



# GUIDING LEGISLATION

Carers and workers within the out-of-home care sector are governed by various legislation.

This brochure provides some information and links around the legislation.

**ACT Together is a consortium of:**

- Barnardos Australia
- Australian Childhood Foundation
- Oz Child

Initiative of



**ACT**  
Government

A Step Up for Our Kids -  
Out of Home Care  
Strategy 2015-2020  
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# THE CHILDREN AND YOUNG PEOPLE ACT 2008

The Children and Young People Act of 2008 is the most relevant and important legislation for carers and workers in the sector.

This Act:

- Defines what constitutes abuse and neglect as well as reporting and investigative procedures in relation to abuse and neglect.
- Defines the range of court orders and gives the Magistrate in the Children's Court the power to make court orders about any child or young person that it believes to be in need of care and protection.
- It enables the director-general to authorise foster carers and residential care services to exercise daily care or long-term parental responsibilities for any child or young person for whom the director-general has daily or long-term parental responsibility.
- It regulates the processes that need to be followed when a child enters out-of-home care.
- Sets out important principles that must underpin all decisions and actions taken.
- Stipulates the requirements for care plans.
- And is the legal basis for foster carers to care for a child or young person in the ACT.

## PRINCIPLES:

Under the Act are principles. You should make yourself aware of these and consider how it applies to your situation:

- Best Interests Principle (s8): the first and paramount principle under the Act is that all decisions made in relation to a child or young person must regard what is in the best interests of the child or young person. All other principles in the Act must be applied as long as they are in the best interests of the child or young person.
- Aboriginal Placement Principle (s10 and s13): The ACT outlines priorities for placement of Aboriginal and Torres Strait Islander children. This includes considering the following placements for suitability in order:
  - kinship carers
  - foster carers who are a member of the child's or young person's Aboriginal or Torres Strait Islander community
  - foster carer who is a member of the child's or young person's community

- an Aboriginal or Torres Strait Islander foster carer;
- a non-Aboriginal or Torres Strait Islander foster carer who is sensitive to the child or young person's needs and is capable of promoting the child's or young person's ongoing contact with the child's or young person's Aboriginal or Torres Strait Islander family, community and culture
- Cultural plans are developed to help you support the cultural identity for Aboriginal and Torres Strait Islander children.

The Act can be found at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## **NATIONAL STANDARDS FOR OUT-OF-HOME CARE AND THE CHILDREN AND YOUNG PEOPLE (ACT OUT OF HOME CARE) STANDARDS**

The National Standards for Out-of-Home Care (National Standards) were developed as part of the National Framework for Protecting Australia's Children and were endorsed by the Council of Australian Governments in 2009. The National Standards were finalised in 2011 on the basis of significant consultation across Australia with the out of home care sector.

The ACT has adopted the National Standards as the ACT Out-of-Home Care Standards (ACT Standards).

The ACT Standards set out minimum expectations and drive improvements in the quality of care for children and young people who are unable to reside with their birth families for protective or family welfare reasons.

The ACT Standards are consistent with the principles defined in the United Nations Convention on the Rights of the Child, are child focused and consider the rights and needs of children and young people in out-of-home care.

The National Standards, to be adopted as the ACT Standards, ensure the following occurs:

- 1.** Children and young people are provided with stability and security during their time in care. Stability and security are vital to healthy emotional development and provide strong predictors of better outcomes for children.
- 2.** Children and young people participate in decisions that have an impact on their lives. This is critical to emotional development and self-esteem and is a key provision within the United Nations Convention on the Rights of the Child.
- 3.** Aboriginal and Torres Strait Islander communities participate in

decisions concerning the care and placement of their children and young people. Maintaining connections to family, community and country will help Aboriginal and Torres Strait Islander children and young people to develop their identity, feel connected to their culture and develop their spirituality.

4. Each child and young person has an individualised plan that details their health, education and other needs.
5. Children and young people have their physical, developmental, psychosocial and mental health needs assessed and attended to in a timely way.
6. Children and young people in care access and participate in education and early childhood services to maximise their educational outcomes. Standards 4, 5 and 6 promote care planning that includes the views of the child or young person and significant others and is focussed on the child or young person's wellbeing, health and education, maximising the individual's life opportunities. Appropriate assessments are carried out to identify needs and respond in a timely way.
7. Children and young people up to 18 years are supported to be engaged in appropriate education, training and /or employment.
8. Children and young people are supported to participate in social and /or recreational activities of their choice, such as sporting, cultural or community activity. Standards 7 and 8 reflect the importance of children and young people in care having opportunities to experience education, training and development that enable them to fulfil their potential and be actively connected with community.
9. Children and young people are supported to safely and appropriately maintain connection with family, be they birth parents, siblings or other family members. These relationships are important to the development of their identity, as well as their feeling of belonging in the world
10. Children and young people in care are supported to develop their identity, safely and appropriately, through contact with their families, friends, culture, spiritual sources and communities and have their life story recorded as they grow up. Shared experiences with family, friends and community strengthen the sense of self of children and young people in care. Memories and experiences during their time in care will be recorded to help them recall people and events that have shaped their lives.
11. Children and young people in care are supported to safely and appropriately identify and stay in touch, with at least one other person who cares about their future, who they can turn

to for support and advice. An adult role model can be critically important for children and young people in care and a vital support for their ongoing development

12. Carers are assessed and receive ongoing training, development and support in order to provide quality care. Carers are recruited, assessed and have access to support, information and review mechanisms in order to ensure quality care is provided.
13. Children and young people have a transition from care plan commencing at 15 years old which details support to be provided after leaving care. Plan and provide practical help children and young people to prepare for the future.

