

NORTHERN TERRITORY OF AUSTRALIA

TERRITORY FAMILIES LEGISLATION AMENDMENT ACT 2021

Act No. 25 of 2021

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 25 of 2021

An Act to amend the *Care and Protection of Children Act 2007* and the *Youth Justice Act 2005* and for related purposes

[Assented to 15 December 2021]
[Introduced 27 October 2021]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Territory Families Legislation Amendment Act 2021*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on the day fixed by the Administrator by *Gazette* notice.
- (2) If a provision of this Act does not commence before 30 October 2023, it commences on that day.

Part 2 Amendment of Care and Protection of Children Act 2007

3 Act amended

This Part amends the *Care and Protection of Children Act 2007*.

4 Section 7 amended (Responsibility of Territory Government)

- (1) Section 7, before "The"

insert

(1)

- (2) Section 7, at the end

insert

- (2) In exercising powers or performing functions under this Act, Agencies have a responsibility to work cooperatively and in a timely manner.

5 Section 8A inserted

After section 8

insert

8A Responsibility of public authorities

In exercising powers or performing functions under this Act, public authorities have a responsibility to:

- (a) promote and safeguard the wellbeing of children and support their families; and
- (b) work cooperatively and in a timely manner.

6 Section 13 amended (Definitions)

Section 13

insert

public authority, see section 6 of the *Children's Commissioner Act 2013*.

7 Section 15 amended (Harm to child)

- (1) Section 15(2)(c)

omit

violence.

insert

violence;

- (2) After section 15(2)(c)

insert

(d) exposure of the child to domestic or family violence.

- (3) Section 15, example

omit

8 Section 34 amended (Giving information for inquiries)

After section 34(2)

insert

- (2A) A request under subsection (2) must be in writing and must specify:
- (a) the date and time by which the specified information must be given; and
 - (b) that the information is needed because the inquiring officer has concerns about the child's wellbeing.

9 Section 38 amended (Access to information)

After section 38(1)

insert

- (1A) A request under subsection (1) must be in writing and must specify:
- (a) the date and time by which access to the specified information must be given; and
 - (b) that the information is needed to determine whether the child is in need of protection.

10 Section 43 amended (CEO may request assistance)

- (1) After section 43(1)

insert

- (1A) Without limiting subsection (1), the CEO may request a public authority to provide prioritised access to child-related services to a child, a young person who has left the CEO's care or a member of

the child's or young person's family, if the child or young person is at risk of significant harm.

(2) Section 43(3)

omit

11 Section 70 amended (CEO must prepare care plan)

Section 70(4)

omit

85A.

insert

85A or 85B.

12 Section 83B amended (Inquiries)

After section 83B(1)

insert

- (1A) A request under subsection (1) must be in writing and must specify:
- (a) the date and time by which the specified information must be given; and
 - (b) that the information is needed for the purpose of monitoring the wellbeing of the child.

13 Section 84B amended (Investigation – access to information)

After section 84B(1)

insert

- (1A) A request under subsection (1) must be in writing and must specify:
- (a) the date and time by which access to the specified information must be given; and
 - (b) that the information is needed for the purpose of an investigation under section 84A.

14 Section 85B inserted

After section 85A

insert

85B Assistance with living and support arrangements until age of 22

- (1) This section applies in relation to a young person who has left the CEO's care if the young person was in the CEO's care immediately before turning 18 years of age.
- (2) The young person is entitled to receive assistance (including financial assistance) under this section from the CEO to maintain appropriate living and support arrangements until the young person turns 22 years of age.
- (3) The CEO must provide the assistance mentioned in subsection (2) if:
 - (a) the CEO is satisfied on reasonable grounds that the assistance:
 - (i) is for an appropriate purpose; and
 - (ii) is reasonably necessary considering the young person's circumstances; and
 - (iii) will enhance the young person's ability to be self-sufficient and independent by the age of 22; and
 - (b) the young person consents to the assistance.
- (4) Financial assistance given under this section must be given on the terms and conditions the CEO considers appropriate in the circumstances.
- (5) The CEO must ensure a young person entitled to assistance under this section is notified of the entitlement, and how to request assistance:
 - (a) when the young person turns 18 years of age; and
 - (b) as the CEO considers appropriate, until the young person turns 22 years of age.
- (6) This section does not limit the provision of assistance under section 85A.

15 Section 86 amended (Access to personal items)

Section 86(1)

omit

young

16 Chapter 2, Parts 2.5 and 2.6 inserted

After section 183, in Chapter 2

insert

Part 2.5 Prenatal support**183A Prenatal support**

If the CEO believes on reasonable grounds that an unborn child may be a child in need of protection after the child is born, the CEO may, only with the consent of the person who is pregnant with the unborn child, do any of the following:

- (a) refer the pregnant person and any person who may be involved in caring for the unborn child when it is born to a provider of prenatal or child-related services for advice, services and support;
- (b) provide or arrange voluntary support services for the pregnant person and any person who may be involved in caring for the unborn child when it is born.

