ACT Government

Children and Young People Amendment Bill 2 2024

Information paper

October 2023

Community Services Directorate

Contents

Minister's foreword

The ACT Government is reforming child, youth and family services to ensure we strengthen families and keep children and young people safe and connected.

The reform is focused on early support for children, young people and their families to facilitate positive life outcomes and ensure long-term wellbeing for our community.

Legislative change is a foundational element of this plan for reform and modernising the *Children and Young People Act 2008* is a priority action under *Next Steps for Our Kids 2022-2030* (Next Steps), the ACT's strategy for strengthening families and keeping children and young people safe.

This work commenced with the introduction of the *Children and Young People Amendment Bill 1 2023* (Bill 1) to the ACT Legislative Assembly in August 2023.

Subject to passage and commencement, Bill 1 will enable the ACT's child protection system to provide better and earlier support to families at risk. It will also start the process of fully embedding the Aboriginal and Torres Strait Islander Child Placement Principle into legislation, implementing a key recommendation of the *Our Booris, Our Way* review.

While we've made significant strides in reforming child and youth protection, there is much more to do. We need to be adaptable, incorporating emerging best practice from research and continuous quality improvement, as well as the invaluable insights of frontline workers, children, young people, birth families and carers. This ongoing evolution is essential to improve the sector and, most importantly, for the wellbeing of our children and young people.

This paper outlines a transformative stage of legislative change to the *Children and Young People Act 2008* (the CYP Act) to deliver on the Government's commitment to a modern, accessible legislative framework.

Some of these proposals will challenge deeply established practices in the ACT. The aim is to enhance collaboration between government and non-government services, streamline Childrens Court proceedings, use more nuanced orders to secure stability for children and strengthen oversight mechanisms. Delivering systemic change of this scale takes time, but equally this change cannot come soon enough for many.

I am grateful to those who have already shared their experience, perspectives and time to progressing child protection reform in the ACT through consultation on the delivery of child, youth and family services through to the detail of the CYP Act.

In particular, I acknowledge the *Our Booris, Our Way* Implementation Oversight Committee that has worked closely with Government to monitor and drive these much-needed reforms and to ensure we are working actively to address the over-representation of Aboriginal and Torres Strait Islander children and young people in the statutory child protection system.

I invite everyone with an interest to contribute their views about the proposed legislative amendments that will support the ACT Government's commitment to improving the lives of vulnerable children, young people and families in our community.

Rachel Stephen-Smith MP

Minister for Health, Minister for Families and Community Services
Minister for Aboriginal and Torres Strait Islander Affairs

Overview

Delivering legislative change is part of the ACT Government's commitment to align the *Children and Young People Act 2008* (the CYP Act) with *Next Steps for Our Kids 2022-2030* (Next Steps), the ACT's strategy for strengthening families and keeping children and young people safe.

Next Steps seeks to establish a more robust, equitable and efficient support system for children, young people, their families and carers. This revolves around placing the wellbeing of children and young people at the core of its mission, with their best interests taking precedence in every decision-making process.

It is imperative the framework supporting the ACT's vulnerable children, young people, families and carers be rooted in a robust, contemporary and effective legislative foundation and in November 2022, the ACT Government agreed to modernise the CYP Act over 2 stages. The first stage saw the introduction of the Children and Young People Amendment Bill 1 2023 (Bill 1) to the ACT Legislative Assembly in August this year.

This second stage of reform to the CYP Act builds on stage 1 and will deliver significant, tangible, positive change for children, young people, families, carers and workers who intersect with the child protection system.

This information paper introduces the second stage of this significant legislative reform, the Children and Young People Amendment Bill 2 2024 (Bill 2) and is underpinned by five core objectives:

- Promote shared responsibility for child protection through collaborative information sharing and reform of mandatory reporting laws.
- Empower children by strengthening their rights and voices in decision-making.
- Enable diversion from the statutory child protection system into earlier support services.
- Deliver more equitable, transparent and accountable decision-making processes.
- Address the over-representation of Aboriginal and Torres Strait Islander children, young people and families in the child protection system.

The draft Bill 2 has been influenced by several significant sources:

- The Royal Commission into Institutional Responses to Child Sexual Abuse
- Our Booris, Our Way review (2019)
- The SNAICC report
- The review into the system-level responses to family violence (the Glanfield Inquiry)
- The Health, Ageing, and Community Services (HACS) inquiry into child protection in the ACT

Importantly, in tailoring Bill 2 to best suit the needs of the people it serves, the ACT Government has placed substantial reliance on the invaluable insights of the ACT's community. This encompasses children, young people and families who have a firsthand experience of the system and were actively involved in the development of Next Steps.

Additionally, input was sought from government and non-government partners, service providers, peak bodies, legal entities and the Our Booris, Our Way Implementation Oversight Committee. Much of the feedback received through the consultation process for Bill 1 has also been integrated into Bill 2.

This paper outlines the planned scope of legislative reform to raise awareness of the scale of change to be delivered and to ensure impacted agencies and entities are supported to effectively implement the changes within their organisations.

As the concepts outlined in this paper progress through the engagement and drafting stages of Bill 2, they may undergo slight modifications based on feedback before the final Bill is introduced to the ACT Legislative Assembly. Nevertheless, they will remain aligned with the overarching intentions as presented here.

How to participate

The ACT Government is seeking information and your views on areas of the proposed Bill 2. This includes:

- Reviewing the detail of the proposed changes to ensure it delivers the intended purpose of the reforms.
- Understanding what impacted entities need to be supported to be ready to operationalise the changes, including consideration of implementation support and guidelines, or any specific opportunities or potential risks for your sector in executing these changes.

Formal consultation is open for six weeks, with opportunities to participate online via the ACT Government's YourSay Conversations platform at Changing the Children and Young People Act 2008. Targeted activities will also be undertaken to hear directly from different cohorts impacted by these changes.

We welcome your feedback on the proposals in this paper. You can choose to comment on specific areas of interest to you. If you wish your feedback to be kept confidential, please make it clear in your submission. Please note non-confidential submissions may be published or quoted in public documents.

Submissions to be submitted in writing via email: cypact@act.gov.au

Submissions close: 14 November 2023.

The legislative framework: guiding principles

1. The legislative framework: guiding principles

At its core, the transformation of the CYP Act centres on a shift towards principle-based legislation, emphasising the need for flexible, equitable, transparent and nuanced decision-making.

The existing legislative framework heavily relies on rules-based provisions, specifying detailed and rigid requirements, especially in the early stages of the child protection process. In comparison to similar legislation in other jurisdictions, it may be perceived as excessively prescriptive in early stages of the child protection process, while lacking detail in later stages.

Adopting a principle-based approach will allow practitioners to adapt to evolving societal norms and best practices in child protection, both now and in the future. This empowers decision-makers to consider individual circumstances, recognising the significant variability in situations and contexts. Rigid rules often fall short in accounting for the intricacies, complexities and cultural nuances unique to each family.

Bill 2 introduces five foundational principles informed by contemporary research and guided by the experiences shared by those within the system, partners in the non-government sector and the multidisciplinary workforce across government directorates. These principles will be prominently featured in the care and protection chapters of the CYP Act, serving as the bedrock for all child protection actions.

These principles pave the way for child protection to actively engage in case management, fostering improved and consistent interactions with children, young people and their families. This approach invites genuine participation, drawing from cultural wisdom and family knowledge whenever possible.

Families will be supported in their journey towards strength and unity, while children and young people entering the child protection system will be ensured the best possible outcomes. This includes providing stable and culturally appropriate care arrangements with a priority on preserving family connections.

While we embrace this fundamental shift, we still acknowledge the importance of complementing principles in legislation with relevant supporting rules for clear guidance on what actions are allowed or restricted. This balanced approach fosters consistency, transparency and accountability in decision-making, particularly in cases where more intrusive intervention in families' lives is needed. As outlined in this paper, the reform work is intended to strengthen and provide enhanced clarity in both aspects of the CYP Act.

The ‘best interests principle' will continue to be the paramount consideration in decision-making, with the remaining principles regarded in a non-hierarchical manner.

1.1. Best interests principle

The current list of factors defined in the CYP Act to be considered in child protection decision-making, while meant to determine the best interests of the child, is overly complex and extensive. This complexity can lead to confusion and divert attention from the primary focus on the child's wellbeing.

Bill 2 upholds the best interests of children and young people as the paramount consideration, elevating its prominence within the legislation to underscore its pivotal role in all decision-making processes. This

deliberate emphasis reinforces the commitment of the ACT Government to prioritise and safeguard the best interests of children and young people in every decision-making context.

Bill 2 streamlines the best interests principle by offering a concise set of considerations likely to be applicable in the majority of cases, while also introducing specific considerations for Aboriginal and Torres Strait Islander children to fully embed the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) in the CYP Act.

For Aboriginal and Torres Strait Islander children and young people, their ties to family, community, culture and country are of utmost importance and are integral factors in determining their best interests. Likewise, involving their family in decisions regarding their care arrangements is crucial.

In addition to assessing the child or young person's risk of significant harm, the new best interests considerations encompass:

- addressing the child or young person's various needs, including cultural, physical, emotional, intellectual and educational requirements
- prioritising the participation of the child or young person
- recognising and valuing the child or young person's identity
- ensuring permanency and stability in their living situation
- preserving family connections
- adhering to the ATSICPP
- considering other factors such as the child or young person's unique characteristics and specific circumstances.

1.2. Child and youth participation principle

The current CYP Act lays out important principles for child protection, emphasising the value of including the perspectives of children and young people in decision-making. However, this construct becomes problematic when their input is merely requested or sometimes assumed without genuine involvement in the process. This can lead to an oversight of the true depth of their views and lessen their ability to shape their own future. This points to a noticeable gap in the current legislation, underscoring the need for a more comprehensive framework that truly enables meaningful and effective participation of children and young people in decision-making processes.

In Next Steps, the ACT Government committed to a child protection system that ensures the voices of children, young people and families will be central in decision-making. It is fully accepted at a national and international level that participation requires direct involvement by children and young people in the decision-making process.

Bill 2 will introduce a separate principle of child and youth participation to ensure listening and responding to the voices and views of children and young people is enshrined in the CYP Act. This will more effectively fulfil our human rights obligations and respond directly to feedback from children and young people with lived experience of the system.

The new child and youth participation principle will be child-centric and outline that children and young people must be supported to understand and participate in decision-making processes. It will include what information the child or young person must be given to ensure they understand their circumstances and

the decision-making process. The principle will also provide additional guidance about how children and young people's views should be considered in decision-making.

The child and youth participation principle will be modelled on matters set out in other jurisdictions, such as section 10 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) and section 5E of the *Child Protection Act 1999* (Qld).

1.3. Family preservation principle

Incorporation of the family preservation principle contributes to nurturing and maintaining family cohesion, whether a child or young person lives with their biological family or in out of home care. This principle serves to reinforce and broaden existing legislative measures, encompassing 2 vital concepts: early support and the promotion of the least intrusive intervention.

The concept of early support emphasises the importance of working with high-risk families when problems first start. Early support is linked to achieving a least intrusive intervention, with an aim of preserving the family environment wherever possible, unless contrary to the child or young person's best interests.

For those children and young people who cannot live safely with their parents, the family preservation principle will recognise family relations must be preserved as far as practicable throughout the child or young person's time in care. Where circumstances allow, the care of a child or young person should be planned for as early as possible, using a model of family decision-making (see section 3.5).

The concept of least intrusive intervention will ensure children and young people are protected in ways that produce the least interference with family unity, while assuring the child or young person is safe. The most intrusive intervention would be to remove a child from the household. The least intrusive interventions are actions to keep the child in the home and would consist of the family's own resources within their own safety network. Child protection will be required to prioritise the least intrusive interventions that will keep the child or young person safe.

The introduction of the family preservation principle will align the ACT with the United Nations Convention on the Rights of the Child (UNCRC) and other jurisdictions such as New South Wales (NSW) and the Northern Territory.

1.4. Permanency and stability principle

The concept of permanency currently lacks clear definition. Through extensive community consultations in the development of its Next Steps reform, the ACT Government received resounding feedback emphasising the need for consistent support in maintaining connections between children and young people and their families.

This imperative is particularly pronounced for Aboriginal and Torres Strait Islander children and young people, as underscored in the *Our Booris, Our Way Final Report*, where the preservation of cultural ties is emphasised as essential for their overall wellbeing.

The introduction of the permanency and stability principle marks a significant shift. It mandates actions or orders must prioritise what best ensures the child or young person cultivates enduring, positive and nurturing relationships with individuals of significance in their life.

