

NORTHERN TERRITORY OF AUSTRALIA

CARE AND PROTECTION OF CHILDREN (CHILDREN'S COMMISSIONER) AMENDMENT ACT 2011

Act No. 9 of 2011

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 9 of 2011

An Act to amend the to amend the *Care and Protection of Children Act*, and
for other purposes

[Assented to 18 April 2011]
[Second reading 22 February 2011]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Care and Protection of Children (Children's Commissioner) Amendment Act 2011*.

2 Commencement

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

Part 2 Amendment of Care and Protection of Children Act

3 Act amended

This Part amends the *Care and Protection of Children Act*.

4 Section 13 amended

- (1) Section 13, definitions *investigation, matter to which a complaint relates, protected child, required services, responsible Agency, responsible Minister, responsible service provider* and *service provider*.

omit

- (2) Section 13

insert (in alphabetical order)

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

investigation means an investigation by the Commissioner under Part 5.1.

matter to which the complaint relates, see section 264(3).

matter to which an investigation relates means:

- (a) for the investigation of a complaint – the matter to which the complaint relates; or
- (b) for an investigation initiated by the Commissioner – a failure of a kind mentioned in section 264(1)(a) or (b) to which the investigation relates.

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

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

required services:

- (a) for a complaint – see section 264(1)(a) and (2); or
- (b) for an investigation initiated by the Commissioner – the services mentioned in section 264(1)(a) or (2) to which the investigation relates.

responsible Agency:

- (a) for a complaint – see section 267(3), definition *responsible Minister*, paragraph (a); or

-
- (b) for an investigation initiated by the Commissioner – 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) for a complaint – see section 267(3); or
- (b) for an investigation initiated by the Commissioner – the minister who has administrative responsibilities for the responsible Agency, or a responsible service provider, to which the investigation relates.

responsible service provider.

- (a) for a complaint – see section 264(1)(a); or
- (b) for an investigation initiated by the Commissioner – a service provider mentioned in section 264(1)(a) to which the investigation relates.

service provider, for 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 children's services 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.

vulnerable child, see section 258(2) to (4).

young person who has left the CEO's care, see section 68.

5 Section 24 amended

Section 24, note

omit

section 260

insert

sections 260 and 264

6 Section 37 amended

Section 37(4)

omit, insert

- (4) It is a defence to a prosecution for an offence against subsection (3) if:
- (a) the defendant has a reasonable excuse; or
 - (b) the child indicated that he or she did not wish to have the contact.

7 Section 258 amended

- (1) Section 258

omit

The object

insert

- (1) The object

- (2) Section 258

omit

protected children

insert

vulnerable children

- (3) After section 258(1)

insert

- (2) 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;
 - (b) a child who has been arrested or is on bail, or in relation to whom an order made under the *Youth Justice Act* is in force;
 - (c) a child in relation to whom an order made under the *Volatile Substance Abuse Prevention Act* is in force;

-
- (d) a child who is suffering from a mental illness or is mentally disturbed, or has a disability;
 - (e) 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;
 - (f) a person prescribed by regulation.
- (3) In addition, this Act applies to a young person who has left the CEO's care as if the person were a vulnerable child.
- (4) A regulation may prescribe particular child-related services:
- (a) as services covered by subsection (2)(e); or
 - (b) as services not covered by subsection (2)(e).

8 Sections 260 and 261 replaced

Sections 260 and 261

repeal, insert

260 Commissioner's functions and powers

- (1) The following are the Commissioner's functions:
- (a) to investigate:
 - (i) a complaint about services required to be provided to vulnerable children by service providers (see sections 263 to 265); or
 - (ii) on the Commissioner's own initiative, a matter that may form the grounds 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 this Act in so far as it relates to vulnerable children;

-
- (d) to monitor the implementation of any government decision arising from the Inquiry into the Protection of Aboriginal Children from Sexual Abuse;
 - (e) to act in accordance with section 261 in relation to submissions received by the Commissioner about recommendations arising from the Board of Inquiry into the Child Protection System of the Northern Territory;
 - (f) to report to the Minister on a matter relating to the Commissioner's functions as requested by the Minister.
- (2) The Commissioner has powers necessary to perform the Commissioner's functions.