The National Standards for Out-of-Home Care can be found at:  
[www.dss.gov.au](http://www.dss.gov.au)

Children and Young People (ACT Out-of-Home Care) Standards can be found at: <http://www.legislation.act.gov.au/>

## THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD AND THE ACT CHARTER OF RIGHTS FOR CHILDREN AND YOUNG PEOPLE IN OUT-OF-HOME CARE

The United Nations Convention on the Rights of the Child changed the way children are viewed and treated – i.e., as human beings with a distinct set of rights instead of as passive objects of care and charity.

The ACT Charter of Rights for Children and Young People in Out-of-Home Care is consistent with the United Nations Convention on the Rights of the Child, the ACT Human Rights Act, and the ACT Children and Young People Act, all of which outline the basic human rights to which all children and young people are entitled.

These include the right to:

- be safe and looked after
- be respected
- be treated fairly
- have fun, play and be healthy
- be heard
- to have privacy and have your own things
- to ask questions about what is happening to you
- to have contact with the people you care about and know about your family and cultural history

- the right to go to school and
- the right to talk to people about things you don't like or don't understand.

Your role as a carer or staff member is to ensure that children in your care irrelevant of age have these rights.

It may require you to voice these rights on their behalf where they cannot communicate these for themselves. For example, although a baby cannot express their right to be healthy, you can identify health needs and voice these to your care team to ensure their health needs are met.

The United Nations Convention on the Rights of the Child can be found at: [www.unicef.org](http://www.unicef.org)

The ACT Charter of Rights can be found at: [www.communityservices.act.gov.au/](http://www.communityservices.act.gov.au/)

## INTERNATIONAL DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

The International Declaration on the Rights of Indigenous Peoples is an international human rights instrument that

**The Declaration recognises a range of basic human rights and fundamental freedoms of Indigenous peoples. Among these are:**

- the right to self-determination: Indigenous peoples have the right to make their own decisions on issues that concern them
- the right to cultural identity: Indigenous peoples are equal to all other peoples, but they also have the right to be different and culturally distinct
- the right to free, prior and informed consent: Indigenous peoples have the right to be consulted and make decisions on any matter that may affect them, having all the information, before anything happens, and without being pressured
- the right to be free from discrimination: Governments must ensure that Indigenous peoples and individuals are treated equally, regardless of sex, disability or religion.

The Declaration also recognises Indigenous peoples' collective rights to lands and other natural resources, and requires fair and adequate compensation for wrongful dispossession.

The declaration can be found at: [www.humanrights.gov.au](http://www.humanrights.gov.au)

## INFORMATION SHARING

There is a number of pieces of legislation that guide policies and procedures about what information is collected and who it can be shared with, this includes:

### **Privacy Act 1988 (Commonwealth)**

Children and Young People Act information privacy principles are based on this Act.

### **Health Records (Privacy and Access) Act 1997**

Guides privacy and access to health records

### **Freedom of Information Act 1989**

Guides what information can be accessed from Government Departments and the Agencies providing care.

### **Territory Records Act 2002**

ACT Government agencies and those whom the Government has contracted must keep full and accurate records of their activities

What this means in practice is that you should consider information you hold, who you are sharing with and with what authority you are doing this.

Release of information needs to be considerate of the privacy of all parties involved and what is in the best interest of the child and its direct relevance to supporting their care and development. It also means you have to consider what information you know about the child and your care and who you can share this information with.

It also means that you are not privy to all records and information about the child.

## OTHER RELEVANT LEGISLATION:

The Human Rights Act can be found at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

Domestic Violence and Protection Orders Act can be found at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

Family Law Act can be found at [www.austlii.edu.au](http://www.austlii.edu.au)

Adoption Act can be found at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

Working with Vulnerable People (Background Checking) Bill 2010 can be found at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

Family Violence Act can be found at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

Mental Health (Treatment and Care) Act can be found at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

# ACT OMBUDSMAN – REPORTABLE CONDUCT SCHEME

## Ombudsman Act (1989)

The ACT Ombudsman's Reportable Conduct Scheme was established to oversee how organisations prevent and respond to allegations of child abuse and misconduct. ACT Together is defined as an employer under the Reportable Conduct Scheme, and for this specific scheme, the Ombudsman defines carers as employees. As such, carers are responsible for reporting incidences outlined within the reportable conduct scheme. Reportable conduct covers a broader range of conduct compared to the types of child abuse, which must be reported to CYPS. Carers will be held to the standards outlined within the scheme and any inappropriate behaviour will be reported.

Carers must report allegations or convictions concerning child-related misconduct by another carer or worker, including:

- Ill-treatment of a child (including emotional abuse, and hostile use of force)
- Neglect
- Psychological harm
- Misconduct of a sexual nature
- Sexual or physical offences and convictions where a child is a victim or is present
- Inappropriate discipline or offences relating to protecting children from harm in accordance with the provisions of the Education and Care Service National Law (ACT) Act 2011.
- Previous allegations or convictions relating to any of the above

Carers must report such behaviours to the child's caseworker or to their carer support worker. The organisation will then be responsible for notifying the Ombudsman and potentially undertake an investigation into the conduct, depending on the nature of the report.

For more information about reportable conduct visit

[www.ombudsman.act.gov.au](http://www.ombudsman.act.gov.au)







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