

NORTHERN TERRITORY OF AUSTRALIA

CARE AND PROTECTION OF CHILDREN AMENDMENT ACT 2019

Act No. 24 of 2019

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 24 of 2019

An Act to amend the *Care and Protection of Children Act 2007*

[Assented to 2 September 2019]

[Introduced 20 March 2019]

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 2019*.

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 2007*.

4 Section 8 amended (Role of family)

Section 8(3)

omit

all words after "is"

insert

an unacceptable risk of harm to the child.

5 Section 10 amended (Best interests of child)

(1) After section 10(2)(c)

insert

(ca) the need to strengthen, preserve and promote positive relationships between the child and the child's parents, family members, kinship group and other persons who are significant in the child's life;

(cb) in circumstances where the child has been removed from the care of the child's family, all possibilities related to reunifying the child with the child's parents;

(2) After section 10(2)(h)

insert

(ha) if the child is an Aboriginal child – the child's right to enjoy the Aboriginal culture and tradition of the child's family and community including the need to maintain ongoing contact with the child's family and connection to country and language;

6 Section 10A inserted

After section 10

insert

10A Decisions involving an intervention in the life of a child

When a decision involving an intervention in the life of a child is made, the intervention must be the least intrusive intervention in the child's life that is consistent with the best interests of the child.

7 Section 12 amended (Aboriginal children)

Section 12(2), after "an Aboriginal"

insert

child or the

8	Section 42 amended (What CEO may do generally)
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- (1) After section 42(1)(a)

insert

(ab) to provide or facilitate the provision of services or support to children, families and communities aimed at promoting or safeguarding the wellbeing of children; or

- (2) After section 42(1)(c)

insert

(ca) to provide information to children, families and the community generally about the development and safety of children; or

(cb) to provide or facilitate the provision of assistance to Aboriginal communities to establish programs for preventing or reducing incidents of harm to children in Aboriginal communities; or

- (3) Section 42(1)(e)

omit

paragraph (a), (b), (c) or

insert

paragraphs (a) to

- (4) After section 42(2)

insert

- (3) The CEO must take reasonable steps to ensure that services provided under this Act include, where appropriate:

(a) preventative and support services to strengthen and support families to reduce the incidents of harm to children; and

(b) if a risk of harm to a child has been identified – services to protect the child.

- (4) The CEO must take reasonable steps to ensure that services provided to families under this Act, where appropriate:

(a) involve meaningful engagement with families in a language and manner they understand (for example, by providing the use of an interpreter); and

-
- (b) are culturally responsive; and
 - (c) involve a holistic assessment of children and families to ascertain risk factors in order to enable tailored supports and services to be provided; and
 - (d) promote decision-making processes that:
 - (i) seek to empower and strengthen families to make decisions for their families; and
 - (ii) actively involve:
 - (A) children; and
 - (B) parents, family members and members of the relevant kinship group; and
 - (iii) are developed with regard to the age, maturity, health, cognitive ability and cultural background of the children involved.

9 Section 70 amended (CEO must prepare care plan)

- (1) Section 70(2)
omit
written
- (2) Before section 70(2)(a)
insert
(aa) is written in clear and plain language; and
- (3) Section 70(2)(a), after "child"
insert
, including the cultural needs of the child
- (4) Section 70(2)(b)
omit
measures
insert
actions

-
- (5) Section 70(2)(c)(ii)
omit
persons.
insert
persons; and
- (6) After section 70(2)(c)(ii)
insert
(d) sets out what is required to reunify the child with the child's parents, unless the CEO determines that reunification is not in the best interests of the child.
- (3) If the child is 15 years of age or over, the care plan must:
- (a) identify the needs of the child in:
- (i) preparing to leave the CEO's care; and
- (ii) the child's transition to other living arrangements after leaving the CEO's care; and
- (iii) living independently; and
- (b) outline actions that must be taken to address those needs.
- (4) The actions mentioned in subsection (3)(b) may include the provision of assistance under section 85A.
- (5) In addition, the care plan for an Aboriginal child must include reasonable actions to:
- (a) maintain and develop the child's Aboriginal identity; and
- (b) encourage the child's connection to the Aboriginal culture, tradition, language and country of the child.

10 Section 71 amended (Modification of care plan)

- (1) Section 71(2)
omit
all words after "plan"

insert

to include the matters mentioned in section 70(3)(a) and (b) if:

- (a) the plan does not already include those matters; and
- (b) one of the following applies:
 - (i) the child is 15 years of age or over;
 - (ii) the child is about to leave the CEO's care.

