

# NORTHERN TERRITORY OF AUSTRALIA

## CHILDREN'S COMMISSIONER ACT 2013

As in force at 1 May 2016

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 May 2016

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## CHILDREN'S COMMISSIONER ACT 2013

**An Act to provide for a Children's Commissioner, and for related purposes**

### **Part 1                      Preliminary matters**

#### **1                      Short title**

This Act may be cited as the *Children's Commissioner Act 2013*.

#### **2                      Commencement**

This Act commences on the day fixed by the Administrator by *Gazette* notice.

#### **3                      Act binds Crown**

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

#### **4                      Objects of Act**

The objects of this Act are to:

- (a) ensure the safety and wellbeing of vulnerable children; and
- (b) promote continuous improvement and innovation in policies, practices and services relating to the safety and wellbeing of vulnerable children.

#### **5                      Principles underlying this Act**

- (1) A person exercising a power or performing a function under this Act must, as far as practicable, uphold the following principles (the ***underlying principles***):

- (a) the best interests of children are the paramount concern;

- (b) every child is entitled:
    - (i) to live in a caring and nurturing environment in which the child is protected from harm and exploitation and able to reach his or her full potential; and
    - (ii) to be treated in a way that respects the child's dignity and privacy; and
    - (iii) to express the child's concerns and grievances and to have them dealt with in a fair and timely way;
  - (c) the views of children on all matters affecting them should be given serious consideration and taken into account.
- (2) However, the underlying principles do not affect the operation of any law in force in the Territory.

## Part 2 Interpretation

### 6 Definitions

In this Act:

**CEO** means the Chief Executive Officer of the Agency administering the *Care and Protection of Children Act 2007*.

**child**, see section 13 of the *Care and Protection of Children Act 2007*.

**child is in the CEO's care**, see section 67(1) of the *Care and Protection of Children Act 2007*.

**child-related services**, see section 13 of the *Care and Protection of Children Act 2007*.

**Commissioner** means the Children's Commissioner mentioned in section 9.

**complainant** means a person who makes a complaint.

**complaint** means a complaint, or a part of a complaint, made under section 20.

**disability**, see section 2(1) of the *Disability Services Act 1993*.

**exploitation**, of a child, see section 16 of the *Care and Protection of Children Act 2007*.

**family member**, of a child, includes a person mentioned in section 19 of the *Care and Protection of Children Act 2007*.

**harm**, to a child, see section 15 of the *Care and Protection of Children Act 2007*.

**investigation** means an investigation by the Commissioner under Part 5.

**matter to which a complaint relates** means each failure of a kind mentioned in section 21(1)(a) or (b) that forms a ground for the complaint.

**matter to which an investigation relates** means:

- (a) in relation to the investigation of a complaint – the matter to which the complaint relates; or
- (b) in relation to an investigation initiated by the Commissioner – a failure of a kind mentioned in section 21(1)(a) or (b) to which the investigation relates.

**mental illness**, see section 6 of the *Mental Health and Related Services Act 1998*.

**mentally disturbed**, see section 4 of the *Mental Health and Related Services Act 1998*.

**Ombudsman**, see section 4 of the *Ombudsman Act 2009*.

**operator of child-related services**, see section 13 of the *Care and Protection of Children Act 2007*.

**public authority** means any of the following:

- (a) an Agency;
- (b) the Police Force;
- (c) a local government council constituted under the *Local Government Act 2008*;
- (d) an office or body (whether incorporated or not) established for a public purpose by or under a law of the Territory;
- (e) any other entity established for a public purpose (including a non-government organisation) that is prescribed by regulation.

**required services**:

- (a) in relation to a complaint – see section 21(1)(a) and (2); or

- (b) in relation to an investigation initiated by the Commissioner – the services mentioned in section 21(1)(a) or (2) to which the investigation relates.

***responsible Agency:***

- (a) in relation to a complaint – see section 26(3), definition ***responsible Minister***, paragraph (a); or
- (b) in relation to an investigation initiated by the Commissioner – means the Agency directly or indirectly responsible for providing, or funding or administering the funding of, any required services to which the investigation relates.

***responsible Minister:***

- (a) in relation to a complaint – see section 26(3); or
- (b) in relation to an investigation initiated by the Commissioner – means the Minister who has administrative responsibility for the responsible Agency, or a responsible service provider, to which the investigation relates.

***responsible service provider:***

- (a) in relation to a complaint – see section 21(1)(a); or
- (b) in relation to an investigation initiated by the Commissioner – a service provider mentioned in section 21(1)(a) to which the investigation relates.

