

# NORTHERN TERRITORY OF AUSTRALIA

## CARE AND PROTECTION OF CHILDREN AMENDMENT ACT 2015

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### Act No. 3 of 2015

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### Table of provisions

1	Short title .....	1
2	Commencement .....	1
3	Act amended .....	1
4	Section 13 amended .....	1
5	Section 23 amended .....	2
	23      Application of Criminal Code	
6	Section 51 amended .....	2
7	Section 53 amended .....	2
8	Section 103 amended .....	3
9	Section 106 amended .....	3
10	Section 109 amended .....	4
11	Section 110 amended .....	4
12	Part 2.3, Division 4, Subdivision 4 inserted .....	4
	Subdivision 4      Permanent care orders	
	137A      Permanent care order	
	137B      How application is made	
	137C      Notice of application	
	137D      Parties to proceedings	
	137E      Hearing in absence of parents	
	137F      Order of Court	
	137G      Making permanent care orders	
	137H      Court to consider certain matters	
	137J      Extraterritoriality	
	137K      Duration of order	
	137L      Notice of order	
	137M      Revocation of order	
13	Section 138 amended .....	9
14	Section 139 amended .....	10
15	Section 143 amended .....	10
16	Section 301 amended .....	10
17	Expiry of Act .....	10





# NORTHERN TERRITORY OF AUSTRALIA

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Act No. 3 of 2015

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An Act to amend the *Care and Protection of Children Act*

[Assented to 25 March 2015]  
[Second reading 27 November 2014]

The Legislative Assembly of the Northern Territory enacts as follows:

**1 Short title**

This Act may be cited as the *Care and Protection of Children Amendment Act 2015*.

**2 Commencement**

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

**3 Act amended**

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

**4 Section 13 amended**

Section 13

*insert (in alphabetical order)*

***permanent care order***, see section 137A.

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**5 Section 23 amended**

Section 23

*repeal, insert*

**23 Application of Criminal Code**

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

*Note for section 23*

*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.*

**6 Section 51 amended**

Section 51(2)

*omit, insert*

- (2) As soon as practicable after taking a child into provisional protection, the CEO must inform the following persons that the CEO has done so:
- (a) if a permanent care order for the child is in force – the person to whom parental responsibility for the child has been given;
  - (b) otherwise – each parent of the child.

**7 Section 53 amended**

Section 53(2)

*omit, insert*

- (2) Subject to any other provision of this Act and any other law of the Territory, the CEO must return the child by the end of the period to:
- (a) if a permanent care order for the child is in force – the person to whom parental responsibility for the child has been given; or
  - (b) otherwise – a parent of the child.

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**8 Section 103 amended**

After section 103(2)(a)

*insert*

(aa) whether or not a permanent care order is in force for the child;  
and

**9 Section 106 amended**

Section 106(1) and (2)

*omit, insert*

- (1) As soon as practicable after the order is made, the CEO must:
  - (a) give a copy of the order to:
    - (i) if a permanent care order for the child is in force – the person to whom parental responsibility for the child has been given; or
    - (ii) otherwise – each parent of the child; and
  - (b) inform the child about the order; and
  - (c) explain the effect of the order to the child.
- (2) The CEO may give the copy to a parent of the child or the person to whom parental responsibility for the child has been given:
  - (a) by personally serving the copy on the parent or other person;  
or
  - (b) if the CEO considers it impracticable to do so – by:
    - (i) leaving it at the last known address of the parent or other person; or
    - (ii) sending it by post to that address.

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**10 Section 109 amended**

(1) Section 109(1)

*omit, insert*

(1) Subject to any other provision of this Act, when the order ceases to be in force the CEO must return the child to:

(a) if a permanent care order for the child is in force – the person to whom parental responsibility for the child has been given; or

(b) otherwise – a parent of the child.

(2) Section 109(2), after "parent of the child"

*insert*

or the other person mentioned in subsection (1)(a)

**11 Section 110 amended**

Section 110(2)(c) and (3)(b), after "parent of the child"

*insert*

or the other person mentioned in section 109(1)(a)

**12 Part 2.3, Division 4, Subdivision 4 inserted**

After section 137

*insert*

**Subdivision 4 Permanent care orders****137A Permanent care order**

(1) A **permanent care order** is an order made by the Court in relation to a child, for the period that ends when the child turns 18 years of age, that orders that a person have the parental responsibility for the child.

(2) Only the CEO may apply for a permanent care order.

(3) The CEO may apply to the Court for a permanent care order for a child if the CEO reasonably believes:

(a) the child would be in need of protection but for the fact that, at the time the application is made, a protection order with a long-term parental responsibility direction giving parental

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responsibility for the child to the CEO or another specified person (or both) is in force for the child for a period that ends immediately before the child turns 18 years of age; and

- (b) the proposed order is the best means to safeguard the wellbeing of the child; and
- (c) the person proposed to be given the parental responsibility for the child has demonstrated the person's suitability to be given that responsibility.

### **137B How application is made**

The application must include the following:

- (a) the proposed order;
- (b) when the order is proposed to have effect;
- (c) why the CEO considers the order is necessary;
- (d) a statement that the person proposed to be given the parental responsibility for the child consents to the making of the order;
- (e) if the CEO considers it appropriate to do so – a request that the permanent care order include a direction authorising the child to travel outside Australia without the consent of the child's parent.