(2) Section 71(3)

omit

11 Section 72A inserted

After section 72

insert

72A Participation in care plan

In preparing or modifying a care plan for a child the CEO must:

- (a) encourage and facilitate the participation of any of the following the CEO considers appropriate (the ***participants***):
 - (i) the child;
 - (ii) each parent of the child;
 - (iii) an appropriate member of the child's family;
 - (iv) if the child is an Aboriginal child – a person from the kinship group of the child or an Aboriginal representative organisation nominated by the child or the child's family;
 - (v) if the child is not an Aboriginal child – a person nominated by the child or the child's family who represents the cultural group to which the child belongs; and
- (b) in facilitating participation, take all reasonable steps to arrange for the provision of services (such as an interpreter) as the CEO considers necessary; and

-
- (c) ensure any information about the preparation or modification of the care plan is given to each participant in a timely way and in a language and manner the participant understands; and
 - (d) have regard to the wishes of the participants as the CEO considers reasonable and appropriate in the circumstances.

12 Section 73 amended (Provision of care plan to interested parties)

- (1) Section 73(2)
omit
or impracticable
- (2) After section 73(2)
insert
- (3) The CEO must take reasonable steps to provide assistance to a person given a care plan under subsection (1) to understand the contents of the care plan.

13 Section 74 amended (Review of care plan)

- (1) After section 74(2)(c)
insert
(ca) the making of a significant medical diagnosis for the child;
- (2) Section 74(4)
omit, insert
- (4) In conducting a review, the CEO must:
 - (a) encourage and facilitate the participation of any of the following the CEO considers appropriate (the **participants**):
 - (i) the child;
 - (ii) each parent of the child;
 - (iii) the carer of the child;
 - (iv) an appropriate member of the child's family;

-
- (v) if the child is an Aboriginal child – a person from the kinship group of the child or an Aboriginal representative organisation nominated by the child or the child's family;
 - (vi) if the child is not an Aboriginal child – a person nominated by the child or the child's family who represents the cultural group to which the child belongs; and
 - (b) in facilitating participation, take all reasonable steps to arrange for the provision of services (such as an interpreter) as the CEO considers necessary; and
 - (c) ensure any information about the preparation or modification of the care plan is given to each participant in a timely way and in a language and manner the participant understands; and
 - (d) have regard to the wishes of the participants as the CEO considers reasonable and appropriate in the circumstances.
- (3) Section 74(5)(a)
- omit*
- those persons
- insert*
- the participants

14 Section 76 amended (CEO must prepare interim care plan)

- (1) Section 76(2)
- omit*
- written
- (2) Before section 76(2)(a)
- insert*
- (aa) is written in clear and plain language; and
- (3) Section 76(2)(a), after "child"
- insert*
- , including the immediate cultural needs of the child

-
- (4) Section 76(2)(b)

omit

measures

insert

actions

- (5) Section 76, at the end

insert

- (3) In addition, the interim care plan for an Aboriginal child may include reasonable measures to:

- (a) maintain and develop the child's Aboriginal identity; and
- (b) encourage the child's connection to the Aboriginal culture, tradition, language and country of the child.

15 Part 2.2, Division 5 heading replaced and section 85A inserted

Part 2.2, Division 5 heading

omit, insert

Division 5 Transition to independence

85A Assistance for child or young person

- (1) This section applies in relation to:
 - (a) a child who is in the CEO's care and who is 15 years of age or over; and
 - (b) a young person who has left the CEO's care.
- (2) The CEO must ensure the child or young person is provided with any services, including child-related services, the CEO considers appropriate to help the child or young person transition from being a child in the CEO's care to being independent.
- (3) Without limiting subsection (2), the CEO may assist the child or young person to obtain any of the following:
 - (a) information about available resources, services and entitlements;
 - (b) accommodation;

-
- (c) education or training;
 - (d) employment;
 - (e) financial security;
 - (f) legal services;
 - (g) health services;
 - (h) community services;
 - (i) personal, family and relationship counselling;
 - (j) access to information in the control or possession of the CEO about the child or young person while in the care of the CEO.
- (4) If a child who is in the CEO's care turns 18 years of age and becomes a young person who leaves the CEO's care while attending a course of education or training, the CEO must provide the necessary assistance (including financial assistance) to maintain the young person's living arrangements until the young person has completed the course.
- (5) In addition, the CEO may give financial assistance to the child or young person for any of the following purposes:
- (a) the child or young person's education or training;
 - (b) obtaining and furnishing the child or young person's accommodation;
 - (c) living in close proximity to the place where the child or young person is or will be:
 - (i) undertaking education or training; or
 - (ii) employed or seeking employment.
- (6) The financial assistance must be given on terms and conditions the CEO considers appropriate in the circumstances.