***service provider***, in relation to a vulnerable child, means:

- (a) a public authority, or another person or body acting for or under an arrangement with a public authority, who has taken or is taking an action in relation to the child as a vulnerable child; or
- (b) without limiting paragraph (a) – an operator of child-related services, or an approved provider of an education and care service operated under the *Education and Care Services National Law (NT)*, who provides, or is required to provide, services in relation to the child as a vulnerable child;

other than a public authority, person or body prescribed by regulation, or a court.

***underlying principles***, see section 5(1).

***vulnerable child***, see section 7(1).



**wellbeing of a child**, see section 14 of the *Care and Protection of Children Act 2007*.

**young person who has left the CEO's care**, see section 68 of the *Care and Protection of Children Act 2007*.

## **7 Vulnerable child**

- (1) A **vulnerable child** is any of the following:
- (a) a child who is the subject of the exercise of a power or performance of a function under Chapter 2 of the *Care and Protection of Children Act 2007*;
  - (b) a child who has been arrested or is on bail, or in relation to whom an order made under the *Youth Justice Act 2005* is in force;
  - (c) a child in relation to whom an order made under the *Volatile Substance Abuse Prevention Act 2005* is in force;
  - (d) a child who is suffering from a mental illness or is mentally disturbed;
  - (e) a child who has a disability;
  - (f) a child who has sought or is seeking child-related services, or for whom a family member of the child has sought or is seeking child-related services, for any of the following:
    - (i) the prevention of harm to, or exploitation of, the child;
    - (ii) the protection of the child;
    - (iii) care or support of the child;
  - (g) a person prescribed by regulation.
- (2) In addition, a young person who has left the CEO's care is taken to be a vulnerable child.
- (3) A regulation may prescribe particular child-related services:
- (a) as services covered by subsection (1)(f); or
  - (b) as services not covered by subsection (1)(f).

## **8 Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 8*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

## **Part 3 Children's Commissioner**

### **9 Children's Commissioner**

- (1) There is to be a Children's Commissioner.
- (2) The Administrator may, by *Gazette* notice, appoint a person to be the Children's Commissioner.
- (3) The Administrator may do so only on the recommendation of the Minister.
- (4) The recommendation must be made on the basis that the person:
  - (a) has qualifications or experience relating to the Commissioner's functions; and
  - (b) is committed to the objects of this Act and the underlying principles.

### **10 Commissioner's functions and powers**

- (1) The following are the Commissioner's functions:
  - (a) to deal with:
    - (i) a complaint about required services; or
    - (ii) on the Commissioner's own initiative, a matter that may form a ground for making a complaint (irrespective of when the matter occurred and whether or not a complaint was made);
  - (b) to monitor the ways in which service providers respond to reports made by the Commissioner;
  - (c) to monitor the administration of the *Care and Protection of Children Act 2007* in so far as it relates to vulnerable children;

- (d) to undertake inquiries related to the care and protection of vulnerable children;
  - (e) to monitor the implementation of any government decision arising from:
    - (i) an inquiry undertaken by the Commissioner under Part 6; or
    - (ii) any other inquiry related to the care and protection of vulnerable children, regardless of who undertook the inquiry;
  - (f) to monitor the ways in which the CEO deals with suspected or potential harm to, or exploitation of, children in the CEO's care;
  - (g) to report to the Minister on a matter relating to the Commissioner's functions as required by the Minister;
  - (h) to promote an understanding of, and informed public discussion about, the rights, interests and wellbeing of vulnerable children.
- (2) The Commissioner has the powers necessary to perform the Commissioner's functions.

## **11 Commissioner's independence**

Except as otherwise provided by another law of the Territory, the Commissioner is not subject to the direction of anyone in relation to:

- (a) the way in which the functions of the Commissioner are performed; or
- (b) the order of priority the Commissioner gives to investigations.

## **12 Term of appointment**

The Commissioner holds office for the period (not exceeding 5 years) specified in his or her appointment and is eligible for reappointment.

## **13 Conditions of appointment**

The Commissioner holds office on the conditions (including as to remuneration, expenses and allowances) determined by the Administrator.

**14 Leave**

The Minister may grant the Commissioner leave of absence on the conditions determined by the Minister.

**15 Resignation**

The Commissioner may resign the office of Commissioner by written notice given to the Administrator.