261 Commissioner's functions about Board of Inquiry recommendations

- (1) The Commissioner must, as soon as practicable after receiving any submission about recommendations arising from the Board of Inquiry into the Child Protection System of the Northern Territory, give a copy of it to the Minister.
- (2) To the extent to which the submission raises a matter about the wellbeing of a vulnerable child, the Commissioner may:
 - (a) deal with the submission as the Commissioner considers appropriate; and
 - (b) without limiting paragraph (a):
 - (i) perform a function of the Commissioner mentioned in section 260(1)(a) to (d) having regard to the submission; and
 - (ii) advise, or make recommendations to, the Minister in relation to the submission.
- (3) The Commissioner may notify the Minister of any action the Commissioner has taken or proposes to take in relation to the submission.

9 Section 264 amended

- (1) Section 264(1)(a)
- omit*
- protected child

insert

vulnerable child

(2) Section 264(2) and (3)

omit, insert

(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 258(2)(e) – child-related services covered by that section that are provided to the child, or a family member of the child, 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.

(3) A reference in this Act to the matter to which the complaint relates is a reference to each failure forming the grounds for the complaint.

10 Section 266 amended

Section 266(2) to (5)

omit, insert

- (2) The Commissioner may decide to investigate and resolve the complaint only if the Commissioner is satisfied the Commissioner is authorised to conduct the investigation under this Part.
- (3) The Commissioner may decide not to deal with the complaint only if the Commissioner is satisfied:
 - (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 someone 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 someone else; 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 260(1)(a)(ii) 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 and underlying principles of this Act and the resources available to deal with the complaint.
- (4) Except as provided in subsection (5), the Commissioner must not refer the complaint to the Ombudsman for investigation and resolution if the Commissioner is authorised by this Part to investigate the complaint.
- (5) The Commissioner must refer the complaint to the Ombudsman for investigation and resolution if the complaint is covered by subsection (3)(b).
- (6) The Commissioner may make preliminary inquiries for subsections (1) to (5).
- (7) 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 – within 28 days after obtaining the information.
- (8) This section does not prevent the Commissioner from making a decision mentioned in subsection (1)(b) about a complaint after deciding to investigate and resolve the complaint.

11 Part 5.1, Division 3 heading amended

Part 5.1, Division 3, heading

renumber as Division 6

12 Part 5.1, Division 4 heading amended

Part 5.1, Division 4, heading

renumber as Division 7

13 Part 5.1, Division 5 heading amended

Part 5.1, Division 5, heading

renumber as Division 8

14 Part 5.1, Division 6 heading amended

Part 5.1, Division 6, heading

renumber as Division 9

15 Part 5.1, Division 3 heading inserted

After section 268

insert

Division 3 Conducting investigations**16 Sections 269 to 272**

Sections 269 to 272

repeal, insert

269 Commencing investigation

- (1) The Commissioner may investigate a complaint only if the Commissioner has decided to do so as provided in section 266.
- (2) The Commissioner may investigate a matter on the Commissioner's initiative only if the Commissioner is satisfied the Commissioner is authorised to do so under this Part.
- (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.

270 End 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 report to each of the following:

- (i) each responsible service provider;
 - (ii) the Chief Executive Officer of each responsible Agency; and
 - (b) may give the report to a responsible Minister if the Commissioner considers it appropriate to do so.
- (6) If the service provider or 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.

Division 4 Commissioner's other powers

271 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:
 - (i) a matter to which a complaint relates; or
 - (ii) a matter to which an investigation relates.
- (2) The request must specify a reasonable time and place for the contact.
- (3) The person must comply with the request.
- Maximum penalty: 100 penalty units or imprisonment for 12 months.
- (4) It is a defence to a prosecution for an offence against subsection (3) if:
- (a) the defendant has a reasonable excuse; or
 - (b) the child indicated that he or she did not wish to have the contact.

272 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 by 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 under the notice, 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.
- (4) The person must comply with the requirement.
- Maximum penalty: 20 penalty units.
- (5) It is a defence to a prosecution for an offence against subsection (4) if the defendant has a reasonable excuse.