This includes not only parents, but also siblings, extended family members and carers. Moreover, it emphasises the need for stable living arrangements rooted in the child's community that comprehensively address their developmental, educational, emotional, health, intellectual and physical needs.

This principle will acknowledge relational, physical and legal aspects of permanency and prioritise:

- promptly restoring a child or young person to their parents and subsequently their biological family, provided it is deemed safe to do so
- ensuring a child or young person not in a safe home environment is placed in care with families capable of offering enduring relationships and a true sense of belonging
- maintaining meaningful connections for those children and young people who cannot live safely at home.

1.5. Administration of the Act principle

Currently, the CYP Act presents a diverse array of principles scattered across different sections. The introduction of a principle for administration of the CYP Act seeks to harmonise and consolidate these principles, creating a unified framework to guide those implementing the legislation.

Bill 2 proposes the incorporation of the administration principle to serve as a comprehensive guide for individuals tasked with executing the legislation. This principle outlines the expected behaviour for decision-making and the application of other principles and objectives within the CYP Act.

In essence, the principle will establish the benchmarks that must be met for child protection to operate at the highest standard, benefiting not only children and young people, but also their families and the broader community.

This initiative will bring the ACT in line with other Australian states and territories such as NSW, Queensland, Victoria, South Australia, Tasmania, and the Northern Territory, each of which has implemented specific administration principles in their respective child protection legislations. This alignment emphasises the commitment to maintaining a consistent and effective approach to child protection across jurisdictions.

1.6. Active efforts principle

The ACT Government is committed to reducing the over-representation of Aboriginal and Torres Strait Islander children and young people and has agreed to fully embed the intent of the ATSICPP into legislation.

Bill 2 will require child protection officials adhere to the principle of active efforts when carrying out functions under the CYP Act. Active efforts involve taking proactive steps to ensure the safety, welfare and wellbeing of children and young people, including endeavours to prevent their placement in out of home care.

In cases where a child or young person has been removed from their parents or families, active efforts will focus on either restoring them home, or if not feasible or in their best interests, placing them with family, kin or community.

The active efforts principle will ensure timely, purposeful and comprehensive measures are taken to preserve family connections throughout the child protection process. While rooted in the ATSICPP, active efforts will be applied in the consideration of *all* children and young people.

In legal proceedings, child protection will need to provide evidence of how they have actively worked to ensure the child's safety, wellbeing and family preservation. This evidence will be crucial in justifying the need for specific care orders. It ensures decisions made by the court are well-informed and based on a clear understanding of the efforts made to protect and support the child or young person.

Bill 2 will be modelled on the Principle of Active Efforts on section 9A of *Children and Young People (Care and Protection) Act 1998* (NSW) and will include a caveat that the best interests of children and young people will remain of paramount consideration.

Promoting a shared responsibility for child protection

2. Promoting a shared responsibility for child protection

'To see real and lasting change, the principle of collective responsibility for protecting children must extend to system stewardship. When diverse stakeholders learn and solve problems collaboratively, they can foster more effective actions and better outcomes for children and families than they could otherwise accomplish.' (Wise, 2017)

Child protection is a collective responsibility of the whole ACT Government and community with primary responsibility for rearing and supporting children lying with parents, families and communities. Government should only provide support where it is needed, either directly or through the funded non-government sector.

Central to this effort is building a culture of cooperation and partnership between government agencies, the non-government sector and communities and their representatives, especially Aboriginal and Torres Strait Islander peoples. This requires effective coordination, information sharing and referral processes to ensure families access the right services at the right time.

This Bill aligns with the introduction of the Child Safe Standards Scheme in the ACT. The Scheme, which will be located in the Human Rights Commission Act, will ensure more holistic and child-friendly approaches to safety and wellbeing in organisations by requiring they evidence:

- systems that protect and promote the rights, wellbeing and safety of children and young people and aim to prevent harm or abuse from occurring in the first place.
- continuous improvement to ensure child safety remains central to their operation and purpose.
- responding appropriately to all concerns, disclosures, allegations, and suspicions of harm, including child sexual abuse – whether through internal processes, reporting, or external oversight.

Bill 2 will also amend existing provisions for mandatory reporting and information sharing, and promote collaboration to ensure families can be more consistently connected with services outside of the statutory system. For those families that do require statutory support, Bill 2 will allow for more effective and targeted assessment of children and young people, alongside active case management and provisions that support delegation of powers to external organisations.

2.1. Information sharing

Information sharing plays a pivotal role when working with vulnerable children, young people and their families. It enables services to collaborate and coordinate tailored support, ensuring the individual needs of children, young people and their families are met appropriately.

Confirmed by many reviews, the Royal Commission into Institutional Responses to Child Sexual Abuse, and the ACT Government's consultations with relevant stakeholders, the current legislative framework for information sharing is outdated, complex and confusing. It has fostered a culture of risk aversion and hindered the prevention and reduction of risk to children and young people that can come from proactive information exchange and collaborative service provision.

Under the current provisions, child protection effectively acts as a clearing house for all information concerning the safety, welfare and wellbeing of a child or young person. Bill 2 inserts a new chapter into the CYP Act to enable greater exchange of information directly between agencies involved in the safety, welfare and wellbeing of those children or young people. This will balance issues of care and protection while at the same time guarding the confidentiality of that information.

The principles governing this new chapter make clear that firstly and wherever safe and practical, consent should be obtained before sharing information. Secondly, all agencies with responsibilities related to the safety, welfare and wellbeing of children and young people should be able to share information to promote that purpose and should work collaboratively with other agencies. Thirdly, the safety, welfare and wellbeing of the child or young person takes precedence over the protection of confidentiality or an individual's right to privacy when sharing information.

To simplify and add transparency and parity to how information is shared, the new model will collapse the categories of protected, sensitive and prenatal information (see section 2.3). All information will now be considered ‘protected information’ with a smaller subset, including prenatal information, considered ‘safety, welfare and wellbeing information’.

Under the proposed amendments, information sought by an agency must relate directly to that agency's work in relation to the safety, welfare and wellbeing of a particular child or young person or group of children or young people. In most circumstances, where there are inconsistencies between these provisions and other legislation governing privacy, the new chapter will take precedence. A prescribed agency will be required to comply with a request for information when it is ‘satisfied on reasonable grounds’ the information will assist the requesting agency for specific purposes: to undertake assessments, provide services or manage risk.

It is proposed a prescribed entity must not use or disclose personal information for a purpose other than the primary purpose for which it was collected, unless otherwise required or permitted under another act or law. A broad offence provision relating to unauthorised use and disclosure of information provides further safeguards.

In practice, equipped with more complete information, a prescribed agency will be better able to develop and coordinate early supports to vulnerable families, without the need for statutory intervention and will also know when to escalate concerns.

Bill 2 places a number of limitations on the obligation to provide information. For example, an agency is not required to disclose information if the agency believes it would prejudice a criminal investigation or coronial inquest, endanger a person's life or is not in the public interest. Importantly, the amendments allow for the protection of those providing information where it is given in good faith.

The information sharing model has been developed with regard to *Domestic Violence Agencies (Information Sharing) Amendment Bill 2023*, which aims to allow assessment and management of family violence risk to a child or young person. Both models will include guidelines to ensure practitioners consider the obligations of all stakeholders involved in the child or young person’s care and wellbeing.

Currently the CYP Act allows for the creation of discrete sets of information sharing entities based on their role in coordinating or delivering services to a specific child or family, known as ‘Care Teams’. These provisions function well to facilitate information sharing between tailored groups of family members and service providers, however the name lacks clarity in the intent of the provision.

The concept of these teams will be preserved but will be renamed as 'Information Sharing Teams'. These teams will empower specific agencies and individuals who may not be included in the list of designated agencies, to both receive and contribute information relevant to a particular child or young person.

A preliminary flowchart of the proposed information sharing model is attached at Appendix 1.

2.1.1 Disclosure of registration status of registered sex offenders

Currently, child protection faces a significant limitation in disclosing the registration status of registered sex offenders to non-offending parents and carers. This leaves vulnerable children potentially placed in environments where risks are present, unbeknown to those entrusted with their care.

Bill 2 seeks to rectify this gap by introducing a provision, modelled on section 42D of the *Child, Youth and Family Act 2005* (Vic). This provision will grant child protection the authority to inform non-offending parents and carers about the registration status of known sex offenders. This measure is designed to empower those responsible for a child's wellbeing with crucial information, enabling them to make informed decisions about their child's safety and take necessary precautions.

2.2. Mandatory reporting

Mandatory reporting is the backbone of our child protection system and the ACT Government is strengthening this spine to provide the right services and support at the right time for children, young people and their families.

Bill 2 creates the legislative foundation for important changes to child protection intake and reporting processes, as promised by the ACT Government's Next Steps reform.

All Australian jurisdictions have mandatory reporting laws. The list of mandated reporters ranges from persons in a limited number of occupations (Queensland) to a more extensive list (Victoria and Western Australia), to a very extensive list (the ACT, NSW, South Australia and Tasmania), through to every adult (the Northern Territory). Despite the ACT's position, it does not yet completely align with the recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse, which will be corrected in Bill 2. Furthermore, in comparison to other jurisdictions, the ACT has one of the most limited categories of mandatory reporting abuse types, with only sexual abuse and non-accidental physical injury listed.

Although many assessment processes make a distinction between abuse or maltreatment types, contemporary research demonstrates that children and young people who are abused or neglected are mostly maltreated in multiple ways. For example, the Australian Child Maltreatment Study (2023), found multi-type maltreatment was the norm for children and young people who have experienced any abuse or neglect. Furthermore, it found family related adversity factors, such as parental separation, family mental illness, family substance problems and poverty, doubled the risk of multi-type maltreatment.

To ensure child protection in the ACT is capturing those children and young people most in need of its services, and supported by research, the Royal Commission into Institutional Responses to Child Sexual Abuse recommendations and modernised legislation in other jurisdictions, Bill 2 proposes the following:

- An expansion of the mandatory reporting abuse types to children and young people who are at risk of significant harm due to:
    - physical abuse
    - sexual abuse

- emotional abuse
- exposure to domestic violence
- neglect.

- An expansion of the list of occupations subject to the mandatory reporting requirements, including out of home care and youth justice workers in line with the recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse.

To enhance collaboration and decision-making by multiple services working with the same family, and to foster a culture of information sharing, Bill 2 will:

- insert a provision that allows and supports conferral and information sharing with colleagues prior to making a mandated or voluntary report
- collapse and unify the offences relating to making false or misleading reports and reduce the penalties relating to this.

Reporting expansion: Addressing concerns

Expanding mandated abuse reporting is a pivotal advancement in safeguarding the wellbeing of vulnerable children and young people. Recognising abuse takes various forms, not confined to traditional notions of physical or sexual abuse, is a significant step towards ensuring no mistreatment goes unaddressed. This approach provides a safety net for those who may not fit within current definitions.

This expansion aligns with the deepening understanding of abuse dynamics, recognising emotional, psychological and neglectful forms of maltreatment can be equally detrimental to a young person's wellbeing. By enshrining the reporting of these forms of abuse as a legal obligation, we solidify our collective commitment to protecting the most vulnerable members of our community.

However, it's crucial to acknowledge concerns about potential surges in reporting and the strain it may place on services. Critics fear an expansive mandate could lead to an overwhelming influx of reports, potentially diverting attention from the most severe cases.

Additionally, for survivors of family violence and Aboriginal and Torres Strait Islander people, the prospect of mandatory reporting may discourage them from seeking or utilising support services.

While these concerns are valid, it's crucial to underscore that with sufficient training and improved screening processes, child protection agencies and child and family service partners can adapt to manage increased referrals and have greater cultural competency when assessing risk. Reporters will work transparently with families and be better equipped to discern cases best addressed within the community.

Equally, this training and new processes will highlight that by any individual seeking or accessing support and services, they are taking positive and proactive steps to create a safer environment and this will be perceived positively when assessing risk.

Striking a balance between enabling effective reporting and providing necessary support services is crucial. This involves investing in training, infrastructure, data analysis and ensuring reporting

systems are equipped to manage potential increases in reports. The ACT Government is dedicated to making these essential adjustments to create a more comprehensive and effective system to safeguard the most vulnerable members of our community.

This work is already underway, driven by the ACT Government's commitment to Child and Family Services reform through:

- Implementing Next Step for Our Kids 2022-2030: ACT strategy to strengthen families and keep children and young people safe (*Next Steps*).
- Improving child, youth and family services in the ACT.
- Re-designing the central intake and referral service for the Homelessness and Child, Youth and Families Support Services (CYFSP), and child protection (CPS) sectors.
- Raising the minimum age of criminal responsibility.