**16 Suspension and termination of appointment**

- (1) The Administrator may, in writing, suspend the Commissioner from duty on the ground of misbehaviour or physical or mental incapacity.
- (2) The Minister must, within 3 sitting days after the suspension, present a statement of the reasons for the suspension to the Legislative Assembly.
- (3) The Administrator must terminate the Commissioner's appointment if, within 7 sitting days after presenting the statement, a resolution is passed by a two-thirds majority of the Legislative Assembly requesting the termination.
- (4) The Commissioner must resume duties if:
  - (a) the Minister does not present the statement under subsection (2); or
  - (b) the Legislative Assembly does not pass the resolution under subsection (3).
- (5) The Commissioner is entitled to be paid remuneration and allowances during the suspension.
- (6) The Administrator must terminate the Commissioner's appointment if the Commissioner:
  - (a) becomes bankrupt; or
  - (b) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
  - (c) compounds with creditors or makes an assignment of the Commissioner's remuneration for their benefit.

**17 Acting Commissioner**

- (1) The Minister may appoint a person to act in the office of the Commissioner:
  - (a) during a vacancy in the office (whether or not an appointment has previously been made to the office); or
  - (b) during a period or all periods when the Commissioner is unable to perform the functions of the office.
- (2) A person appointed under subsection (1)(a) must not act continuously for more than 3 months in the office of the Commissioner.
- (3) The Minister may determine the conditions of the appointment (including as to remuneration, expenses and allowances).

**18 Oath of office**

- (1) A person appointed to be the Commissioner must, before taking office as Commissioner, take an oath that he or she:
  - (a) will faithfully and impartially perform the functions of the office; and
  - (b) will not, except for the purposes of this Act, disclose any information obtained by him or her in performing those functions.
- (2) The Speaker or a Supreme Court Judge must administer the oath.

**19 Staff of Commissioner**

- (1) The staff of the Commissioner consists of:
  - (a) public sector employees employed for the Commissioner; and
  - (b) persons employed in an Agency made available by the Chief Executive Officer of the Agency under an arrangement with the Commissioner.
- (2) A member of the Commissioner's staff is subject only to the direction of:
  - (a) the Commissioner; or
  - (b) another member of the Commissioner's staff.

## **Part 4                      Complaints**

### **Division 1                Procedures for making complaints**

#### **20                      Making complaint**

- (1) Any of the following persons may make a complaint:
  - (a) a person who is or has been a vulnerable child;
  - (b) an adult acting on behalf of a person who is or has been a vulnerable child, whether or not the person is alive at the time the complaint is made.
- (2) The complaint:
  - (a) must be made to the Commissioner; and
  - (b) may be made orally or in writing.
- (3) If the complaint is made orally, the Commissioner may arrange for it to be reduced into writing.

#### **21                      Grounds for complaint**

- (1) The complaint must be made on one or more of the following grounds:
  - (a) a service provider (a **responsible service provider**) failed to provide services (**required services**) for the child, as a vulnerable child, that the provider was reasonably expected to provide;
  - (b) the required services provided for the child by the responsible service provider failed to meet the standard that was reasonably expected of the provider.
- (2) Without limiting subsection (1), the required services include:
  - (a) any services relating to the care or wellbeing of the child; and
  - (b) for a vulnerable child mentioned in section 7(1)(f) – child-related services mentioned in section 7(1)(f).

#### **22                      When complaint must be made**

- (1) The complaint must be made within 1 year after the matter to which the complaint relates has arisen.

- (2) However, the Commissioner may accept a complaint after the 1 year period if the Commissioner considers it is appropriate to do so in the public interest or because of special circumstances.

## **Division 2            Dealing with complaints**

### **23            Initial assessment of complaint**

- (1) On receiving the complaint, the Commissioner must decide which of the following actions should be taken:
- (a) to investigate the complaint;
  - (b) either or both of the following:
    - (i) not to deal with the complaint;
    - (ii) to refer the complaint to another person for investigation and resolution;
  - (c) to resolve the complaint without an investigation.
- (2) The Commissioner may make preliminary inquiries for making a decision under subsection (1).
- (3) The Commissioner must make the decision under subsection (1) within:
- (a) 28 days after receiving the complaint; or
  - (b) if the Commissioner needs other information for the decision – 28 days after obtaining the information.
- (4) The Commissioner may change his or her decision to take an action mentioned in subsection (1) even after starting to take the action.