### **137C Notice of application**

- (1) As soon as practicable after applying for the order, the CEO must give to each parent of the child and the person proposed to be given the parental responsibility for the child under the order:
  - (a) a copy of the application; and
  - (b) a written notice stating:
    - (i) when and where the application is to be heard; and
    - (ii) that the application may be heard and decided in the absence of the parent or the person proposed to be given the parental responsibility for the child under the order.
- (2) The CEO may give the copy and notice to a parent of the child or the person proposed to be given the parental responsibility for the child under the order:
  - (a) by personally serving them on the parent or other person; or

- 
- (b) if the CEO considers it impracticable to do so – by:
    - (i) leaving them at the last known address of the parent or other person; or
    - (ii) sending them by post to that address.
  - (3) The CEO:
    - (a) must explain the effect of the application and notice to the child; and
    - (b) may give a copy of the application and notice to the child if the CEO considers it appropriate to do so having regard to the child's maturity and understanding.

#### **137D Parties to proceedings**

- (1) The parents of the child are the respondents in the proceedings for the application.
- (2) The other parties to the proceedings are:
  - (a) the child; and
  - (b) the CEO; and
  - (c) the person proposed to be given parental responsibility for the child under the order.

#### **137E Hearing in absence of parents**

- (1) The Court may hear the application in the absence of a parent of the child if:
  - (a) the Court is satisfied that the CEO has given the parent a notice that complies with section 137C(1)(b); or
  - (b) the CEO has not given the parent a notice that complies with section 137C(1)(b) but the Court is satisfied the application should be heard in the absence of the parent despite the non-compliance.
- (2) However, subsection (1) does not limit the Court's power to exclude the parent or anyone else from Court proceedings.



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**137F      Order of Court**

- (1) The Court may:
  - (a) make a permanent care order for the child as proposed by the CEO; or
  - (b) dismiss the application.
- (2) If the Court makes a permanent care order, any protection order in force for the child is revoked.
- (3) When making a permanent care order for a child, the Court:
  - (a) may, if the application for the order requested a direction authorising the child to travel outside Australia without the consent of a parent of the child, make that direction; and
  - (b) must not make any other direction.

**137G      Making permanent care orders**

The Court must make the permanent care order if the Court is satisfied:

- (a) the child would be in need of protection but for the fact that the child is, at the time the order is made in the care of the CEO or another person; and
- (b) the order is the best means to safeguard the wellbeing of the child; and
- (c) the person proposed to be given the parental responsibility for the child under the order has demonstrated the person's suitability to have that responsibility.

**137H      Court to consider certain matters**

In making the decision whether or not to make the permanent care order, the Court must consider:

- (a) the wishes of the following:
  - (i) the child;
  - (ii) a parent of the child;
  - (iii) the person proposed to be given parental responsibility for the child under the order;

- 
- (iv) any other person considered by the Court to have a direct and significant interest in the wellbeing of the child; and

- (b) any other matters the Court considers relevant.

**137J Extraterritoriality**

To avoid doubt, the Court may make a permanent care order for the child even if the circumstances causing the child to be in need of protection occurred:

- (a) outside the Territory or Australia; or
- (b) partly in the Territory or Australia and partly outside the Territory or Australia.

**137K Duration of order**

A permanent care order is in force from when it is made until the child turns 18 years of age unless the Court earlier revokes the order under section 137M.

**137L Notice of order**

- (1) As soon as practicable after a permanent care order is made, the CEO must give each party to the proceedings (except the child):
  - (a) a copy of the order; and
  - (b) a written notice:
    - (i) explaining the effect of the order; and
    - (ii) stating that the party may appeal against the order under Division 6 within 28 days after it is made; and
    - (iii) stating how the appeal may be instituted.
- (2) The CEO may give the copy and notice to a party:
  - (a) by personally serving them on the party; or
  - (b) if the CEO considers it impracticable to do so:
    - (i) by leaving them at the party's last known address; or
    - (ii) by sending them by post to that address.

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- (3) The CEO may give a copy of the order and notice to the child if the CEO considers it appropriate to do so having regard to the child's maturity and understanding.

**137M      Revocation of order**

- (1) Before the permanent care order expires, the CEO may apply to the Court for the order to be:
- (a) revoked; or
  - (b) revoked and replaced by a protection order.
- (2) This Subdivision applies to the application with the following changes:
- (a) as soon as practicable after making the application, the CEO must give a copy of the application to each party to the proceedings for the making of the permanent care order;
  - (b) in considering the application, the Court may take into account:
    - (i) any contravention of the order by a person; or
    - (ii) any contravention of this Act in relation to the child by a person.
- (3) The Court may revoke the order only if the Court is satisfied that to revoke the order is the best means to safeguard the wellbeing of the child.
- (4) If the Court revokes the permanent care order, the Court may:
- (a) simply revoke the order; or
  - (b) revoke the order and make a protection order, including any directions the Court considers appropriate.

**13      Section 138 amended**

Section 138(1)

*omit, insert*

- (1) The Court may adjourn proceedings for an application for an assessment order, a protection order or a permanent care order (including an application under section 136 or 137).

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**14      Section 139 amended**

Section 139(1)(b)

*omit, insert*

- (b) an order that a report be prepared and filed in the Court about the following persons:
- (i) the child;
  - (ii) the child's family;
  - (iii) if the proceedings relate to an application for a permanent care order – the person proposed to be given parental responsibility for the child under the order;

**15      Section 143 amended**

Section 143(b), after "decision"

*insert*

(unless the original decision was a permanent care order)

**16      Section 301 amended**

Section 301(1)(b)(i)

*omit*

or protection order

*insert*

, protection order or permanent care order

**17      Expiry of Act**

This Act expires on the day after it commences.