Part 2.6 Providing information for national database**183B Providing information for national database**

- (1) The CEO may share any information acquired by the CEO in exercising powers or performing functions under this Act in a database that enables States and the Territory to share information related to the safety and wellbeing of children if the CEO is satisfied that the information in the database will only be used for an interstate officer to exercise powers or perform functions under a child welfare law.

(2) In this section:

child welfare law means a law of a State that substantially corresponds to the provisions in Part 2.3 that relate to a protection order.

interstate officer, for a State, means the person holding or occupying the office or position that has the principal responsibility for the protection of children in the State under the child welfare law of the State.

State means:

- (a) a State or another Territory of the Commonwealth; or
- (b) New Zealand.

17 Section 190 amended (Provision of information)

Section 190(1)(a)

omit, insert

- (a) for the purpose of determining an application under section 188, the Commissioner of Police, the CEO and any other person may give the Authority any information held by them about any of the following:
 - (i) the candidate's engagement with the Agency under this Act;
 - (ii) any order imposed on the candidate by a court under this Act, the *Domestic and Family Violence Act 2007* or the *Personal Violence Restraining Orders Act 2016*;
 - (iii) the candidate's criminal history; and

18 Chapter 5, Part 5.1 inserted

After Chapter 5 heading

insert

Part 5.1 Data access agreements**223 Object and underlying principle of Part**

- (1) The object of this Part is to ensure the safety and wellbeing of children by enabling the CEO to enter into data access agreements with other parties to facilitate timely access to information about children.
- (2) In achieving that object, the safety and wellbeing of children is the paramount concern and it is the underlying principle of this Part that ensuring the safety and wellbeing of children takes precedence over the protection of an individual's privacy.
- (3) Anyone exercising a power or performing a function under this Part must, as far as practicable, uphold the principle.

224 Relationship of Part

- (1) This Part does not affect the ability of the CEO or a data provider to share information under another provision of this Act.
- (2) This Part has effect despite the operation of any other law of the Territory that prohibits or restricts the disclosure of information.

225 Interpretation

- (1) In this Part:

data means any facts, statistics, instructions, concepts or other information in a form that is capable of being communicated, analysed or processed (whether by an individual or by a computer or other automated means).

data access agreement means an agreement approved by the Minister under section 229.

data provider means a person who provides data to the Agency under a data access agreement.

Information Commissioner means the person appointed under section 85 of the *Information Act 2002*.

- (2) For this Part, a person or body **owns** data if the person or body:
- (a) has possession or custody of the data; or
 - (b) has the data in the possession or custody of some other person or body.

226 Preparation of draft data access agreement

- (1) The CEO may prepare a draft data access agreement between the Agency and one or more other Agencies, a Commonwealth agency or an operator of child-related services.
- (2) The parties to the data access agreement must be satisfied that the sharing of information under the agreement:
- (a) is reasonably necessary to achieve the objects of this Act; and
 - (b) is likely to enable the Agency to detect, investigate, manage or otherwise respond to matters related to the safety and wellbeing of children; and
 - (c) is likely to substantially contribute to the Agency's capacity to improve outcomes for child safety and wellbeing, including by improving the efficiency with which information can be accessed to guide decisions and actions regarding child safety and wellbeing.
- (3) The data access agreement must include the information mentioned in section 227.
- (4) In preparing a draft data access agreement, the CEO must consult with the Information Commissioner.

227 Contents of data access agreement

- (1) A data access agreement must include the following information:
- (a) a detailed description of the data that the data provider will give to the CEO;
 - (b) how the data will be accessed, used, interpreted, linked and secured;
 - (c) the categories of users who may access the data and any conditions upon their access;
 - (d) any restrictions on the access, use or interpretation of the data;

- (e) what happens if a data provider no longer owns the data it is required to share under the agreement;
 - (f) what happens if a party breaches the agreement;
 - (g) the period for which the agreement is in force;
 - (h) how the agreement may be terminated.
- (2) A data access agreement may permit the CEO, or a user authorised under the terms of a data access agreement, to only access, use, interpret or link data obtained under an agreement for the purpose of exercising powers or performing functions under this Act.
- (3) A data access agreement must make provision for the agreement to be reviewed at least once every 5 years to ensure the sharing of information under the agreement meets the criteria in section 226(2).
- (4) A data access agreement may include other conditions the parties to the agreement consider appropriate.

228 Publication of draft data access agreement

- (1) After preparing the draft data access agreement, the CEO must publish a notice in the *Gazette* stating the following:
- (a) that the draft data access agreement has been prepared;
 - (b) where copies of the draft data access agreement may be obtained;
 - (c) that interested persons may make submissions about the draft data access agreement on or before the date specified in the notice, which must be at least 30 days after the date on which the notice is published;
 - (d) the address to which submissions may be sent or delivered.
- (2) The CEO must consider any submissions received in relation to the draft data access agreement and, as a result, may modify the draft agreement as the parties to the agreement consider appropriate.
- (3) After complying with subsection (2), the CEO may forward the draft data access agreement to the Minister.