### **24            Deciding not to deal with or to refer complaint**

- (1) The Commissioner may decide not to deal with the complaint only if satisfied that:
- (a) the complaint lacks substance; or
  - (b) the complaint relates to an act or omission of a police officer; or
  - (c) the complaint should be referred to a person who has an established mechanism to deal with similar complaints; or

- (d) the matter to which the complaint relates has already been satisfactorily dealt with by the Commissioner or another person; or
  - (e) the complainant has failed, without reasonable excuse, to comply with a requirement of the Commissioner (for example, giving specified information to the Commissioner); or
  - (f) the complainant does not have a sufficient interest in the matter to which the complaint relates; or
  - (g) the complainant has withdrawn the complaint; or
  - (h) it is appropriate for the Commissioner to initiate an investigation under section 28(2) for matters including the matter to which the complaint relates; or
  - (i) any dealing or further dealing with the complaint is inappropriate, having regard to:
    - (i) a proceeding before a court or tribunal relating to the matter to which the complaint relates; or
    - (ii) the objects of this Act, the underlying principles and the resources available to deal with the complaint.
- (2) Except as provided in subsection (3), the Commissioner must not refer the complaint to the Ombudsman for investigation and resolution if the Commissioner is authorised under section 28(1) to investigate the complaint.
- (3) The Commissioner must refer a complaint mentioned in subsection (1)(b) to the Ombudsman for investigation and resolution.

## **25        Deciding to resolve complaint without investigation**

The Commissioner may decide to resolve the complaint without an investigation only if satisfied that:

- (a) the Commissioner would be authorised to investigate the complaint under section 28(1); and
- (b) having regard to the nature and seriousness of the complaint, it may be resolved expeditiously without an investigation.



## **26                      Notification of initial assessment**

- (1) As soon as practicable after making a decision under section 23(1), the Commissioner must notify the complainant of the decision and the reasons for the decision.
- (2) In addition:
  - (a) if the Commissioner decides not to deal with the complaint, the Commissioner:
    - (i) must notify each of the following of the decision:
      - (A) each responsible service provider in relation to the complaint;
      - (B) the Chief Executive Officer of each responsible Agency in relation to the complaint; and
    - (ii) may notify each responsible Minister in relation to the complaint of the decision if the Commissioner considers it appropriate to do so; and
    - (iii) if the Commissioner decides not to deal with the complaint after initially commencing an investigation into the complaint – must give a report about the investigation to each person notified under subparagraph (i) or (ii); and
  - (b) if the Commissioner decides to resolve the complaint without an investigation, the Commissioner must notify each person mentioned in paragraph (a)(i) of the decision and any action taken or proposed to be taken for resolving the complaint.
- (3) In this section:

**responsible Minister**, in relation to the complaint, means the Minister who has administrative responsibilities for:

- (a) an Agency (a **responsible Agency**) directly or indirectly responsible for providing, or funding or administering the funding of, any required services in relation to the complaint; or
- (b) a responsible service provider in relation to the complaint.

**27 Complaint referred to another person**

- (1) This section applies if the Commissioner refers the complaint to another person (the ***referred authority***) for investigation and resolution.
- (2) The referred authority must, as soon as practicable, notify the Commissioner:
  - (a) whether the referred authority accepts the referral; and
  - (b) if the referred authority accepts the referral – the result of the investigation and resolution.

**Part 5 Investigations****28 Commencing investigation**

- (1) The Commissioner may investigate a complaint only if satisfied that the requirements of Part 4, Division 1 are met in relation to the complaint.
- (2) The Commissioner may investigate a matter on the Commissioner's initiative only if satisfied that the matter may form a ground for making a complaint (irrespective of when the matter occurred and whether or not a complaint was made in relation to the matter).
- (3) The Commissioner may make preliminary inquiries for subsection (2).
- (4) Before commencing an investigation, the Commissioner must notify each responsible service provider, and the Chief Executive Officer of each responsible Agency, of the following:
  - (a) the Commissioner's decision to conduct the investigation;
  - (b) details of the matter to which the investigation relates;
  - (c) that the Agency and service provider may each make a written submission about the matter within a reasonable time specified in the notice.

**29 Report of investigation**

- (1) On completing the investigation, the Commissioner must:
  - (a) prepare a report of the investigation; and
  - (b) take any action the Commissioner considers appropriate in relation to the matter to which the investigation relates.

- (2) Without limiting what may be included in the report, the Commissioner may, in the report:
  - (a) make specified findings about the matter to which the investigation relates; and
  - (b) recommend a responsible service provider or responsible Agency take specified actions within a specified time in relation to that matter.
- (3) If the Commissioner proposes to make specified findings or recommend specified actions in the report about a responsible service provider or responsible Agency, the Commissioner must:
  - (a) give the service provider or Agency a reasonable opportunity to comment on those findings or recommendations; and
  - (b) take into account those comments in finalising the report.
- (4) For an investigation of a complaint, the Commissioner must, after finalising the report, notify the complainant of:
  - (a) the result of the investigation; and
  - (b) any action taken or proposed to be taken for resolving the complaint.
- (5) The Commissioner:
  - (a) must give a copy of the report to each of the following:
    - (i) each responsible service provider;
    - (ii) the Chief Executive Officer of each responsible Agency; and
  - (b) may give a copy of the report to a responsible Minister if the Commissioner considers it appropriate to do so.
- (6) If the responsible service provider or responsible Agency fails to take a recommended action within the time specified in the report, the Commissioner may give another report about the failure to a responsible Minister.