2.2.1 Penalties and exceptions

The ACT enforces the most substantial penalty nationwide for failure to make a mandatory report. This offense is reinforced by the failure-to-report provision for child sexual abuse outlined in section 66AA of the *Crimes Act 1900*.

While some jurisdictions have opted to remove mandatory reporting penalties due to concerns about high-volume, low-quality reports (see Table 1 for a comparison of maximum penalties and penalty units across Australian states and territories), it's essential to acknowledge penalties for failure to report offenses serve as a vital tool in motivating specific professional groups to report the gravest instances of child abuse.

Table 1 - Maximum penalties and penalty units: Australian states and territories

Jurisdiction	Child protection legislation at 09/2023
ACT	*Children and Young People Act 2008* s159(2). Maximum penalty of 50 penalty units ($8,000), 6 months' imprisonment, or both.
NSW	*Children and Young Persons (Care and Protection) Act 1998.* No penalty.
NT	*Care and Protection of Children Act 2007* s26. Maximum penalty of 200 penalty units ($35,200).
QLD	*Child Protection Act 1999*. No penalty.
SA	*Children and Young People (Safety) Act 2017* s31(1). Maximum penalty of $10,000.
TAS	*Children, Young Persons and Their Families Act 1997*. Maximum penalty of 20 penalty units ($3,460).
VIC	*Children, Youth and Families Act 2005.* Maximum penalty of 10 penalty units ($1,923).
WA	*Children and Community Services Act 2004*. Maximum penalty of $6,000.

Considering the proposed expansion of mandatory abuse types and the failure to report offense outlined in the *Crimes Act 1900*, Bill 2 suggests a modification in the penalty for failure to make a mandatory report. This would involve repealing the maximum 6-month imprisonment penalty while retaining a significant financial penalty.

Exceptions to the failure to report offence include a reasonable belief that someone else has made a report in relation to the same circumstances. In 2008, a new exception was added for not reporting in situations where a reporter had a reasonable belief physical injury was caused to a child by another child or young person, and a person with parental responsibility for the child is willing and able to protect the child from further injury.

Bill 2 will repeal the exception regarding physical abuse caused by another child or young person. This shift in focus aims to prioritise the evaluation of whether a child or young person is at risk of significant harm, rather than the specific circumstances surrounding an incident of physical harm.

2.3. Prenatal information sharing and assessments

Bill 2 provides significant legislative backing to the ACT Government's Next Steps promise of increased access to prenatal support for parents at risk of engagement with child protection. It will enable better prenatal support for high-risk families, allowing for consistent practice that facilitates family preservation that is restorative and responsive to trauma.

It will also align the ACT with equivalent legislation in NSW, Queensland, Western Australia, South Australia and Victoria that balances the pregnant person's right to privacy against the poor outcomes that occur when the risk to an unborn child, once born, cannot be assessed or mitigated through support or intervention prior to their birth.

Under the current CYP Acy, prenatal information is treated differently to other information in several ways, creating unnecessary complexity to the handling of information relating to the safety of a child after their birth. Existing provisions also make it difficult to provide support and planning to pregnant people where it is not safe or practical to obtain their consent.

In circumstances where effective prenatal assessment and support are not provided, a subsequent appraisal at birth is often extremely traumatic for the child's parents and family. This is because there is limited time and opportunity for a comprehensive assessment and planning with the parents and family for the care of a child after birth.

To resolve these issues, Bill 2 will integrate information sharing provisions for prenatal situations with that of all children and young people. This will remove the current barriers to sharing what has been known as prenatal information and bring the ACT in line with most jurisdictions.

Government and non-government services will be able to share information to coordinate assessments and supports for pregnant people and others who may be involved in caring for a child after its birth. The principle of seeking consent of a pregnant person wherever safe and practical, will also apply alongside the other information sharing safeguards.

2.4 Delegation of statutory powers

Bill 2 will finalise the outstanding provisions needed in legislation to fully operationalise the transfer of all children and young people on long-term care orders to out of home care agencies external to child protection. This was envisioned by the predecessor to the Next Steps reform – *A Step Up for Our Kids Strategy 2015-2020*.

Significantly, these provisions will also allow for the future delegation of powers to Aboriginal Community Controlled Organisations (ACCOs), allowing them to contribute to service design and delivery, as well as case manage and have decision-making powers with individual children and young people.

In doing so, the ACT Government takes another step towards its commitment to embed the ATSICPP and self-determination for Australia's first peoples.

The proposed amendments will:

- Collapse and unify delegation provisions into a single broad provision that allows child protection to delegate any function or power under the CYP Act (except the power to delegate).
- Ensure the most appropriate person to make decisions and act about or for a child or young person can be given the authority to do so. Clarity about who has the authority to decide what would be outlined within the specific instruments of delegation.
- Allow scope for the delegation of all statutory child protection functions to the chief executive of an ACCO that provides out of home care services.

Earlier support within the statutory system

3. Earlier support within the statutory system

The ACT Government is taking active steps to deliver an earlier response to concerns regarding children, young people and their families and carers at every step of the service spectrum. Early proactive action offers the best outcomes for children, young people and their families and must be prioritised.

Once the statutory threshold is met, Bill 2 establishes a framework that delivers more precise and proactive assessments of children and young people, complemented by active case management. By prioritising response in this early statutory intervention for those most likely to be at risk of significant harm, family unity and stability will be upheld whenever feasible.

The new legal framework facilitates streamlined assessments, yielding a deeper understanding of the needs of children, young people and their families. This in turn, empowers the service system to deliver supports that are more tailored, culturally sensitive and with the primary goal of ensuring children and young people can remain safely at home whenever possible.

Central to the vision of effective assessments and tailored support, is heightened engagement with immediate and extended families, carers and other crucial figures in the child or young person's life. These individuals will be provided genuine opportunities and actively encouraged to participate in family decision-making, contributing to solutions that are meaningful for their own circumstances.

The ACT Government's steadfast commitment to collaborating with families in a restorative and respectful manner is further exemplified in the Charter for Parents and Families involved with ACT child protection services (the Charter). Embedded in the CYP Act, this Charter establishes a shared understanding of how families and child protection workers can expect to interact and cooperate with one another.

3.1. Legislation delivered in practice: Introduction of Structured Decision Making® tools

The transformative change delivered through Bill 2 will be strengthened in practice by the introduction of Structured Decision Making®(SDM) tools, a suite of international child protection tools founded on evidence and research that will be designed specifically for the ACT context.

SDM tools will be used by mandated reporters and child protection practitioners to guide critical assessment decision-making points, improving the structure and consistency of these decisions. Mandated reporters will be assisted to decide whether a child or young person should be reported, and child protection will be assisted to assess referrals and determine those families most at need.

This integration of SDM tools will not only empower professionals with robust decision-making support, but also ensure a more standardised and informed approach to child protection processes.

3.2 Transforming the appraisal stage: A new approach

The existing CYP Act mandates a convoluted, multi-stage assessment process that places significant demands on practitioners' time, taking resourcing away from active support of families in order to meet administrative obligations. Further, its prescriptive nature hinders the possibility of improving assessment procedures through policy enhancements.

Bill 2 represents a transformative approach by redesigning the assessment process. It removes complex provisions governing the intake and appraisal stages, creating an opportunity to introduce SDM tools and enhance assessment procedures through policy refinements.

3.2.1 Appraisal agreement

Legislatively, an appraisal can only proceed with agreement from a parent, upon obtaining a court order, or when it is deemed in the best interests of the child or young person.

The Glanfield Inquiry, which received subsequent endorsement from the coronial inquest into the tragic passing of Bradyn Dillon, contended the mandate to seek parental agreement posed limitations on child protection's effectiveness in fulfilling its function. Specifically, Glanfield argued parental agreement *'allows an opportunity for a perpetrator parent to delay the appraisal while a court order is obtained or to negotiate their presence when their children are interviewed. This significantly decreases the possibility of a child disclosing abuse...'.*

Bill 2 will streamline the assessment phases by eliminating the current concept of an appraisal. This adjustment will pave the way for the introduction of SDM tools at this juncture in the assessment continuum.

Parental agreement will continue to be required for certain actions, notably for conducting interviews and visual examinations of the child or young person. However, exceptions will apply in cases where seeking such consent would be contrary to child or young person's best interests or could compromise an ongoing criminal investigation. For all other care and protection assessments, including medical examinations, parental consent or court order, parental agreement will remain a mandatory requirement.

3.3. Redefining appraisal and assessment orders: A fresh approach

In cases where parental agreement is withheld, the current legislation allows child protection to request an appraisal order from the court. However, obtaining appraisal orders swiftly, especially in urgent situations, poses significant challenges. There is also a concern court proceedings could be manipulated if a parent was involved in the abuse of their child. Notably, an application for an appraisal order hasn't been made since 2020.

To address this issue and ensure prompt assessments of children or young people when parental agreement is not obtained, a new set of provisions is proposed. These would empower the court to issue an order without parental notification, enabling interviews and medical examinations to proceed in high-risk circumstances without undue delays or potential interference with the child's wellbeing.

These orders would prioritise the best interests of the child or young person, weighing potential risks of significant harm against the potential value of information gleaned from the interview or assessment. This approach seeks to strike a balance between safeguarding the child's wellbeing and ensuring necessary evaluations can proceed quickly.

To enhance the accuracy and comprehensiveness of assessments for children, young people and their families, particularly in non-urgent cases, Bill 2 expands the availability of existing assessment orders to earlier stages of assessment. This adjustment aims to facilitate informed decision-making before situations reach a critical point necessitating removal.

Currently, assessment orders grant child protection the exclusive authority to organise court-ordered assessments, regardless of the initiating party. The proposed adjustment aims to empower the court to oversee the arrangements for court-ordered assessments. This change would provide opportunities for other involved parties, specifically the court itself, or the child's legal representative, to take the lead in organising these assessments, with assistance from child protection. By fostering a more collaborative and inclusive assessment process, this modification seeks to ensure fairness and thoroughness in evaluation.

3.4. Immediate and urgent medical examinations

Seeking parental consent for an urgent medical examination may not be in the best interests of the child or young person, especially in cases of alleged sexual or physical abuse where time is critical in obtaining medical attention and preserving crucial evidence.

Modelled on section 173 of the *Children and Young Person (Care and Protection) Act 1999* (NSW), Bill 2 empowers child protection to issue a notice to parents, mandating the immediate examination of the child or young person by a designated medical practitioner in circumstances of alleged sexual or physical abuse where consent to the medical examination has been refused.

This approach aims to strike a delicate balance between prioritising the immediate wellbeing of the child or young person and refraining from removing them from the care of their parents until a comprehensive assessment indicates they are not safe at home. It seeks to ensure timely and necessary medical attention while respecting family unity.

3.5 Family decision-making

The ACT Government is committed to providing universal access to family group conferencing as agreed to against Recommendation 4 of the *Our Booris, Our Way Final Report*[1].

However, the existing CYP Act is overly detailed and prescriptive, and it has not served as the foundation for a functional family group conferencing model for nearly a decade.

Despite the extensive guidance provided in the CYP Act, participation in and adherence to the family group conferencing program remains voluntary, rendering the model outlined in the CYP Act inactive.

Bill 2 aims to minimise the excessive prescription of the family group conferencing process, while fully engaging the participation of children, young people and their families as wise and active agents in making decisions and creating solutions for their own lives and circumstances.

A new concept of family decision-making will be inserted into the CYP Act and defined as:

> a meeting with an impartial facilitator involving family members, including the child, parents, extended family or kin, as well as any supporting service providers that have been agreed upon by the parents.

[1] Recommendation 4 states: *'That the Directorate provide access and availability of Family Group Conferencing as an essential step for all Aboriginal and Torres Strait Islander families engaging or entering the child protection system.'*

The concept of family decision-making will be listed as a concept within Bill 2's family preservation principle and positioned as central to early and least intrusive interventions (see section 1.3).

For all families, and especially for Aboriginal and Torres Strait Islander families, opportunities for family decision-making to occur will be strongly protected as they must be included as evidence of active efforts for certain orders (see sections 1.6).

