (Chapter 1)	
The best interests principle is enshrined as the paramount consideration for persons making decisions or taking action under the Act. The best interests principle was displaced as a paramount consideration for decisions in relation to young offenders under the 1999 Act	Chapter 1, section 8
Revised principles emphasise individual consideration of a child or young person's age, maturity, developmental capacity, sex, background and other relevant characteristics	Chapter 1, section 9
New requirement that decision-makers exercising functions under the Act have qualifications, experience or skills to apply the principles, where practicable and appropriate	Chapter 1, section 9(2)
New definitions of family member and significant person	Chapter 1, sections 13 and 14
New terms to describe daily care responsibility and long-term care responsibility	Chapter 1, sections 19 and 20
Administration (Chapter 2)	
New power allowing the Chief Executive to make instructions for administrative functions being exercised under the new Act	Chapter 2, section 23
New power for Minister to give written directions to the Chief Executive about the exercise of functions under the new Act	Chapter 2, section 24
Extends the power of the Chief Executive to request assistance, facilities or services from non-government or private schools and school related institutions	Chapter 2, section 25
Revised membership for Children and Youth Services Council (formerly the Childrens Services Council in the 1999 Act)	Chapter 2, section 29
A new framework for the referral of a complaint by the Official Visitor to an investigative entity and resolution of a complaint by the Official Visitor with the operating entity for the place	Chapter 2, part 2.3
A new power for the Minister to make guidelines for complaints handling by the Official Visitor	Chapter 2, section 43
An expanded suitability test for people providing services or exercising functions under the Act	Chapter 2, section 65
A new ongoing duty for suitable entities to report certain changes to suitability information	Chapter 2, section 70
An expanded family group conferencing model to enable a family group conference to be arranged to promote and support the wellbeing of any child or young person and not only those who may be in need of care and protection	Chapter 3, section 80
New mechanisms that strengthen the participation of children and young people in family group conferences, particularly those under school leaving age	Chapter 3, sections 83 and 88
Youth Justice (Chapters 4 to 9)	
Revised youth justice principles to give greater recognition to involving children and young people and Aboriginal and Torres Strait Islander communities in decision making, timely access to legal assistance and expeditious legal proceedings, ensuring detention is used only as a measure of last resort and for the shortest appropriate period of time, and promoting the young offender's rehabilitation, while balancing the rights of victims and the community's interests	Chapter 4, section 94
New definitions of young detainee and youth detention officer	Chapter 4, sections 95 and 96
New provisions for escorts of children and young people in custody between places in the Territory, for example, between Courts and the detention place	Chapter 5, Division 5.1.1 and 5.1.2
New provisions for transfers within the ACT of young detainees,	Chapter 5, Division 5.1.3 and 5.1.4

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including to and from health facilities and from the detention place to a correctional centre after a young detainee becomes an adult	
Youth detention - New minimum standards and entitlements for young detainees, in addition to necessary measures to ensure safety, security and good order at the detention place, such as the use of force, segregation (including safe room segregation directions) and monitoring certain communications within the detention place	Chapter 6
New offences for prohibited things in a detention place	Chapter 6, section 192 and 230
New requirement that adults who work in the detention place to report threats to security and good order	Chapter 6, section 193
New provisions for young detainees who are parents to continue caring for or having contact with their young child	Chapter 6, section 234
New provisions enabling specially trained dogs to be used during any searches authorised by the Act	Chapter 7, section 249
New powers to conduct scanning, frisk or ordinary searches of persons who work at or visit the detention place	Chapter 7, part 7.6
A new framework for responding to behaviour breaches by young detainees in the detention place	Chapters 8 and 9
Provides a new sentencing methodology and includes amendments that address the specific needs and interests of children and young people in criminal proceedings	Schedule 1
Care and Protection (Chapters 10 to 19)	
New definition of significant harm	Chapter 10, section 341
The test of what is in a child or young person's best interests for decisions made under the care and protection chapters includes a greater emphasis on stability for children and young people in out of home care through early decision-making for a safe, supportive and stable placement, and protecting and promoting the cultural and spiritual identity of Aboriginal or Torres Strait Islander children and young people through connections to family and community	Chapter 10, section 349