## **Part 6                      Inquiries**

### **30                      Undertaking inquiry**

- (1) Subject to subsection (2), the Commissioner:
  - (a) may undertake an inquiry related to the care and protection of children in the Territory on the Commissioner's own initiative; and
  - (b) must undertake such an inquiry if directed to do so by the Minister.
- (2) The Commissioner may only undertake the inquiry if satisfied that the inquiry is consistent with the objects of this Act and the Commissioner's functions.

### **31                      Notification of inquiry**

The Commissioner must give each of the following persons written notice that an inquiry will be undertaken:

- (a) the Minister;
- (b) if the Commissioner considers that the inquiry may involve consideration of a matter that is the responsibility of another Minister – the other Minister;
- (c) if the Commissioner considers that the inquiry may involve consideration of a matter that is the responsibility of an Agency – the Chief Executive Officer of the Agency.

### **32                      Procedures of inquiry**

The Commissioner may determine the procedures of the inquiry.

### **33                      Report of inquiry**

- (1) The Commissioner must give the Minister a report of the findings of the inquiry.
- (2) The Minister must table the report in the Legislative Assembly within 6 sitting days after receiving it.
- (3) However, if the Commissioner is satisfied on reasonable grounds that it is in the public interest to do so, the Commissioner may:
  - (a) direct that all or part of the report must not be tabled; or

- (b) direct that any information identifying individuals named in the report be removed from the version of the report that is tabled.
- (4) In deciding whether to make a direction under subsection (3):
  - (a) the Commissioner must have regard to the views of the CEO and the Minister; and
  - (b) the possibility that tabling all or part of the report may result in embarrassment to, or a lack of confidence in, the Territory Government or an Agency is irrelevant.
- (5) If the Commissioner decides to make a direction under subsection (3), the Commissioner must give the Minister written reasons for the decision as soon as practicable after making it.

## **Part 7 Commissioner's other powers**

### **34 Access to child**

- (1) For performing the Commissioner's functions, the Commissioner may request a person to allow the Commissioner to have contact with a child who is, or whom the Commissioner reasonably believes to be:
  - (a) a vulnerable child; or
  - (b) a witness for a matter to which an inquiry under Part 6 or a complaint or investigation relates.
- (2) The request must specify a reasonable time and place for the contact.

### **35 Access to information**

- (1) For performing the Commissioner's functions, the Commissioner may, by written notice, request a person:
  - (a) to give specified information to the Commissioner within a reasonable time specified in the notice; or
  - (b) to attend before the Commissioner at a reasonable time and place specified in the notice:
    - (i) to give information and answer questions about a specified matter; or
    - (ii) to produce a specified thing; or

- (c) to communicate with the Commissioner in any other way about a specified matter at a reasonable time specified in the notice.
- (2) If a person gives the Commissioner a thing in response to the request, the Commissioner:
  - (a) may inspect it and make a copy of it; and
  - (b) must return it to the person as soon as practicable.
- (3) For subsection (1), the Commissioner may require a person:
  - (a) to give information on oath; or
  - (b) to verify, on oath, a written statement of the person.

## **Part 8                      Offences**

### **36                      Failure to comply with request for access to child**

- (1) A person commits an offence if:
  - (a) the Commissioner makes a request of the person under section 34(1); and
  - (b) the person engages in conduct that results in the person failing to comply with the request.

Maximum penalty:        100 penalty units or imprisonment for 12 months.

- (2) It is a defence to a prosecution for an offence against subsection (1) if:
  - (a) the defendant has a reasonable excuse; or
  - (b) the child who is the subject of the request indicated that he or she did not wish to have the contact specified in the request.

### **37                      Failure to comply with request for information**

- (1) A person commits an offence if:
  - (a) the Commissioner makes a request of the person under section 35(1); and

- (b) the person engages in conduct that results in the person failing to comply with the request.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) It is a defence to a prosecution for an offence against subsection (1) if:

- (a) the defendant has a reasonable excuse; or
- (b) a certificate under subsection (3) or (4) has been given in relation to the request; or
- (c) a Supreme Court Judge has decided the defendant would be able to refuse to comply with the request on the ground of a privilege had the request been made in a criminal proceeding; or
- (d) a Supreme Court Judge has decided any benefits arising from complying with the request will be outweighed by the damage to the defendant's financial interests or privacy as a result of the compliance.