The concept of family decision-making has been intentionally kept broad to allow for flexibility in its implementation. By not prescribing a specific model, the legislation acknowledges different situations may require different approaches to decision-making within a family context, including Family Group Conferencing or Aboriginal Family-Led Decision-Making. Amendments encompass:

- Explicitly listing the concept of family decision-making, within the family preservation principle to facilitate early planning for the care of all children and young people.
- Requiring final orders cannot be issued until the ACT Childrens Court verifies family decision-making has been offered as an opportunity to resolve or achieve agreement in care applications.
- Ensuring for Aboriginal or Torres Strait Islander children or young people family decision-making is offered to every family to address risks to the child or young person when deemed at risk of significant harm.
- Ensuring for Aboriginal or Torres Strait Islander children or young people family decision-making is offered to every family to participate in care arrangements, such as placement and contact decisions for a child or young person living in out of home care.
- Ensuring for Aboriginal or Torres Strait Islander families who participate in family decision-making, meetings be facilitated by an Aboriginal facilitator, who may be affiliated with an ACCO.
- Repealing the current family group conferencing provisions in the CYP Act, while retaining:
    - the ability to participate in family group conferencing as an option in policy for delivering family-led decision making
    - the option to register an agreement reached through family decision-making (if outlined in a Care Plan) with the court as an alternative pathway to court orders.

Care and protection orders: Better and more accountable case management

4. Orders: Better and more accountable case management

The ACT Government is ensuring child protection legislation delivers a fairer, more accountable, and transparent system that improves positive child protection outcomes.

The ACT Government's Next Steps strategy has committed to deliver a child protection system with a better approach to family preservation, including intensive case management with families to have their children come home wherever possible. For children and young people who live in out of home care, whether it be on a short or longer-term basis, stability in care with connectedness to carers and relationships with family is needed.

To support these commitments and deliver a strengthened approach to family preservation, reunification and stable and culturally appropriate care arrangements, Bill 2 will introduce a new suite of orders and thresholds for when it is necessary to intervene with families or remove children and young people from their parents.

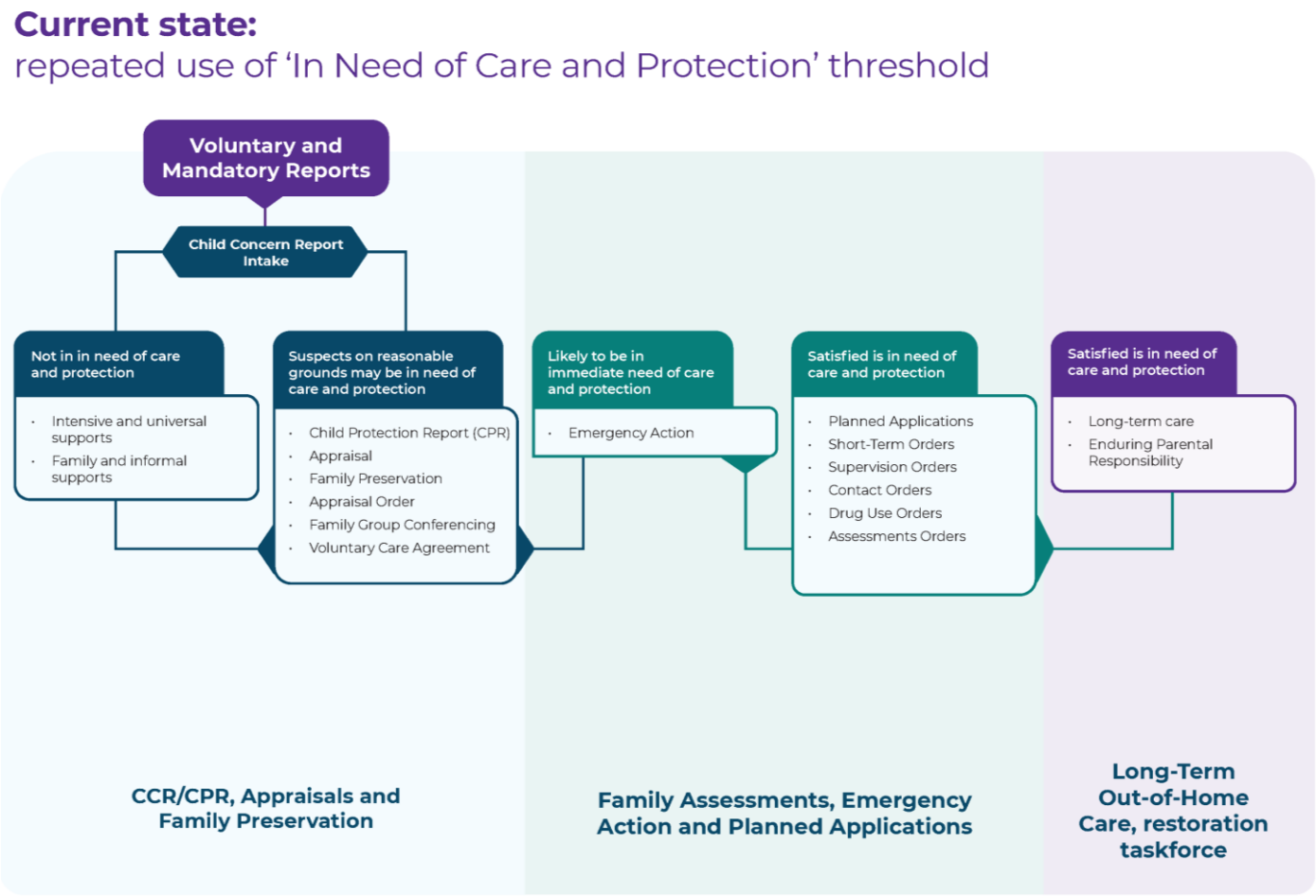
The new orders and thresholds will be bolstered by provisions to enhance the quality of child protection's case management. These provisions will support case management to be accountable, transparent, culturally appropriate and restorative. This new approach will ensure work is done respectfully with children, young people, their families and carers to 'help them identify and achieve their goals rather than disempowering them by doing things to or for them' (p9, Next Steps).

4.1. A practical, balanced approach to thresholds and care and protection orders

The current CYP Act has a uniform criterion for all care and protection orders, without considering the inherent differences in the purposes, durations and intentions of each order type (see Figure 1 – Current legislative thresholds).

This results in unintended consequences, as it overlooks the distinct circumstances and requirements of individual families. This can lead to either insufficient or unsuitable support for those in need, or an excessively intrusive intervention for families who may require less intensive assistance.

Figure 1 - Current legislative thresholds



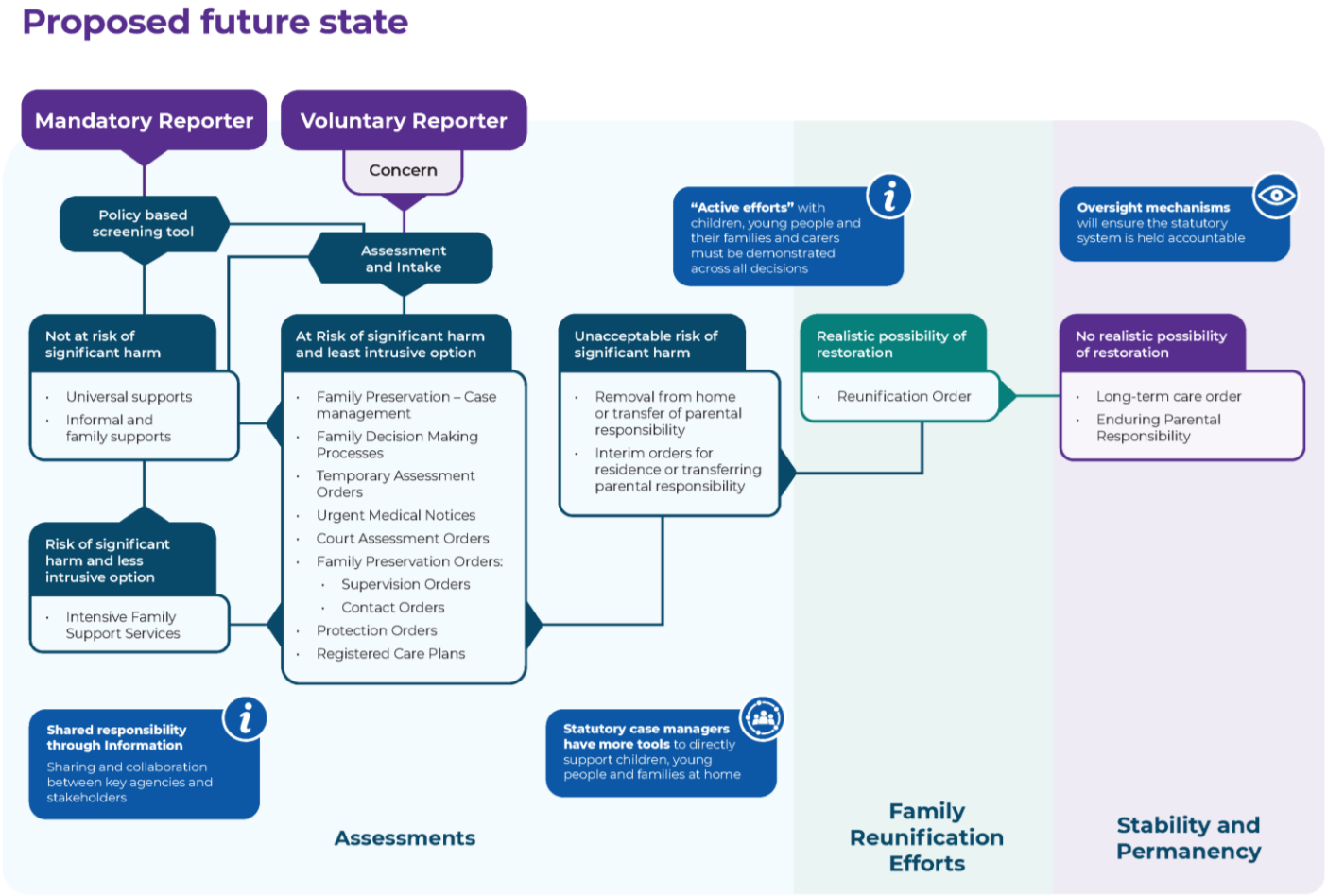
To overcome these limitations, and provide clarity and transparency for those with a lived experience of the system and other stakeholders, Bill 2 will repeal all existing orders and replace with 3 new categories of final order (see Figure 2 – Balanced legislative thresholds):

1. Family preservation orders
2. Family reunification orders
3. Long-term orders

These orders will have clearly defined criteria, as will the basis for removing a child or young person from the care of their family (see criteria for interim orders, Table 2). For any of these orders to be made, the court will need to be satisfied:

- there would be a risk of significant harm to the child or young person if the order was not made
- the order is the least intrusive order to ensure the protection of the child or young person
- the best interests of the child or young person has been considered, along with their views and wishes
- the court is satisfied with the care plan accompanying the care application.

Figure 2 - Balanced legislative thresholds



4.1.1. Family preservation order

Bill 2 will introduce a new family preservation order to be used with families who with the right supports, such as intensive and restorative case management, can care for their children safely at home.

A family preservation order will be made where it has been assessed:

- a family requires a short-term, legal intervention
- there is evidence it is the least intrusive option to ensure the child or young person's safety
- there is evidence of prior active efforts made by child protection to offer and facilitate a range of family supports.

The family preservation order aims to prevent the unnecessary removal of children and young people from their homes, while putting in place necessary measures to create a safer environment that fosters their growth and development. This order will be sought when there is no less intrusive means of safeguarding a child or young person, with child protection to be accountable for providing necessary supports, resources and guidance to families.

4.1.2. Emergency action thresholds: Unacceptable risk of significant harm

Bill 2 will amend the existing legislative framework for removing a child or young person from the care of their parents.

The current threshold for emergency action (removing a child or young person from the care of their parents) is centered on evaluating both the immediate risk of harm to the child or young person, along with the parents' willingness and ability to provide adequate care.

This construct, while important, can overlook broader contextual considerations that play a crucial role in ensuring a child or young person's overall safety and wellbeing.

Bill 2 will shift away from focusing solely on parental willingness and ability and move towards a broader consideration of an immediate unacceptable risk of significant harm. The revised threshold is significant for families, acknowledging a child or young person's safety is influenced by a multitude of factors beyond parental willingness and ability. It will align the ACT with other jurisdictions, using a nationally recognised threshold which in turn will add a valuable dimension of legal precedent and practice guidance.

4.1.3. Family reunification orders

Bill 2 will introduce a new family reunification order, aligning with the Next Steps commitment to support timely restoration wherever safe to do so. It will be considered where children and young people cannot live safely at home, but there is a realistic possibility the child or young person can be restored to their parents within the length of the order.

Family reunification orders will address cases where:

- a child or young person has been removed due to an unacceptable risk of significant harm
- there are plans to remove a child or young person from their parents care due to safety or risk concerns that may rise to the level of unacceptable risk of significant harm.