16	Section 86 amended (Assistance for young person who has left CEO's care)
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(1) Section 86, heading

omit, insert

86	Access to personal items
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-
- (2) Section 86(2) to (5)

omit

17 Section 104A inserted

After section 104

insert

104A Notice of application

- (1) The CEO must take the steps the CEO considers reasonable in the circumstances to give each parent of the child notice of the application, as soon as practicable after applying for the order but before the application is heard by the Court:
- (a) stating when and where the application is to be heard (if known); and
 - (b) stating that the application may be heard and decided in the absence of the parents.
- (2) In addition, the CEO may give a copy of the application with the notice if it is practicable to do so.

18 Section 106 amended (Notice of order)

- (1) Section 106(1)(c)

omit, insert

- (c) explain the duration and effect of the order to the child in a language and manner the child understands.

- (2) Section 106(2)

omit

may

insert

must

-
- (3) After section 106(2)

insert

- (2A) If the copy is personally served on the parent or other person, the CEO must explain the duration and effect of the order to the parent or other person:

- (a) in the preferred language of the person; or
- (b) if it is not reasonably practicable to do so in the preferred language of the person – in a language and manner the person understands.

- (2B) If the parent was not given a copy of the application under section 104A(2), the CEO must give the parent a copy of the application with the copy of the order under subsection (1).

19 Section 121 amended (Applying for protection order)

- (1) Section 121(1)(a)

omit

child

insert

child:

- (2) Section 121(1)(b)

omit, insert

- (b) the proposed order is:

- (i) appropriate; and
- (ii) the least intrusive means to safeguard the wellbeing of the child.

20 Section 122 amended (How application is made)

- (1) Section 122, heading

omit, insert

122 Applications

-
- (2) Section 122, before "The"

insert

- (1)

- (3) Section 122, at the end

insert

- (2) A care plan, interim care plan or, if the child is not in the CEO's care, a proposed care plan for the child must be provided with the application unless it is not reasonably practicable to do so.
- (3) If a care plan, interim care plan or proposed care plan is not provided with the application the Court may set a date by which the plan is to be provided to the Court, which must not be more than 21 days after the application is made.

21 Section 123 amended (Directions in protection order)

After section 123(1)(a)(ii)

insert

- (iii) that the CEO must do, or refrain from doing, a specified thing related to the care of the child;

22 Section 124 replaced

Section 124

repeal, insert

124 Notice of application

- (1) As soon as practicable after applying for the order, the CEO must give to each parent of the child:
- (a) a copy of the application; and
- (b) a written notice:
- (i) stating when and where the application is to be heard; and
- (ii) providing a list of contact details for local legal service providers; and
- (iii) stating that the application may be heard and decided in the absence of the parent.

-
- (2) The CEO must give a copy of the application and written notice by personally serving them on each parent.
 - (3) If the Court is satisfied that it is impracticable to personally serve the documents mentioned in subsection (1), the Court may order that the documents be served in another manner.
 - (4) In deciding whether to make an order under subsection (3) the Court must have regard to the following:
 - (a) whether attempts have been made to effect personal service and why the attempts were unsuccessful;
 - (b) the reasons why personal service is considered impracticable;
 - (c) the nature of service proposed;
 - (d) the reasons why the proposed method of service is likely to be successful;
 - (e) whether the proposed method of service is appropriate in the circumstances.
 - (5) If the documents mentioned in subsection (1) are personally served, the CEO must explain the duration and effect of the order to the parent or other person:
 - (a) in the preferred language of the person; or
 - (b) if it is not reasonably practicable to do so in the preferred language of the person – in a language and manner the person understands.
 - (6) The CEO:
 - (a) must explain the effect of the application and written notice to the child; and
 - (b) may give a copy of the application and written notice to the child if the CEO considers it is appropriate to do so having regard to the child's maturity and understanding.

23 Section 128 amended (Order of Court)

After section 128(1)

insert

- (1A) If the Court proposes to specify other directions under subsection (1)(a)(ii), the Court must hear submissions from the parties in relation to those directions.

24 Section 129 amended (When Court must make order)

Section 129(b)

omit, insert

(b) the proposed order is:

(i) appropriate; and

(ii) the least intrusive means to safeguard the wellbeing of the child.