- (3) The Commissioner of Police may certify in writing that compliance with the request would:

- (a) prejudice the investigation of any unlawful conduct; or
- (b) disclose a confidential source of information in relation to the administration of a law; or
- (c) prejudice the effectiveness of a method or procedure in relation to the administration of a law; or
- (d) facilitate a person's escape from lawful custody; or
- (e) endanger the safety of a person.

- (4) The Administrator may certify in writing that compliance with the request would be contrary to the public interest.

- (5) Without limiting subsection (4), the Administrator may do so if the Administrator is satisfied the compliance would involve:

- (a) a disclosure of communications between the Administrator and the Executive Council or a member of the Executive Council; or

- (b) a disclosure of communications between one or more of the following:
  - (i) a Minister of the Territory;
  - (ii) a Minister of the Commonwealth;
  - (iii) a Minister of a State or another Territory; or
- (c) a disclosure of a deliberation or decision of:
  - (i) the Executive Council or a committee of the Executive Council; or
  - (ii) a committee of the Legislative Assembly formed to advise the Administrator or a Minister; or
  - (iii) the Cabinet of the Territory or of the Commonwealth, a State or another Territory.
- (6) The person who receives the request may apply to a Supreme Court Judge for a decision about the application of subsection (2)(c) or (d) to the person.
- (7) The person bears the legal burden of proof for the application.
- (8) Subject to the decision of the Supreme Court Judge, the application must be made in accordance with the Rules of Court made under the *Supreme Court Act 1979*.
- (9) The Supreme Court Judge may make any orders necessary for the practical operation of section 35 including, for example, amending the notice.

### **38 Failure to comply with requirement to give information on oath**

- (1) A person commits an offence if:
  - (a) the Commissioner requires the person, under section 35(3) to:
    - (i) give information on oath; or
    - (ii) verify, on oath, a written statement of the person; and
  - (b) the person engages in conduct that results in the person failing to comply with the requirement.

Maximum penalty: 20 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.



**39 Misleading information or document**

(1) A person commits an offence if:

- (a) the person gives information to the Commissioner under this Act; and
- (b) the person knows the information is misleading.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) A person commits an offence if:

- (a) the person gives a document to the Commissioner under this Act; and
- (b) the person knows the document contains misleading information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(3) Subsection (2) does not apply if the person, when giving the information:

- (a) draws the misleading aspect of the document to the Commissioner's attention; and
- (b) to the extent to which the person can reasonably do so – gives the Commissioner the information necessary to remedy the misleading aspect of the document.

(4) In this section:

***misleading information*** means information that is misleading in a material particular or because of the omission of a material particular.

**40 Preventing or obstructing complaint**

A person commits an offence if, as a result of the person's conduct, another person:

- (a) is prevented from making a complaint; or
- (b) is obstructed in making a complaint.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

**41 False complaint**

A complainant commits an offence if:

- (a) in making the complaint, the complainant makes a representation; and
- (b) the complainant knows that the representation is false.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

**42 Obstructing or improperly influencing investigation**

- (1) A person commits an offence if, as a result of the person's conduct, the conduct of an investigation is obstructed.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) A person commits an offence if the person engages in conduct with the intention of improperly influencing the conduct of an investigation.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) In this section:

**obstruct** includes resist and hinder.

**Part 9 Commissioner's reports****43 Annual report and other reports**

- (1) The Commissioner must:
  - (a) by 31 October following the end of each financial year, prepare and give the Minister a report on the operation of this Act during that year; and
  - (b) as required by the Minister, prepare and give the Minister a report mentioned in section 10(1)(g).
- (2) If the Commissioner considers it appropriate to do so, the Commissioner may also prepare and give the Minister a report about a matter relating to the performance of a function of the Commissioner.

- (3) Without limiting subsection (1) or (2), a report may contain particulars about a person's failure to comply with this Act.
- (4) The Minister must table each report mentioned in subsection (1) or (2) in the Legislative Assembly within 6 sitting days after receiving it.
- (5) The Commissioner may, for a report (the **first report**) mentioned in subsection (1) or (2), prepare and give the Minister a second report, on a confidential basis, about a matter to which the first report relates.
- (6) However, the Commissioner may do so only if the Commissioner considers aspects of the matter should not be publicly disclosed, having regard to:
  - (a) the underlying principles; and
  - (b) any action being taken by the Commissioner or anyone else.

#### **44 Report authorised by Speaker**

- (1) The Speaker may, at the Commissioner's request, authorise the Commissioner to publish, in the public interest or in the interests of a person:
  - (a) a report relating to the performance of a function of the Commissioner; or
  - (b) a report relating to a particular complaint or investigation.
- (2) Subsection (1) applies regardless of whether the matters dealt with in the report have been the subject of another report tabled in the Legislative Assembly.