A new principle for the care and protection chapters to emphasise that the safety and wellbeing of children and young people who have been removed from their parents is paramount over the interests of their parents	Chapter 10, section 350(e)
A new principle for decision-makers making a decision under the care and protection chapters to address how decision-makers inform themselves of views expressed by children and young people	Chapter 10, section 352
New concepts – now a child concern report and a child protection report	Chapter 11, section 353
Threshold changed for voluntary reporting to a person's suspicion or belief that a child or young person is being abused or neglected or is at risk of abuse or neglect. Under the 1999 Act, the threshold for reporting was that reporters believed a child or young person to be in need of care and protection.	Chapter 11, section 354
A new exception to the requirement to report if the mandated reporter reasonably believes that the child or young person has experienced, or is experiencing, non-accidental physical injury caused by another child or young person and the subject child or young person has a person with parental responsibility who is willing and able to protect them from further injury	Chapter 11, section 357
New requirement for the Chief Executive to undertake an initial assessment of matters raised in a child concern report to assess whether the child or young person may be in need of care and protection and take action considered appropriate in response to the report	Chapter 11, section 360

Key Change	Refer to
New powers allowing prenatal information to be shared between the Chief Executive and prenatal information sharing entities in certain circumstances where the consent of the pregnant woman has been sought, but not obtained	Chapter 11, section 362(10)
New powers for the Chief Executive to undertake an appraisal involving a visual examination or interview of a child or young person in certain limited circumstances	Chapter 11, sections 368 and 371
Introduces appraisal orders	Chapter 11, division 11.2.3
New concept of a child or young person in need of emergency therapeutic protection	Chapter 13, section 404
New procedures in order to streamline the process for arranging assessments through the Chief Executive deciding terms of reference for the assessment and arranging for an authorised assessor to undertake the assessment, unless otherwise ordered by the Court	Chapter 14, sections 437 and 438
New criteria for the making of an assessment order to ensure that children and young people are not subjected to repeated assessments that are not in their best interests	Chapter 14, section 448
In order to improve stability for children and young people, there are new provisions allowing the Chief Executive to include a proposal in a care plan about how the Chief Executive proposes to ensure the living arrangements for the child or young person are as stable as possible over the longer term in a safe, nurturing and secure environment	Chapter 14, sections 455 and 456
Introduces proposals in care plans which address planning and services for when a child or young person leaves out of home care, for example, to transition to independent living arrangements when approaching or attaining adulthood	Chapter 14, section 455(vii)
For children and young people who are Aboriginal or Torres Strait Islander, introduces proposals in care plans that address the preservation and enhancement of the identity of the child or young person as an Aboriginal or Torres Strait Islander person	Chapter 14, sections 455(ii) and 457(iv)
New provisions to allow the Childrens Court to make interim and final DVPO protection orders for children and young people who are exposed to domestic violence in their home when care and protection proceedings are also before the Court for the child or young person but not yet finally decided	Chapter 14, sections 459 and 460
New framework of care and protection orders with provisions	Chapter 14, section 464
Introduces drug use provisions in care and protection orders	Chapter 14, section 488
Introduces short-term parental responsibility provisions (not longer than 2 years) and long-term parental responsibility provisions (until the child or young person is 18 years). Includes a rebuttable presumption in favour of the child or young person being subject to a long-term parental responsibility provision after being in out of home care for the 2 year period of a short term parental responsibility provision when an application is made to extend the order	Chapter 14, divisions 14.6.2 and 14.6.3
New obligation for the Chief Executive to consult with the child or young person and other relevant people, such as the child or young person's carer, to discuss an annual review report prior to its finalisation	Chapter 14, section 496
Provides a new framework for the authorisation of foster carers, foster care services, and residential care services to provide care for children and young people and revocation of these authorisations in certain circumstances	Chapter 15, division 15.4.2
The term 'place of care' replaces the former terminology in the 1999 Act of 'shelter' and enables the Minister to approve places of care for the placement of children and young people under the	Chapter 15, section 525

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care and protection chapters	