Family reunification orders will emphasise the reunification of a child or young person to their parents wherever possible and appropriate. Family reunification orders will require the development of a comprehensive care plan to address the issues leading to the removal of the child or young person, with an aim of resolving the identified risks to achieve successful family reunification and stability.

To provide genuine opportunities for reunification and safeguard against indefinite or prolonged extensions without substantial justification, Bill 2 will:

- repeal the rebuttable presumption that it is in the best interests of some children or young people subject to a short-term order to automatically place them into long-term care
- place a cap on the number of times a reunification order can be extended, meaning the court will be unable to grant more than one extension unless circumstances warrant it.

4.1.4. Long-term care orders

In situations where there is unacceptable risk of significant harm to the child or young person, and family reunification is assessed as not feasible, Bill 2 will allow for a long-term care order to be sought.

Long-term care orders will prioritise a secure, nurturing and permanent living arrangement for the child or young person. A long-term care placement or Enduring Parental Responsibility (EPR) provision may be

considered under this order, with a strong emphasis on ensuring the child or young person receives stable and loving care throughout their life.

As with family reunification orders, for long-term orders, Bill 2 will introduce provisions requiring the court to evaluate:

- factors related to unacceptable risk to a child or young person
- child protection's demonstration of active efforts
- whether the child or young person is in need of care and protection
- the feasibility of a parent becoming willing and able in the foreseeable future.

Table 2: Existing and proposed thresholds for interim care orders

	Existing threshold	Proposed threshold
Section 403: Emergency Action	Immediate need of care and protection	Immediate unacceptable risk of significant harm
Section 433: Interim orders – Child removed from the home (Family reunification / Long-term care 0rders)	**Evidence:** In need of care and protection if order not made.	**Evidence:** Evidence of meeting active efforts principle AND at unacceptable risk of significant harm if order not made.
	Criteria for orders: Reasonable grounds to believe in need of care and protection if order not made	**Criteria for orders:** Reasonable grounds to believe 'unacceptable risk of significant harm' if order not made. The court can adjourn a matter if not satisfied with evidence of active efforts.
Section 433: Interim orders – Planned application where child remains at home (Family preservation orders)	**Evidence:** In need of care and protection if order not made.	**Evidence:** At 'risk of significant harm' if order not made.
	Criteria for orders: Reasonable grounds to believe in need of care and protection if order not made.	**Criteria for orders:** Reasonable grounds to believe child at 'risk of significant harm' if order not made.

4.2. Increasing participation at court of other people important to a child or young person

The *Charter for Parents and Families involved with ACT child protection services* takes a broad view of family, seeing it as inclusive of immediate and extended family, kinship and other culturally defined relationships and people who are important to a child or young person.

To empower those who can demonstrate a significant interest in the wellbeing of a child or young person to actively contribute to the decision-making about the child or young person's future, Bill 2 expands the scope for individuals significant to a child or young person to participate and engage in court proceedings and pursue changes to an order.

4.3. Evidence for orders

The *Our Booris, Our Way Final Report* found: *'Changes in [family] circumstances, including successfully parenting subsequent children, are not re visited for opportunities for restoration either to the birth parents or to kin.'* (2019, p.58).

In consideration of this, Bill 2 inserts a provision allowing the court to consider additional evidence in relation to any care and protection proceeding involving, where relevant, a sibling of the child or young person.

4.4. Revocation of orders

The CYP Act currently limits amendment or revocation of final orders to the original parties, excluding others with significant interests in the child's welfare. The CYP Act offers various grounds for application, creating potential ambiguity. Furthermore, it lacks explicit provisions for dismissing frivolous applications.

Bill 2 addresses these shortcomings by redeveloping provisions setting the rules around revocation of orders. Proposed amendments will:

- Expand eligibility to apply for revocation orders to any other person who can demonstrate sufficient interest in the child or young person's welfare.
- Remove timeframes restricting revocation applications to once every 12 months.
- Allow revocation applications with no specified time limit provided there has been significant change in relevant circumstances, and with the leave of the court.
- Expanded the court's authority to dismiss frivolous or vexatious revocation applications, ensuring proceedings remain focused and productive.

4.5. Enduring Parental Responsibility

An order with an Enduring Parental Responsibility (EPR) provision transfers daily and long-term care responsibility to a designated carer that remains in force until the child or young person reaches 18 years of age. The current criteria for making an EPR provision does not promote sufficiently evidenced-based or nuanced decisions.

The proposed amendments strengthen the criteria the court must consider before making an EPR provision. Bill 2 requires the court to consider:

- whether there is a realistic possibility the parents will become able to care for the child or young person in the future
- whether the new placement hierarchy (see section 1.4) has been complied with, and whether the child's or young person's wishes or views have been considered.

For Aboriginal and Torres Strait Islander children and young people, the court may agree to an EPR provision if an Aboriginal and Torres Strait Islander organisation has provided a report recommending it.

The new criteria will require the court to consider whether EPR is the best pathway to achieving safety and wellbeing for the child or young person.

4.6. Maintaining the cultural connectedness of Aboriginal and Torres Strait Islander children and young people in out of home care

'Aboriginal and Torres Strait Islander children who have not been placed with Aboriginal and Torres Strait Islander kin, this long-term nature of separation from family and culture raises the risks of disconnection and dislocation from their family which is the very source of their safety and identity.' (Our Booris, Our Way Final Report, 2019)

Bill 2 introduces a new placement hierarchy for Aboriginal and Torres Strait Islander children and young people who are removed from the care of their parents.

The Aboriginal and Torres Strait Islander community has told the ACT Government the current hierarchy that ranks all kinship carers equally, results in child protection workers favouring non-Indigenous family and not fully considering and appropriately assessing Aboriginal and Torres Strait Islander family members.

The new hierarchy will require that when an Aboriginal or Torres Strait Islander child or young person comes into out of home care, their placement must:

- be consistent with the child or young person's best interests
- have regard for child or young person's wishes, views or objections
- have regard for the views of the child's parents and family members.

Once best interests, views and wishes have been considered, the placement should then be according to the following:

1. Wherever possible, the child must be placed with an Aboriginal or Torres Strait Islander kinship carer, and where this is not possible, with another kinship carer.
2. If, after consultation with the child's family and any relevant Aboriginal and Torres Strait Islander organisation, placement with extended family or relatives is not feasible or possible, the child may be placed, in order of priority, with:
    a) an Aboriginal or Torres Strait Islander carer from the local community and within close geographical proximity to the child's natural family
    b) an Aboriginal or Torres Strait Islander carer from another Aboriginal or Torres Strait Islander community
    c) as a last resort, a non-Aboriginal or Torres Strait Islander carer living in close proximity to the child's natural family.
3. Any non-Aboriginal or Torres Strait Islander carer must demonstrate, prior to taking on the care of the child, a strong commitment to ensure the maintenance of the child's Aboriginal or Torres Strait Islander culture and identity, including through contact with the child's culture, family and community.

This new hierarchy will mean child protection workers must first consider a placement with an Aboriginal and Torres Strait Islander kinship carer and then only place with non-Indigenous family where they can demonstrate this is not in a child's best interests or where not possible.

Indeed, this shift in prioritisation may present challenges for non-Indigenous family members. It's crucial to recognise they too play a significant role in the lives of these children and young people. While the new

hierarchy places emphasis on Aboriginal and Torres Strait Islander kinship carers, it doesn't exclude non-Indigenous family members.

In cases where placement with non-Indigenous family members is deemed to be in the best interests of the child or young person, it will still be progressed. The aim is to strike a balance that ensures the wellbeing, cultural identity and connections of the child, while also valuing the contributions and support that non-Indigenous family members can offer. This approach seeks to create an inclusive and thoughtful framework for decision-making in the best interests of the child or young person.

This will occur along with other amendments that embed the ATSICPP in 'best interests' considerations, require 'active efforts' by child protection workers, and require Aboriginal and Torres Strait Islander children, young people and their families to be involved in placement decisions through family decision-making models.

5. Enhancing judicial oversight for greater accountability

The ACT Childrens Court serves as a vital oversight mechanism overseeing child protection decision-making during pivotal and intrusive moments.

The ACT Government acknowledges the power imbalance that exists between people who work in the child and youth protection system (CYPS staff and out of home care providers) and those who become engaged with it (children, young people, their families, carers and advocates as well as other services). Many of those involved with the system lack trust in it or fail to believe it will work in the interest of their own, or the Territory's children, young people, and families (ACT Government, 2022).

Bill 2 will introduce several provisions requiring the ACT Childrens Court to provide additional oversight of child protection decisions and arrangements, including the demonstration of active efforts to prevent a child or young person from entering care, as well active efforts to restore a child or young person to the care of their parents. The court will also now be required to review the quality of the child or young person's care arrangements by assessing the child or young person's care plan.

5.1. Strengthening adherence to core principles of the Act

Currently, there is no set requirement for child protection to actively demonstrate to the court their efforts in keeping families together or to provide detailed plans aimed at ensuring a child's current and future needs will be met. A clearer direction is needed.

The proposed amendments will enhance the practicality of the new principles by requiring child protection to present evidence of their commitment to upholding the principles.

This shift will ensure child protection adopts a diligent and accountable approach when intervening in the lives of children and families and bolsters the court's ability to safeguard their wellbeing.

5.2. Care and cultural plans

Bill 2 will introduce a robust minimum standard to protect the consistency and quality of care plans, with increased oversight by the court. Development of care plans will require the active participation of children, young people and their families.

Care plans are essential roadmaps that child protection and families should develop and agree on together, and as the name suggests, detail a plan of care for a child or young person. They can include child protection's responsibilities for safeguarding family connections, moving towards reunification or securing stability and permanency for those children and young people living in long-term out of home care arrangements, as well as commitments made by the child or young person's family.

To ensure the quality and consistency of care plans meets the vision described above, Bill 2 will:

- include standards for the participation of children, young people and their families in the development of care plans
- ensure care plans are sufficiently clear and particularised to provide a reasonable clear picture of the child's needs, and how this will be met in the future
- include additional court oversight mechanisms to ensure a more just, transparent and accountable decision-making-system.

Bill 2 will also introduce provisions to address the cultural plan shortcomings heard in the *Our Booris, Our Way Final Report*. Although finding cultural plans were completed for most Aboriginal and Torres Strait Islander children and young people, the *Our Booris, Our Way Final Report* also described many to be of poor quality if not inaccurate, completed with little or no family or community participation.

Cultural plans are designed to document personalised arrangements to nurture and uphold the cultural identity of Aboriginal and Torres Strait Islander children and young people living in out of home care, through connections with their families, communities and culture.

To address the issues identified by the *Our Booris, Our Way Final Report*, Bill 2 proposes:

- Care plans developed for all children and young people must integrate their cultural support needs, outlining how these needs will be met.
- Additionally, specific enhancements will be prescribed for Aboriginal and Torres Strait Islander children and young people, including increased focus on the five core elements of the ATSICPP.

5.3. New reports on suitability of care arrangements

Bill 2 introduces a set of new provisions empowering the court to order child protection to prepare a report outlining the suitability of arrangements. They will represent a clear mechanism for monitoring and accountability with an aim of supporting better outcomes for children and young people subject to an order.

Currently, orders can lapse without any requirement for child protection to ensure the resolution of those concerns that originally compelled the order or demonstrate their efforts to work with the family to secure the safety and wellbeing of the child.

To rectify this, where family preservation orders or family reunification orders are in place, the court will be required to order a suitability report from child protection on the care arrangements for a child or young

person. This aims to guarantee child protection is implementing the plan to ensure the safety and wellbeing of children and young people subject to these types of orders.

When making a final long-term order, the court will have a new discretionary power to order suitability reports in relation to the child or young person. This will allow the court to request crucial information, whenever required, to ensure its decision continues to be in the best interests of the child or young person.

5.4. Registration of care plans: A more collaborative approach

To simplify and clarify the process of obtaining orders by consent, and at the same time promoting family decision-making, Bill 2 will introduce a set of proposals for the registration of care plans. Proposed amendments will:

- allow care plans developed through agreement to be registered with the court, providing documented evidence of prior, less adversarial attempts at resolution
- empower the court to make necessary orders to enforce the care plan, in those cases where an application for a court order is also made, ensuring alignment with the CYP Act's principles and that parties' agreement occurred with independent legal advice.

Keeping children and young people in out of home care safe and connected

6. Keeping children and young people in out of home care safe and connected

The ACT is committed to providing safe environments for children, especially those who can't stay with their families. These children rely on kinship and foster carers who work hard to give them stable, supportive homes. However, additional measures are necessary to better ensure these children and young people's ongoing safety and wellbeing.