25 Section 130 amended (Court to consider certain matters)

(1) After section 130(1)(c)

insert

(ca) the steps taken by the Territory:

(i) to provide the services necessary to address any likely risks of harm to the child; and

(ii) to ensure the services were provided in accordance with section 42(4); and

(2) Section 130(2)

omit

of the child

insert

or family member of the child or a member of the kinship group to which the child belongs

(3) After section 130(2)

insert

(3) The Court must not make a protection order unless a care plan, interim care plan or proposed care plan has been provided to the Court.

26	Section 137 amended (Variation and revocation of order)
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- | | |
|-----|--|
| (1) | Section 137(5)(b)

<i>omit</i>

section 124(1) and (2)

<i>insert</i>

section 124(1) to (5) |
| (2) | Section 137(5)(b)

<i>omit</i>

section 124(3)

<i>insert</i>

section 124(6) |

27	Section 137B amended (How application is made)
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- | | |
|-----|--|
| (1) | Section 137B, heading

<i>omit, insert</i> |
|-----|--|

137B	Applications
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- | | |
|-----|---|
| (2) | Section 137B, before "The"

<i>insert</i> |
| (1) | |
| (3) | Section 137B, at the end

<i>insert</i> |
| (2) | A care plan for the child must be provided with the application unless it is not reasonably practicable to do so. |
| (3) | If a care plan is not provided with the application the Court may set a date by which the plan is to be provided to the Court, which must not be more than 21 days after the application is made. |

28 Section 137C replaced

Section 137C

repeal, insert

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:
 - (i) stating when and where the application is to be heard; and
 - (ii) providing a list of contact details for local legal service providers; and
 - (iii) stating that the application may be heard and decided in the absence of the parent or person.
- (2) The CEO must give a copy of the application and written notice by personally serving them on each parent and the person proposed to be given the parental responsibility for the child under the order.
- (3) If the Court is satisfied that it is impracticable to personally serve the documents mentioned in subsection (1), the Court may order that the documents be served in another manner.
- (4) In deciding whether to make an order under subsection (3) the Court must have regard to the following:
 - (a) whether attempts have been made to effect personal service and why the attempts were unsuccessful;
 - (b) the reasons why personal service is considered impracticable;
 - (c) the nature of service proposed;
 - (d) the reasons why the proposed method of service is likely to be successful;
 - (e) whether the proposed method of service is appropriate in the circumstances.

(5) The CEO:

- (a) must explain the effect of the application and written notice to the child; and
- (b) may give a copy of the application and written notice to the child if the CEO considers it is appropriate to do so having regard to the child's maturity and understanding.

29 Section 139 amended (Order on adjournment)

Section 139(6)

omit

CEO agrees to do so

insert

Court has heard submissions from the parties in relation to the requirement

30 Part 5.6, Division 4 inserted

After section 336

insert

Division 4 Transitional matters for Care and Protection of Children Amendment Act 2019

337 Definition

In this Division:

amending Act means the *Care and Protection of Children Amendment Act 2019*.

338 Care plans

A care plan in force under section 70 immediately before the commencement of section 9 of the amending Act (the ***commencement***) is taken to be a care plan prepared under section 70 as in force after the commencement.

339 Interim care plans

An interim care plan in force under section 76 immediately before the commencement of section 15 of the amending Act (the **commencement**) is taken to be a care plan prepared under section 76 as in force after the commencement.

340 Application of Part 2.3, Division 4, Subdivision 1

- (1) Part 2.3, Division 4, Subdivision 1, as amended by the amending Act, applies only in relation to an application for a temporary protection order that is made after the commencement of section 20 of the amending Act (the **commencement**).
- (2) Part 2.3, Division 4, Subdivision 1, as in force immediately before the commencement, continues to apply in relation to an application for a temporary protection order that was made but had not been decided before the commencement.

341 Application of Part 2.3, Division 4, Subdivision 3

- (1) Part 2.3, Division 4, Subdivision 3, as amended by the amending Act, applies only in relation to an application for a protection order that is made after the commencement of section 22 of the amending Act (the **commencement**).
- (2) Part 2.3, Division 4, Subdivision 3, as in force immediately before the commencement, continues to apply in relation to an application for a protection order that was made but had not been decided before the commencement.

342 Application of Part 2.3, Division 4, Subdivision 4

- (1) Part 2.3, Division 4, Subdivision 4, as amended by the amending Act, applies only in relation to an application for a permanent care order that is made after the commencement of section 30 of the amending Act (the **commencement**).
- (2) Part 2.3, Division 4, Subdivision 4, as in force immediately before the commencement, continues to apply in relation to an application for a permanent care order that was made but had not been decided before the commencement.

31 Repeal of Act

This Act is repealed on the day after it commences.