Division 5 Offences

17 Part 5.1, Division 2, Subdivision 3 heading omitted

Part 5.1, Division 2, Subdivision 3, heading

omit

18 Section 273 amended

Section 273(1)

omit

section 271

insert

section 272(1)

19 Section 278 amended

Section 278(1)(b)

omit

section 260(1)(e)

insert

section 261(1)(f)

20 Section 279 amended

Section 279(1)(b), after "complaint"

insert

or investigation

21 Part 5.6 heading replaced

Part 5.6 heading

repeal, insert

Part 5.6 Transitional matters for other amending Acts

**Division 1 Transitional matters for Care and Protection of
Children Amendment Act 2009**

22 Part 5.6, Division 2 inserted

After section 334

insert

**Division 2 Transitional matters for Care and Protection of
Children (Children's Commissioner) Amendment
Act 2011**

335 Extended application of Part 5.1

(1) Part 5.1 as amended by the amending Act applies to the following:

-
- (a) a matter to which a complaint relates that occurred before the commencement;
 - (b) a matter to which an investigation relates that occurred before the commencement;
 - (c) for paragraph (a) or (b), a person who was a vulnerable child before the commencement.
- (2) However, subsection (1) has effect subject to section 265 in relation to an investigation of a complaint.
- (3) In this section:

amending Act means the *Care and Protection of Children (Children's Commissioner) Amendment Act 2011*.

commencement means the commencement of Part 2 of the amending Act.

23 Act further amended

The Schedule has effect.

Part 3 Amendment of other laws

24 *Health and Community Services Complaints Act* amended

- (1) This section amends the *Health and Community Services Complaints Act*.
- (2) Section 27(2)
- omit*
- subsections (3) and (4)
- insert*
- subsections (3), (4) and (4A)
- (3) After section 27(4)
- insert*
- (4A) If, in the opinion of the Commissioner, the complaint is about a matter that could be the subject of a complaint under the *Care and Protection of Children Act*, the Commissioner:
- (a) may refer the complaint to the Children's Commissioner; or

-
- (b) if the complaint is to be dealt with under this Act – must, as soon as practicable, give written notice about the complaint to the Children's Commissioner.

25 *Mental Health and Related Services Act* amended

- (1) This section amends the *Mental Health and Related Services Act*.
- (2) After section 100(8)
- insert*
- (8A) If, in the opinion of the person-in-charge of an approved treatment facility or approved treatment agency, a complaint made under this section is about a matter that could be the subject of a complaint under the *Care and Protection of Children Act*, the person-in-charge:
- (a) may refer the complaint to the Children's Commissioner; or
- (b) if the complaint is to be dealt with under this Act – must, as soon as practicable, give written notice about the complaint to the Children's Commissioner.

26 *Ombudsman Act* amended

- (1) This section amends the *Ombudsman Act*.
- (2) Section 10
- omit*
- The Ombudsman
- insert*
- (1) The Ombudsman
- (3) After section 10(1)
- insert*
- (2) The Ombudsman's functions under subsection (1) do not extend to a matter for which the Children's Commissioner is authorised to conduct an investigation under Part 5.1 of the *Care and Protection of Children Act*.

- (4) After section 19(2)

insert

- (3) This section has effect subject to sections 10(2) and 32(1).

- (5) Section 32(1)

omit, insert

- (1) If a complaint is made to the Ombudsman about a matter that could be the subject of a complaint under an Act to a complaints entity, the Ombudsman:

(a) if the complaints entity is the Children's Commissioner and the complaint does not relate to a matter mentioned in section 266(3)(b) of the *Care and Protection of Children Act* – must refer the complaint to the Children's Commissioner; or

(b) otherwise – may refer the complaint to the complaints entity.

27 *Youth Justice Regulations* amended

- (1) This section amends the *Youth Justice Regulations*.

- (2) After regulation 66(5)

insert

- (5A) If, in the opinion of the Superintendent, the complaint is about a matter that could be the subject of a complaint under the *Care and Protection of Children Act*, the Superintendent:

(a) may refer the complaint to the Children's Commissioner; or

(b) if the complaint is to be dealt with under these Regulations – must, as soon as practicable, give written notice about the complaint to the Children's Commissioner.

Schedule Care and Protection of Children Act further amended

section 23

Provision	Amendment	
	<i>omit</i>	<i>substitute</i>
sections 34(2)(i) and 211(1)(d)	protected child	vulnerable child
section 263(1)(a) and (b)	protected child	vulnerable child
section 280(1)	for an investigation	for this Part
section 281(1)	in relation to an investigation	for this Part
section 283(1) and (2)	for an investigation	for this Part