Bill 2 will introduce and amend provisions to strengthen opportunities for children and young people to be safe and connected throughout their care journey. The *Our Booris, Our Way Final Report* highlighted the particular grief and despair felt by the local Aboriginal and Torres Strait Islander community over the continued disconnection of their children and young people living in care.

Bill 2 will require information about a child or young person in out of home to be better shared with their parents, subject to a risk assessment and the child or young person's views and wishes, and the annual review process to be enhanced and extended to ensure participation of family and significant people.

Children and young people in care can be expected to be safe from humiliation, fear and threat and the use of corporal punishment will be outlawed.

Furthermore, young people transitioning from out of care deserve a strong support system and access to their own histories as they enter adulthood. This sentiment was strongly emphasised by the ACT Government during the development of the Next Steps reform. Various forms of support will be available to young care leavers until they reach the age of 21, unless they choose to opt out.

6.1. Case management and connection with children and young people in out of home care

Bill 2 will insert a provision requiring children and young people to be visited by and spoken to directly by their child protection case manager on at least 2 occasions per year. In consideration of Bill 2's child and youth participation principle (see section 1.2), this provision will offer children and young people genuine opportunities to actively participate in their arrangements at all stages of their care.

For many children and young people, child protection services will visit them on more than 2 occasions per year, as appropriate to their circumstances. For all children and young people, these visits will give them a voice and ensure their views and wishes are recorded and responded to appropriately. In addition, as promised by the ACT Government though Next Steps, these visits will give carers an opportunity to be heard and included in shared decision-making, and child protection an opportunity to assist carers in accessing supports for their own resilience and wellbeing.

6.2. Retaining personal records: Life story work

Bill 2 will introduce several requirements to support and enhance child protection's life story work with children and young people living in out of home care.

In its research, the ACT Government[2] found life story work enabled children and young people to nurture their identity and sense of self. Life story work has a meaningful impact on the development and wellbeing of children and young people. Subsequently, the ACT Government's Next Steps reform committed to improving life story work, using restorative and trauma informed practice principles.

To meet the Next Steps commitments, Bill 2 proposes:

- An obligation on child protection to retain personal records for each child and young person in out of home care.
- A requirement for child protection to update the records of a child or young person and provide them to the child or young person (or their carer) each year. The records should include significant events, milestones and meaningful connections to their cultural and familial background.

6.3. Annual Review Reports

Bill 2 represents a pivotal step forward in transforming the Annual Review Report process. It introduces a more efficient, inclusive, and seamless approach that prioritises the wellbeing of children and young people in out of home care.

Bill 2 will reorient the annual review process towards a more proactive care plan update, while also ensuring compulsory and extended involvement of families and carers. Further, it emphasises the collection of relevant, meaningful information that fosters stronger connections and support networks.

These changes are informed by views that come out of the *Our Booris, Our Way Final Report*, as well as very comparable views obtained from consultations with child protection practitioners.

The *Our Booris, Our Way Final Report* states:

> *'An Annual Review Report (ARR) is a strengths-based summary of the events, achievements and challenges of the child or young person's past year. This is a critical process and contains very important developmental and cultural information about the child. There are concerns that many reports do not involve participation of parents, children or family are not provided to these individuals on completion. It appears as though they have become an administrative exercise and lost their true purpose.'* (2019, p.64)

6.4. Sharing information about children and young people's care with their parents

Bill 2 will introduce provisions to improve the way in which child protection shares information with parents who have a child living in out of home care. By being more fully informed, parents will be better equipped to participate in family decision-making (see section 3.5), maintain connections with their children or express dissatisfactions with their child's care arrangements.

These provisions are responsive to feedback heard by the ACT Government in its Next Steps reform – poor access to information and a lack of trust in the child protection system were considerably problematic for families, carers and the community.

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[2] *Life Story Work: Helping Children in Care Develop their Identity and Sense of Self,*

Currently, the annual review report process does not require adequate consideration of the views of families or require them to be provided with basic ongoing information about their child's progress in out of home care. Modelled on similar legislation in NSW, Bill 2 will:

- Subject to consent and risk assessment, provide that certain information about a child or young person's placement and progress in care must be provided to parents.

6.5. Outlaw of corporal punishment

Bill 2 will outlaw the use of corporal punishment for all children and young people living in out of home care.

The UNCRC has called for all countries to ban corporal punishment, and one of the 17 United Nations Sustainable Development Goals is to 'end all forms of violence against children'.

In Australia, both Queensland and NSW have implemented laws that protect children and young people in out of home care from corporal punishment. Bill 2 will introduce the following provision modelled on Queensland's legislation:

- For a child or young person in out of home care, techniques used for managing behaviour must not include corporal punishment or punishment that humiliates, frightens or threatens in a way that is likely to cause emotional harm.

6.6. Allowing for conditional carer approval

The determination of a child's living situation is guided by a rigorous assessment and screening procedure. This involves conducting thorough criminal history checks, child protection history assessments, and 'Working with Vulnerable People' verifications, all followed by a comprehensive evaluation of potential carers. While the existing CYP Act outlines specific criteria for making decisions regarding suitable carers, it currently only permits either full approval or outright denial.

Bill 2 makes an important change to enable child protection to place conditions on a person's authorisation to care for a child or young person. This will enable more people, especially prospective kinship carers, to be able to care for a child or young person, whilst strengthening safety considerations for the child or young person in the person's care.

6.7. Support for young people transitioning from care

The transition from care provisions in Bill 2 have been driven by listening to young people, carers and community organisations, including out of home care agencies and peak bodies. They have given strong backing for the concept that care leavers should be provided with support when they need it, for as long as they need it; and this is what Bill 2 aims to provide.

Like all Australian jurisdictions, a young person in the ACT may be subject to a care and protection order *only* until they turn 18 years of age. At this point, the young person is considered to have left out of home care, or to be a 'care leaver', regardless of whether they remain with their kinship or foster carer.

Many young people living in out of home care are highly vulnerable due to the impact of abuse and neglect on their development and sense of self-worth. Transitions, such as leaving care, may be exacerbating as they can involve upheaval and increased uncertainty. On top of this, care leavers may have less access to

continued informal family, friendship and community supports than those of their peers ((Commonwealth of Australia (Department of Social Services), 2021)).

The CREATE Foundation (2023) states the *'epic journey'* of leaving care *'often involves finding accommodation, seeking employment, building support networks, accessing services, learning to budget, sorting out transport needs, starting bank accounts, locating important documents and much more'*.

Care leavers may also decide to seek access to information about their childhoods. Providing records to care leavers at *any* time over their lifespan can be critical to building their life story as these records may hold information about their development, history, context, identity and family. (Council of Australasian Archives and Records Authorities, 2021).

Overall, it is acknowledged young care leavers need to be provided with more support to ensure their lifetime wellbeing outcomes measure up to those of their peers ((Commonwealth of Australia (Department of Social Services), 2021)).

Currently, child protection *may* provide support and services it considers appropriate to a care leaver between the ages of 18 and 24. Other jurisdictions such as Victoria, mandate the provision of support and services to *any* care leaver under the age of 21 years. In alignment with other jurisdictions, Bill 2 proposes:

- Child protection will continue to provide support and services to any care leaver under the age of 21 years old.
- The type of services child protection can provide is broadened and simplified to include financial assistance and/or any other assistance child protection considers necessary in the circumstances.
- For care leavers between the ages of 21 and 24 years old, child protection maintains discretionary power to provide the support and services considered reasonably necessary in the circumstances.
- A removal of the current age limit of 25 years at which care leavers can access and be supported to access information. This will ensure care leavers are supported to access their records at any age.

External merits review

7. External merits review of decisions

The ACT Government has committed to amending the CYP Act to establish a mechanism for external review of child protection decisions. This commitment follows a resounding call from stakeholders and several inquiries and reviews that have underscored the need for an external review mechanism for child protection decision-making in the ACT.

The existing CYP Act offers very limited avenues for reviewing child protection decisions. Bill 2 proposes to introduce a crucial legislative mechanism designed to broaden these opportunities and permit certain decisions to undergo external review by the Administrative and Civil Appeals Tribunal (ACAT) when internal resolution processes prove ineffective.

After conducting extensive consultations and comprehensive research, ACAT is proposed to oversee this external review function. The proposal to entrust ACAT with this responsibility stems from the clear need for an accessible, efficient and user-friendly platform to address disputes and conduct reviews across various facets of child protection. ACAT offers a holistic approach, encompassing conciliation and mediation processes before proceeding to formal hearings. This approach has a successful track record of resolving similar issues without the need for a formal hearing.

While the ACT Childrens Court was considered due to its intimate familiarity with child protection matters and deep understanding of the nuances and sensitivities involved, ACAT ultimately emerged as the preferred option. ACAT's proven track record in expeditiously handling a wide range of administrative matters demonstrates its capacity for efficiency, fairness and accessibility, and make it the optimal choice for enhancing the child protection review process.

7.1 Procedural aspects

In considering the procedural aspects of this proposed framework, several key points come to the forefront. Firstly, determining who may apply for an external merits review is of paramount importance. An 'affected' person, referring to those directly involved and significantly impacted by a decision, should have the right to seek such a review. This category encompasses the child or young person themselves, their parents, siblings and family members, as well as current or prospective carers.

Timing also plays a crucial role in the application process. It is suggested an affected person should have engaged in an internal review process before pursuing an external review, unless there are special circumstances. These situations may include instances of immediate risk or emergencies, such as urgent medical decisions, which may warrant bypassing the internal review prerequisite.

Moreover, a well-balanced timeframe for application will be established. This timeframe aims to provide sufficient time for the internal review process to unfold while also preventing applicants from unduly prolonging or delaying decisions pertaining to the welfare of children and young people.

Furthermore, the grounds for seeking an external review align with those for an internal review, given that the latter would have been completed. These grounds encompass scenarios where there is:

- a discernible error in law, fact or policy
- the decision was based on incomplete or incorrectly interpreted information

- new information has come to light since the original decision.

In recognising the vital importance of children and young people's voices in this process, provisions will be made to ensure children and young people have the agency to express their perspectives. This may occur directly through the child or young person themselves or through a designated representative advocating on their behalf. Bill 2 aims to empower children and young people, allowing them to choose how they articulate their views, whether through written expression, visual representations, verbal presentations before the tribunal or private meetings with tribunal members.

The proposed approach in Bill 2 would also grant ACAT the authority to assess whether it would be in the best interests of the child or young person to have separate legal representation during tribunal proceedings. Importantly, Bill 2 proposes to establish safeguards to ensure children and young people cannot be compelled by any party or the tribunal itself to provide evidence, whether in the form of documents or through attendance at a hearing.

7.2. Matters that will be subject to external merits review

Bill 2 outlines the proposed specific matters eligible for external merits review, which would generally correspond with those also eligible for internal review. In line with practices in other jurisdictions, it is important to note not all decisions made by child protection will fall under this review process. Matters open for external review may encompass:

- Contact arrangements (with specific exceptions)
- Placement determinations, provided child protection holds sole parental responsibility
- Certain facets of restoration (not under the purview of the Childrens Court)
- Determinations regarding financial support for kinship carers
- Choices pertaining to a child or young person's health and medical treatment
- Determinations regarding a child or young person's culture, religion or education
- Assessments of suitability information for carer evaluations
- Determinations regarding an Aboriginal or Torres Strait Islander child or young person's cultural plan
- Determinations concerning a child or young person's therapeutic plan
- Decisions regarding the withholding of information from a parent concerning a child or young person in care, including placement details and other updates

7.3. Ensuring no jurisdictional overlap with Childrens Court matters

There is concern that if ACAT is granted the authority to review child protection decisions, it could potentially lead to jurisdictional complexities alongside the ACT Childrens Court. This might result in both entities simultaneously handling child protection matters.

This concern could be further compounded with the proposed expansion of authority for the Childrens Court to scrutinise care plans. The potential for overlapping jurisdictions and legal processes underscores the need for careful consideration to prevent any inadvertent procedural clashes that could impede the effective resolution of child protection cases.

The proposed approach in Bill 2 would ensure that when an application is made to ACAT and the reviewable decisions are also before the Childrens Court, the tribunal must suspend their review to allow

the court to consider the matter. If the reviewable decision is addressed in the Childrens Court, the tribunal member must dismiss the application. If the reviewable decision is not addressed in the Childrens Court, the tribunal can cancel the suspension and proceed.

Additionally, Bill 2 would grant the court discretionary power to refer a matter to ACAT.

The successful implementation will hinge on ensuring a seamless process for transitioning reviews between these jurisdictions, tailored to the specific nature of each case and fostering harmonious collaboration between the bodies. This type of successful collaboration has been observed in other jurisdictions.