Introduces out-of-home care standards	Chapter 15, section 525(1) and Chapter 26 section 887
New requirement for personal history information for children and young people in out-of-home care to be kept by foster carers, foster care services and residential care services and for this information to be given to the child or young person where it is in their best interests	Chapter 15, division 15.4.3
New criteria for the making of therapeutic protection orders, requires regular reviews of any orders in force by the Chief Executive and sets an absolute upper limit of 6 months for extensions of orders	Chapter 16, section 549 (criteria), division 16.2.5 (regular review) and section 562 (6 month limit)
A revised search and seizure scheme for children and young people in therapeutic protection and authorises the use of force in certain limited circumstances	Chapter 16, division 16.3.4 (use of force) and division 16.3.5 (search)
New powers for the Minister to declare a place as a therapeutic protection place and allowing the Chief Executive to authorise an entity to be an operating entity for the place, including the power to suspend or revoke the authorisation	Chapter 16, division 16.4.1
Introduces therapeutic protection standards	Chapter 26, section 887
Introduces increased oversight arrangements of therapeutic protection	Chapter 16, part 16.4
A new object and criterion for the administrative and judicial interstate transfer of care and protection orders to recognise the desirability of orders relating to the care and protection of a child or young person having effect, and being enforced, in the jurisdiction where the child or young person lives	Chapter 17, sections 644 and 651
Childcare Services (Chapter 20)	
Childcare services standards replaces licence conditions	Chapter 20, section 749 Chapter 26, section 887
New requirements for issuing a temporary standards exemption and introduces maximum timeframes for their use.	Chapter 20, section 749
New requirement that compliance with standards will be assessed by the Chief Executive at a minimum of once during the period of a licence for each service	Chapter 20, section 774
New requirement on Chief Executive to report non-compliance with childcare service standards to people with parental responsibility	Chapter 20, section 760(3)
New requirement on Chief Executive to prepare a public report regarding compliance of services with the childcare services standards	Chapter 20, section 775
Employment of children and young people (Chapter 21)	
Provides for the establishment of standards aimed at protecting children and young people in employment	Chapter 21, section 792 Chapter 26, section 887
Includes a new definition of light work to ensure that children and young people under school leaving age can engage in and benefit from light work that is deemed to be in their best interests	Chapter 21, section 793
New power for the Minister to declare high risk employment	Chapter 21, section 798
Establishes a framework to exempt a work experience program from the operation of the chapter if the program complies with work experience standards	Chapter 21, part 21.2 Chapter 26, section 887
Research involving children and young people (Chapter 22)	
New requirements for the Chief Executive to approve certain research projects	Chapter 22
Introduction of research standards	Chapter 26, section 887
Appeals and review (Chapter 24)	
Restrictions in the 1999 Act on the right to appeal decisions under the care and protection chapters have been removed and the Act	Chapter 24

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has been drafted to allow appeals in accordance with the rules of the <i>Magistrates Court Act 1930</i>	
Certain new administrative decisions being made by the Chief Executive under the Act are also reviewable by the Administrative Appeals Tribunal	Chapter 24, section 839
Information Secrecy and Sharing (Chapter 25)	
New powers for members of a child or young person's care team, who are persons and entities declared by the Chief Executive, to share information with each other relevant to the safety and wellbeing of the child or young person	Chapter 25, section 863
Expands the Chief Executive's powers to share information about a child or young person's health, safety and wellbeing between certain persons and agencies to facilitate collaborative, multi-agency responses.	Chapter 25, division 25.3.2
Expands power for the Chief Executive to give information to a person who is exercising a function under, or administering, a corresponding law of another State	Chapter 25, sections 859 and 860
Authorises out-of-home carers and foster care services to release certain information about a child or young person if this is necessary for the exercise of their care responsibilities for the child or young person	Chapter 25, section 854
Enables the Chief Executive to give researchers and authorised assessors certain information	Chapter 25, sections 855 and 856
New rules for information holders giving information to Courts and investigative entities	Chapter 25, part 25.4
Miscellaneous (Chapter 26)	
Allows for a person to make a confidential report of their suspicion that a provision of the Act is being contravened or has been contravened	Chapter 26, section 876
A new power for the Minister to make standards for the Act and a power for the Executive to make regulations for the Act	Chapter 26, sections 887 and 888