## **Part 10 Disclosure of confidential information**

### **45 Disclosure of information to Commissioner generally**

- (1) An officer of a public authority may disclose information to the Commissioner for this Act despite any restriction on the disclosure under a law of the Territory.
- (2) For subsection (1), an officer of a public authority includes any of the following:
  - (a) the authority's principal officer;
  - (b) a member of the authority;

- (c) a member of the staff of the authority;
  - (d) a person employed or engaged by the authority.
- (3) This section has effect subject to section 37(2) to (9).

#### **46 Direction by Commissioner not to disclose information**

- (1) This section applies if a person is given a document by the Commissioner for this Act.
- (2) The Commissioner may direct the person not to disclose any information in the document except as specified in the direction.
- (3) A person commits an offence if:
- (a) the Commissioner gives the person a direction under subsection (2); and
  - (b) the person engages in conduct that results in the person contravening the direction.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (4) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

#### **47 Confidentiality**

- (1) A person commits an offence if the person:
- (a) obtains information in the course of performing functions under this Act; and
  - (b) either:
    - (i) engages in conduct that results in the disclosure of the information; or
    - (ii) uses the information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Subsection (1) does not apply if:
- (a) the person discloses the information:
    - (i) for the administration of this Act; or

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- (ii) with the consent of the person to whom the information relates; or
  - (iii) for legal proceedings arising out of the operation of this Act; or
  - (iv) for investigating a complaint about the care or protection of children under a law of the Territory, or a law of the Commonwealth, a State or another Territory; or
- (b) the information is otherwise available to the public.

*Note for subsection (2)*

*In addition, under section 43BE of the Criminal Code, a person is not criminally responsible for conduct constituting an offence if the conduct is justified or excused by law.*

- (3) A person must not be required in a proceeding to give evidence or produce a thing for a matter that came to the person's knowledge in exercising a power or performing a function under this Act.
- (4) A proceeding mentioned in subsection (3):
- (a) includes:
    - (i) a proceeding of a court or tribunal; or
    - (ii) any other proceeding conducted by a person having the power to take evidence on oath; but
  - (b) does not include a proceeding for an offence alleged to have been committed by a person in exercising a power or performing a function under this Act.
- (5) In this section:

**exercise**, of a power, includes the purported exercise of the power.

**performance**, of a function, includes the purported performance of the function.

## Part 11 Immunity

### 48 Protection from liability – complainant and informants

- (1) A person acting in good faith is not civilly or criminally liable for making a complaint or giving information for this Act.

- (2) A civil proceeding may be brought against a person for making a complaint or giving information for this Act only with the leave of the Supreme Court.
- (3) The Supreme Court may grant the leave only if it is satisfied there is a substantial ground for contending the person has not acted in good faith.

#### **49 Protection from liability – Commissioner and staff**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function under this Act.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) In this section:

**exercise**, of a power, includes the purported exercise of the power.

**performance**, of a function, includes the purported performance of the function.

## **Part 12 Miscellaneous matters**

### **50 Review of *Care and Protection of Children Act 2007***

- (1) The Commissioner must:
  - (a) review the operation and effectiveness of the *Care and Protection of Children Act 2007* in so far as it relates to vulnerable children at least once every 3 years; and
  - (b) prepare and give the Minister a report of the findings of the review.
- (2) The Minister must table the report in the Legislative Assembly within 6 sitting days after receiving it.

### **51 Delegation**

- (1) The Commissioner may, in writing, delegate to a person any of the Commissioner's powers or functions under this Act.
- (2) The Commissioner may do so only if satisfied the person has the appropriate qualifications or experience to exercise the power or perform the function.

**52 Regulations**

The Administrator may make regulations under this Act.

**Part 13 Transitional matters for Children's Commissioner Act 2013****53 Definitions**

In this Part:

***amended Act*** means the *Care and Protection of Children Act 2007* as in force immediately before the commencement day.

***commencement day*** means the day section 61 commences.

**54 Continuation of ongoing matters**

Anything done or omitted to be done under the amended Act by, to, or in relation to the Children's Commissioner before the commencement day that is of ongoing effect becomes, on the commencement day, a thing done or omitted to be done by, to, or in relation to, the Commissioner under this Act.

**55 Children's Commissioner**

- (1) This section applies to the person holding office as the Children's Commissioner (the ***former office***) under the amended Act immediately before the commencement day.
- (2) The person holds office as the Children's Commissioner under this Act on the conditions on which the person held the former office until the end of the person's term of appointment to the former office.