7.4. Outcome types from external merits review

The outcomes of the proposed external merits review process are that ACAT may:

- affirm the decision (which may be the original decision, or the decision as varied through the internal decision review process)
- vary the decision
- set aside the decision and make its own decision
- set aside the decision and return the matter for reconsideration by the original decision-maker.

Appendices

- Appendix 1. Preliminary flowchart of information sharing provisions
- Appendix 2. Overview of legislative amendments
- Appendix 3. References

ACT Government

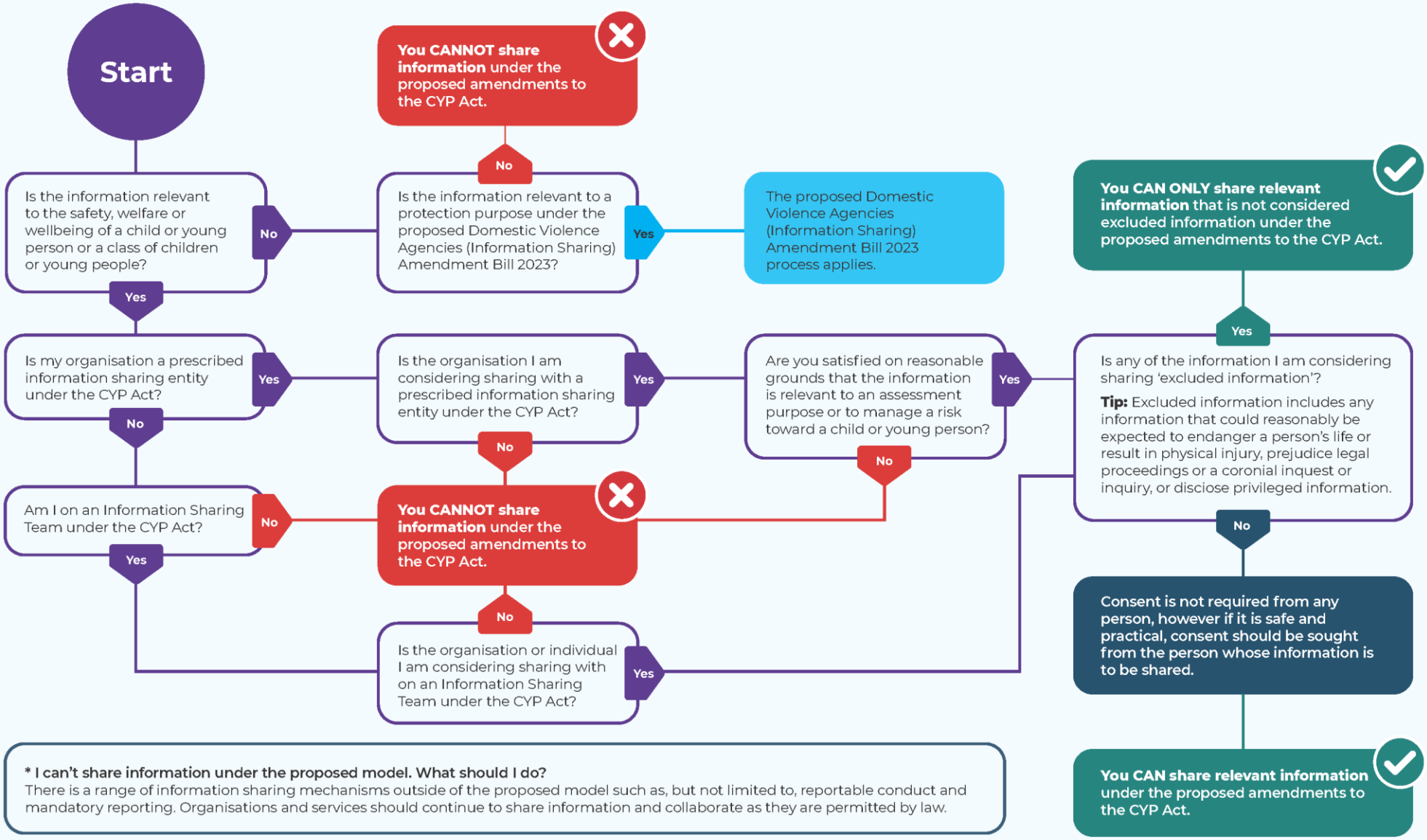
Children and Young People Amendment Bill 2 2024

Appendix 1: Preliminary flowchart of information sharing provisions

October 2023

Community Services Directorate

Can I share information under the *proposed amendments* to the *Children and Young People Act 2008*?



ACT Government

Children and Young People Amendment Bill 2 2024

Appendix 2: Overview of legislative amendments

October 2023

Community Services Directorate

Contents

Overview of legislative amendments proposed in the Children and Young People Amendment Bill 2 2024

Topic	Description of legislative amendment	Alignment with ACT Government Commitments
All elements of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP)	Further **embed the Aboriginal and Torres Strait Islander Child Placement Principle**. This builds on the insertion of the ATSICPP in Stage 1 of the amendments to the *Children and Young People Act 2008* (CYP Act).	SNAICC: 6 Next Steps: Domain 1 OBOW: 5
Principle of Active Efforts	Insert a standalone **principle of 'Active Efforts'** modelled on NSW legislation and applying to all children and their families.	SNAICC: 4, 8 OBOW: 19
	Insert **legal services** in the list of supported services within the principle of **'Active Efforts'**.	SNAICC: 12 Next Steps: Domain 2 OBOW: 8(b)
Principle of Child and Youth Participation	Insert a **principle of child and youth participation** that extends beyond 'views and wishes' to ensure children and young people are provided with real and ongoing opportunities to have a voice.	Next Steps: Domain 2 HACS: 32
	Within the new principle of child and youth participation, it requires that children and young people receive a **minimum number of two home visits** per year and opportunities to speak to case managers, where developmentally appropriate.	Next Steps: Domain 2
Principle of Family Preservation	Insert a standalone **principle that prioritises support and efforts to preserve family unity**, including the concept of the less intrusive action needed to protect the child or young person.	Next Steps: Domain 3 OBOW: 12 HACS11: 3
Principles of Administration	Shift the principles from guiding individual decisions toward a **broader coherent framework of Administrative Principles** for anyone exercising a function under the Act.	HACS11: 2
Principle of Stability and Permanency	Insert a **principle of stability and permanency** based on relational permanence and restorative principles.	PAGA: commitment 21.5
Best Interests Principle	**Reduce the complexity of best interest** considerations by inserting a non-exhaustive and non-hierarchical list of principles to consider in	HACS11: 2

Topic	Description of legislative amendment	Alignment with ACT Government Commitments
	determining the best interests of a child or young person. This is in line with extensive consultation undertaken for the ACT Adoption Act 2020.	
Expanded definition of family member	**Expand the definition of 'Family Member'** to include immediate family members, extended family members, and those that fall within culturally recognised family groups or Aboriginal and Torres Strait Islander concepts of family and a person who is a regular household member of a child or young person.	Next Steps: Domain 3
Information-Sharing	**Simplify information sharing provisions** and establish an information sharing scheme under Chapter 25 that permits sharing of information among prescribed bodies – to be modelled on Chapter 16A of Children and Young Persons Act 1998 (NSW). The provisions will provide broad powers for sharing and seeking information by the Director-General, including **sharing with parents and families**.	Next Steps: Domain 5 Glanfield: 18, 19, 20 and 22 HACS11: 9, 13, 30
	Insert a **new concept of safety, welfare and wellbeing information** that *excludes* reportable conduct information.	
	Permit proscribed information sharing entities to **share and seek safety, welfare and wellbeing information for specific purposes**.	
	Insert a standalone **principle of information sharing** for increased collaboration and sharing of risk, balanced with information privacy and consent.	
	Limit the information that cannot be shared to identifying reporters and contravention report information.	
	Shift away from the concept of 'Care Teams' toward the concept of 'Information Sharing Teams'	
	Insert a good faith protection from liability if a person, acting in good faith, provides any safety, welfare and wellbeing information in accordance with the CYP Act.	
Prenatal Information Sharing and Assessment	**Remove the separate concept of 'prenatal information sharing entities'** and bring them within general information sharing entities.	PAGA: commitment 21.6 OBOW: 9

Topic	Description of legislative amendment	Alignment with ACT Government Commitments
	Remove the concept of "prenatal information' and embed information for unborn children within the concept of 'safety, welfare and wellbeing information'.	Next Steps: Domain 3
	An **express provision that the Director-General can give prenatal information to a family member that would be involved in caring of the child after birth**, but only to the extent that the information is reasonably necessary to: Assess parental capacity, protect the child from harm and promote the safety, welfare or wellbeing of a child, and that the giving of information is accordance with any directions from the DG.	Next Steps: Domain 3
Delegation	Insert a unified provision that allows **delegation of any or all of the director-general powers or functions** (with the exception of the power to delegate), relying on delegation safeguards required under the ACT Legislation Act. This will allow scope for the delegation of all statutory child protection functions to the chief executive of an Aboriginal and Torres Strait Islander community-controlled organisation that provides out of home care services.	SNAICC: 13 and 14 Next Steps: Domain 1
Mandatory Reporting	Amend section 356 to **expand the mandated abuse types to physical abuse, sexual abuse, emotional/psychological abuse; exposure to domestic violence and neglect**	Next Steps: Domain 2 HACS9: 2, 3 Royal Commission
	Amend section 356 to **require mandated reporters to report all the mandated abuse types**.	
	Amend **'non-accidental physical injury' to 'physical abuse'**.	
	Clarify that the **list of professionals with mandated reporting duties is held exclusively in legislation and include out-of-home care and youth justice workers**.	
	New provision that **allows and supports conferral and information sharing with colleagues prior to making a mandated or voluntary reporting** (modelled on Section 13H of the Queensland legislation).	
	Omit section 358: Offence – false or misleading mandatory report and collapse this offence	

Topic	Description of legislative amendment	Alignment with ACT Government Commitments
	along with other offence provisions into a single broad offence for intentionally providing false or misleading information in a material particular to the Director-General (modelled on NSW provisions). the penalty for false or misleading information is significantly reduced with the term of imprisonment repealed (i.e., 5 penalty units).	
Assessment Orders	Appraisal and Appraisal Orders are omitted.	Next Steps: Domain 2
	Powers available under Appraisal Orders can be sought as assessments orders.	
	Allow Assessment orders for specific circumstances, i.e. medical, dental and paediatric assessment of the child and **assessments without parental notification in high-risk circumstances**.	
	The **criteria for making an 'assessment order' is amended to retain that parental agreement is not in the best interest of the child or young person**, and that the order is necessary to assess whether the child or young person is at risk of significant harm.	
	The court is also asked to **consider whether any distress an interview or assessment is likely to cause the child or young person will be outweighed by the value of the information that might be obtained**	
	Amend timeframes for Assessment Orders to be heard and decided by the Court	
	Section 436 (and consequential amendments) be amended so **arrangements for a 'Assessment Order' can be made as ordered by the Court**.	
	New provisions to allow for the Director-General to apply to the court for leave to withhold notification to parents of the application	
	A provision is inserted that allows the **Director-General to apply for a 'Assessment Order' whether or not proceedings are on foot for another care order in respect of the child or young person**	
Active efforts to consider the identity of children and young people	Insert a **principle of identity** to require best interest decisions to consider the child's	HACS11: 2

Topic	Description of legislative amendment	Alignment with ACT Government Commitments
	individuality in terms of cultural inheritance or other aspects that are important to their identity.	
Family Decision Making	Repeal the current **family group conference** provisions in Chapter 3 which would include the legislative instruments for appointments of facilitators and ministerial standards.	SNAICC: 10 and 11 Next Steps: Domain 1 and 3 OBOW: 4 Glanfield: 17 HACS11: 7
	A new concept of **family decision making** would be defined in the Act as a meeting with an impartial facilitator, involving family members including the child, parents and extended family or kin as well as any supporting service providers as agreed with the parents.	
	Explicitly list a concept of **family decision making within the newly created principle of family preservation** modelled on section 10(1)(d) the Children and Young People Safety Act 2017 SA)	
	The concept of **family decision making** will also be included **as a way to demonstrate 'active efforts'** with families as modelled on section 9A of the Children and Young People Amendments Bill (Family is Culture) NSW.	
	Require that the ACT Childrens Court be satisfied that **family decision making** has been offered or attempted to resolve care and protection concerns before final orders can be made.	
	Insert an express provision that: **For Aboriginal or Torres Strait Islander children, family decision making must be offered to every family**, where a child is considered to be 'at risk of significant harm' or to make decisions about care arrangements for a child in care including placement and contact unless it would not be in their best interests	SNAICC: 11 Next Steps: Domain 1 OBOW: 4 and 16
	A **family decision making meeting held under this provision must be facilitated by an Aboriginal facilitator** and they can be from an Aboriginal organisation or ACCO	SNAICC: 11 and 21 Next Steps: Domain 1 OBOW: 1, 4 and 16
Remove Appraisal Agreement	**Remove the concept of an 'appraisal'** from the legislation by omitting section 366. Assessments that currently occur at the appraisal stage would be conducted under s 360 – Assessing risk of significant harm.	Glanfield: 9