**56 Acting Children's Commissioner**

An instrument under section 290 of the amended Act appointing a person to act in the office of Commissioner that is in force immediately before the commencement day continues in force as if it were an instrument under section 17 of this Act.

**57 Investigations**

An investigation commenced under section 269 of the amended Act is taken to be an investigation commenced under section 28 of this Act if, before the commencement day, the Children's Commissioner:

- (a) has not completed the investigation; or
- (b) has not complied with the requirements of section 270 of the amended Act in relation to the investigation.

**58 Complaints**

(1) A complaint made under section 263 of the amended Act is taken to be a complaint made under section 20 of this Act if any of the following apply:

- (a) the Children's Commissioner has not made a decision under section 266 of the amended Act in relation to the complaint before the commencement day;
- (b) the Children's Commissioner:
  - (i) has made a decision under section 266 of the amended Act in relation to the complaint; but
  - (ii) has not complied with the requirements of section 267 of the amended Act in relation to the decision before the commencement day;
- (c) the Children's Commissioner:
  - (i) has decided under section 266 of the amended Act to investigate the complaint; but
  - (ii) has not commenced the investigation before the commencement day;
- (d) the Children's Commissioner:
  - (i) has decided under section 266 of the amended Act to refer the complaint to another person for investigation; but
  - (ii) has not made the referral before the commencement day.



- (2) A complaint referred to another person (the ***referred authority***) for investigation under section 266 of the amended Act is taken to be a complaint referred to the referred authority under section 23 of this Act if, before the commencement day, the referred authority has not complied with the requirements of section 268 of the amended Act in relation to the complaint.

**59      Access to information**

A request made of a person under section 271 or 272 of the amended Act is taken to be a request made under section 34 or 35 of this Act if, before the commencement day, the person has not complied with the request.

**60      First annual report**

The first annual report given under section 43(1)(a) must cover:

- (a) the operation of Chapter 5, Part 5.1 of the amended Act from 30 June 2013 to the commencement day; and
- (b) the operation of this Act from the commencement day to 30 June 2014.

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## ENDNOTES

### 1 KEY

Key to abbreviations

amd = amended  
 app = appendix  
 bl = by-law  
 ch = Chapter  
 cl = clause  
 div = Division  
 exp = expires/expired  
 f = forms  
 Gaz = Gazette  
 hdg = heading  
 ins = inserted  
 lt = long title  
 nc = not commenced

od = order  
 om = omitted  
 pt = Part  
 r = regulation/rule  
 rem = remainder  
 renum = renumbered  
 rep = repealed  
 s = section  
 sch = Schedule  
 sdiv = Subdivision  
 SL = Subordinate Legislation  
 sub = substituted

### 2 LIST OF LEGISLATION

#### ***Children's Commissioner Act 2013 (Act No. 33, 2013)***

Assent date	18 December 2013
Commenced	1 January 2014 ( <i>Gaz</i> S72, 23 December 2013)

#### ***Local Court (Related Amendments) Act 2016 (Act No. 8, 2016)***

Assent date	6 April 2016
Commenced	1 May 2016 (s 2, s 2 <i>Local Court (Repeals and Related Amendments) Act 2016</i> (Act No. 9, 2016) and <i>Gaz</i> S34, 29 April 2016)

### 3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22 of 2018) to: ss 1, 6, 7, 10, 37, 50 and 53.

### 4 LIST OF AMENDMENTS

s 18	amd No. 8, 2016, s 45
s 37	amd No. 8, 2016, s 45
pt 14 hdg	exp No. 33, 2013, s 83
pt 14	
div 1 hdg	exp No. 33, 2013, s 83
ss 61 – 68	exp No. 33, 2013, s 83
pt 14	
div 2 hdg	exp No. 33, 2013, s 83
ss 69 – 70	exp No. 33, 2013, s 83
pt 14	
div 3 hdg	exp No. 33, 2013, s 83
ss 71 – 73	exp No. 33, 2013, s 83
pt 14	
div 4 hdg	exp No. 33, 2013, s 83

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ss 74 – 75	exp No. 33, 2013, s 83
pt 14	
div 5 hdg	exp No. 33, 2013, s 83
ss 76 – 78	exp No. 33, 2013, s 83
pt 14	
div 6 hdg	exp No. 33, 2013, s 83
ss 79 – 80	exp No. 33, 2013, s 83
pt 14	
div 7 hdg	exp No. 33, 2013, s 83
ss 81 – 82	exp No. 33, 2013, s 83
pt 14	
div 8 hdg	exp No. 33, 2013, s 83
s 83	exp No. 33, 2013, s 83