Topic	Description of legislative amendment	Alignment with ACT Government Commitments
	Remove the requirement for parental agreement to an appraisal by omitting sections 368, 369, & 370.	Glanfield: 9
	Amend section 371 to **retain the power of the Director-General to carry out a visual examination and interview of the child without parental agreement**, only if seeking agreement is not in the best interests of the child or would likely jeopardise a criminal investigation.	Glanfield: 9
Urgent Medical Examinations	Introduce provisions for the Director-General to be able to issue a notice to a parent refusing consent to present their child to a medical practitioner modelled on section 173 of the *Children and Young People (Care and Protection Act) Act 1998* (NSW)	Glanfield: 9
Charter of Rights for Parents and Families	Embed a **Charter for Parents and Families**.	Next Steps: Domain 2 PAGA: commitment 17.5 HACS1: 6
New Family Preservation Orders	Insert a **new Family Preservation Order** with revised criteria to replace short-term supervision-like orders where the child remains living at home. The new criteria include the finding that the child would be at risk of significant harm if the order is not made, the order is the less intrusive option to protect the child, and the court is satisfied with the Care Plan.	PAGA: commitment 21.5 OBOW: 12
Evidence of Active Efforts prior to application	Ensure that the **Director-General must provide evidence of meeting the proposed 'Active Efforts' principle** on application for an order transferring an aspect of parental responsibility or seeking residence provision equivalents.	SNAICC: 10, 17 OBOW: 19
	If the court is not satisfied with the evidence of 'Active Efforts', the court may adjourn, but the court cannot discharge a child from the care of the Director-General or dismiss an application on that basis. This is modelled on section 63 of the Children and Young Persons Act 1998 (NSW).	Next Steps: Domain 2
Legal Services listed within 'active efforts	Insert **legal services** in the list of supported services within the principle of **'Active Efforts'**.	SNAICC: 12 Next Steps: Domain 2 OBOW: 8(b)
Cultural & Care Plans	**Amend Care Plans to ensure greater participation of children, young people and their**	Next Steps: Domain 2

Topic	Description of legislative amendment	Alignment with ACT Government Commitments
	families. Ensure greater clarity for parents on minimum outcomes to achieve reunification, ensure long-term care arrangements are 'sufficiently clear and particularised to provide a reasonably clear picture of the child's needs and how this will be met in the future and mandate that the court has both consider and be satisfied with the quality and detail of Care Plans.	
	Ensure **cultural plans are developed for all children** with additional requirements for Aboriginal and Torres Strait Islander children and young people.	SNAICC: 18 Next Steps: Domain 1 OBOW: 11(a)
Registration of Care Plans	Allow **registration of Care Plans and the making of care orders by agreement**, and the court to make orders where parties have had legal advice and freely entered into the agreement and not otherwise in contravention of the proposed principles of the Act.	Next Steps: Domain 2
Emergency Action & Interim Order threshold	Amend the threshold for taking **'Emergency Action'** from 'in need of care and protection' to **'unacceptable risk of significant harm'**; retain three additional circumstances where a child is considered at risk of significant harm or to make decisions about care arrangements for children in care.	SNAICC: 9
	Create **two thresholds for interim orders** depending on whether the child is removed from home or remains in the care of their parents.	PAGA: commitment 21.5 SNAICC: 9
	Adjust the threshold for **interim orders** where the child is removed from their home from reasonable belief that the child may be 'in need of care and protection' to a reasonable belief that a child or young person would be at 'unacceptable risk of significant harm' if the order is not made.	
New Family Reunification Orders & extension criteria	Insert a **new Family Reunification Order** to replace short-term orders where the child has been removed from the home. The new criteria include 'unacceptable risk of significant harm', less intrusive option to protect the child, and the court's satisfaction with the Care Plan. Ensure minimum outcomes to achieve reunification are clear for parents to avoid shifting the 'goalposts'.	SNAICC: 9 OBOW: 12

Topic	Description of legislative amendment	Alignment with ACT Government Commitments
	Retain long-term care orders with strengthened criteria and more focus on ensuring there is **no realistic possibility of a parent becoming 'willing and able' in the foreseeable future**. Ensure minimum outcomes to achieve reunification are clear for parents to avoid shifting 'goalposts'.	SNAICC: 16 and 17
	Repeal the rebuttable presumption a child should be subject to long-term care orders following a specified period on short-term orders and insert provisions supporting **extensions where appropriate and necessary**. Restrict extension applications to 1, unless there are special circumstances.	SNAICC: 16
Right of appearance for parents, children and young people at court and clarity on when 'significant people' can join and be heard at court.	Ensure parents, children and young people have a standalone **right of appearance** in care and protection proceedings.	Next Steps: Domain 2
	Expand and clarify the scope for **significant people to join care and protection proceedings** and have their voice heard with leave of the court.	
Broaden the scope for amendment or revocation applications to any person with significant interest in the child	**Broaden applications for amendment or revocation applications to any person with significant interest in the safety, welfare or wellbeing** of a child or young person. Restrict applications to circumstances of significant change in relevant circumstances and increase the discretion of the court to dismiss frivolous or vexatious applications.	
Dispensation of Service	Provide greater clarity on when the court can make **dispensation orders to prevent service of documents** that would pose an unacceptable risk to any person.	
Parental Reponsibility	**Amend 'parental responsibility'** at section 20 to insert new aspects of parental responsibility including residence, medical, education and culture to allow for aspects to be allocated jointly or solely to the Director-General or designated persons.	Next Steps: Domain 2
Placement Hierarchy	Amend section 513 to reflect the **full intent of the placement hierarchy** whilst expressly requiring the placement is consistent with the child's best interests and other principles of the Act.	SNAICC: 19 Next Steps: Domain 1 OBOW: 10(b)

Topic	Description of legislative amendment	Alignment with ACT Government Commitments
Definition of Aboriginal Kinship Carer	Insert a **definition of kinship carer** at section 513(2)(a).	SNAICC: 20
Evidence of 'Active Efforts' toward restoration	The **decision to restore** a child or young person, who was removed from his or her parent by order of the court, is a decision that should be made by the court upon **application of the person with parental responsibility**.	Next Steps: Domain 2
Court must be satisfied of 'active efforts' prior to making order	Insert a **principle of identity** to require best interest decisions to consider the child's individuality in terms of cultural inheritance or other aspects that are important to their identity.	HACS11: 2
Enduring Parental Responsibility	Amend the **criteria for making an Enduring Parental Responsibility provision** to include no realistic possibility of the parent becoming willing and able; compliance with the placement hierarchy at section 513; and the views and wishes of the child.	SNAICC: 16 and 17
	For an Aboriginal or Torres Strait Islander child or young person, the court may not include an **Enduring Parental Responsibility provision** unless an Aboriginal and Torres Strait Islander organisation has provided a report recommending its inclusion.	SNAICC: 15 OBOW: 26(b)
Court must be satisfied of arrangements within proposed Care Plan	Mandate that the court has both considered and is satisfied with the quality and detail of Care Plans before making a final order.	Next Steps: Domain 2
New Report to Court on suitability of care arrangements	Insert **new reports on suitability of arrangements** to empower, or in specific circumstances require, the court to order a suitability report on care arrangements and monitor the progress of Director-Generals in implementing the Care Plan.	Next Steps: Domain 2
External Merits Review of Decisions	Expand the review of CYPS decisions by **ACAT**.	Next Steps: Domain 4 Glanfield: 12 PAGA: commitment 21.4 HACS11: 19, 20 and 21
	Include the following reviewable decisions: Contact including changes to frequency and supervision (e.g., to change from supervised to non-supervised contact or vice versa); placement; some restoration decisions including to cease restoration efforts or defer or expedite restoration (only to a birth parent); provisions of supports; health; culture, religion, education; cultural plans; therapeutic assessments;	

Topic	Description of legislative amendment	Alignment with ACT Government Commitments
	assessment of suitability (by carers); assessment of sharing information with parents (by carers/by birth parents).	
	Review can be sought by an affected person who is a person directly involved and impacted by a decision.	
	To seek an external review, **an internal review must have been sought first** (with the exception of assessment of suitability).	
	Include **timeframes for applications to ACAT**.	
	Grounds for EMR: 1. There has been an error of law, fact or policy; or 2. The decision was based on incomplete information; or 3. The decision maker incorrectly interpreted the information; or 4. There is new information that has become available since the original decision.	
	Insert a provision that requires CYPS to provide a **statement of reasons** to ACAT.	
	Include that **if ACAT holds a final hearing on a matter, ACAT should be able to take following actions** in response to an application: 1. Affirm the decision2. Vary the decision3. Set aside the decision and make their own decision or4. Set aside the decision and return the decision for reconsideration by the original decision-maker.	
	Insert provisions to **manage the jurisdictions of the Children's Court and the Tribunal** modelled on Queensland's sections 99M and 99MA: If an application is made to QCAT and the reviewable decisions are also before the Childrens Court, the tribunal must suspend QCAT's review if they consider that the court's decision would decide the same issues as before the tribunal and the court will deal quickly with the matter. If the reviewable decision is addressed in the Children's Court, the tribunal member must dismiss the application. If the reviewable decision is not addressed in Children's Court, the tribunal can cancel the suspension and proceed.	

Topic	Description of legislative amendment	Alignment with ACT Government Commitments
	Insert the requirement to **notify the Public Advocate and Aboriginal and Torres Strait Islander Children and Young People Commissioner** of external merit review applications.	Next Steps: Domain 1 Glanfield: 15
	Insert provisions to protect children's right to participate similar to Queensland's: • s99Q (Separate Representation of Children) to **allow ACAT to consider whether it would be in the child or young person's best interests to be separately represented before the tribunal by a lawyer**. • S99U (Child's Right to Express Views to Tribunal) to **allow a child or young person to present their views to ACAT about the matters being reviewed**. This new provision should be drafted broadly to allow children and young people to choose how they present their views including in writing, drawings, presenting to the tribunal or meeting the tribunal members separately. • S99T (Children must not be compelled to give evidence) to **ensure that children cannot be forced by any other party or the tribunal to give evidence** either through producing a document or attending a hearing to give evidence.	
	Restrict annual reports to children on long-term care orders, limit it to update on a Care Plan, and expand participation to families and significant persons.	Next Steps: Domain 2
Annual Reviews (Part 14.13)	Insert new provisions, modelled on NSW's sections 149B-149K to require **information on placement be shared with parents after the appropriate risk assessments** have been completed.	Next Steps: Domain 4
Sharing information with parents about children's care	Insert new provisions, modelled on Queensland's section 122(2) that states for a child or young person in out of home care, techniques used for managing a child's or young person's behaviour must not include **corporal punishment or punishment that humiliates, frightens or threatens** them in a way that is likely to cause emotional harm.	Next Steps: Domain 2

Topic	Description of legislative amendment	Alignment with ACT Government Commitments
Outlawing corporal punishment for children in OOHC	**Mandate the provision of services to persons leaving care under the age of 18**, and on request, to persons under the age of 21.	Next Steps: Domain 4
Transitions from Care (18-21 years) support	**Broaden the kinds of services that the Director-General may provide** to persons who are transitioning out of care.	Next Steps: Domain 6 PAGA: commitment 20 HACS11: 11, 14
	Expand the entitlement to access protected information to adults of any age previously in out of home care.	
	Insert a new provision that mandates the Director-General maintain comprehensive personal records for every child and young person in out of home care, encompassing the completion of individualised assessments annually (Life Story Work).	
Retaining personal records (Life Story Work)	Within the new principle of child and youth participation, it requires that children and young people receive a mini**mum number of two home visits** per year and opportunities to speak to case managers, where developmentally appropriate.	Next Steps: Domain 4
Minimum Visits in OOHC	Within the new principle of child and youth participation, it requires that children and young people receive a **minimum number of two home visits per year**.	Next Steps: Domain 2

ACT Government

Children and Young People Amendment Bill 2024

Appendix 3: References

October 2023

Community Services Directorate

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