229 Minister may approve data access agreement

- (1) The Minister may approve the data access agreement if the Minister is satisfied the CEO has complied with sections 226(4) and 228.
- (2) The data access agreement takes effect on the later of:
 - (a) the date the Minister approves the agreement; or
 - (b) another date specified in the Minister's approval.

230 Publication

As soon as practicable after a data access agreement is approved by the Minister, the CEO must make a copy of the agreement available to the public on the Agency's website.

231 Amendment of data access agreement

- (1) The parties to a data access agreement may amend the agreement.
- (2) Sections 226 to 230 apply in relation to the amendment of a data access agreement, unless the Minister determines that the amendment is of a minor or technical matter, in which case only section 230 applies in relation to the amended agreement.

232 Restriction on use or disclosure of information

- (1) The CEO must not use or disclose data obtained under a data access agreement unless the use or disclosure is permitted under the data access agreement.
- (2) Despite the terms of any data access agreement, the CEO may disclose data obtained under a data access agreement if the disclosure is required or authorised by law.
- (3) Despite the terms of a data access agreement, a data provider may refuse to give the CEO data under the agreement if:
 - (a) the data provider reasonably believes that giving the data could:
 - (i) prejudice the investigation of a contravention (or possible contravention) of a law in force in the Territory; or
 - (ii) prejudice a coronial inquest or inquiry; or
 - (iii) prejudice any proceedings in a court or tribunal; or

- (iv) contravene any legal professional or client legal privilege; or
 - (v) enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained; or
 - (vi) endanger a person's life or physical safety; or
 - (vii) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law in force in the Territory; or
- (b) a circumstance prescribed by regulation exists in relation to the data.
- (4) The data provider must give the CEO written reasons for refusing to give data under subsection (3).

233 Review of Part

The Information Commissioner must review the operation of this Part as soon as possible after 5 years after the date on which the Minister approves the first data access agreement under this Part.

19 Section 293A amended (Object and underlying principle of Part)

Section 293A(2)

omit, insert

- (2) In achieving that object, the safety and wellbeing of the child is the paramount concern and it is the underlying principle of this Part that ensuring the safety and wellbeing of children takes precedence over the protection of an individual's privacy needs.

20 Section 293B amended (Information about a child)

After section 293B(2)

insert

- (3) For this Part, information may be about a child or a group of children.
- (4) Information about a child who is deceased may be given, received or shared under this Part.

21 Section 293C amended (Information sharing authorities)

(1) Section 293C(1)(p)

omit, insert

(p) the person in charge of an organisation approved under subsection (1A).

(2) After section 293C(1)

insert

(1A) The CEO may, by *Gazette* notice, approve an organisation that provides a service or performs a function for or in connection with children if the CEO is satisfied that:

- (a) it is appropriate for the person in charge of the organisation to give and receive information under this Part; and
- (b) the organisation has the capacity to meet the obligations of an information sharing authority under this Part.

22 Section 293D amended (Giving information without request)

Section 293D(2)(c)

omit, insert

(c) the provider reasonably believes that the information may assist the recipient to do any of the following that relates to the safety or wellbeing of the child or children:

- (i) make or contribute to a decision, assessment or plan;
- (ii) monitor any plan;
- (iii) initiate or conduct an investigation;
- (iv) identify, assess, prevent or manage any risk of harm;
- (v) arrange, provide or review a service;
- (vi) perform a function under this Act.

23 Section 293E amended (Giving information on request)

(1) Section 293E(2)

omit

would

insert

may

(2) Section 293E(2)(a) to (c)

omit, insert

(a) make or contribute to a decision, assessment or plan;

(b) monitor any plan;

(c) initiate or conduct an investigation;

(d) identify, assess, prevent or manage any risk of harm;

(e) arrange, provide or review a service;

(f) perform a function under this Act.

(3) Section 293E(3)(a)

omit

would

insert

may

24 Section 293K inserted

After section 293J, in Part 5.1A, Division 3

insert

293K Duties of information sharing authorities

(1) Information sharing authorities must take reasonable steps to ensure the cooperative, coordinated and efficient provision of information between information sharing authorities under this Part.

(2) An operator of child-related services that is, or employs a person who is, an information sharing authority must ensure everyone

providing services for a child under the operator's control or direction is aware of the information sharing authority's obligations under this Part.

25 Section 308 replaced

Section 308

repeal, insert

308 Offence to disclose certain information

- (1) A person commits an offence if:
- (a) the person obtains information in the course of performing a function connected with the administration of this Act or exercising a power under this Act; and
 - (b) the information is confidential and the person is reckless in relation to that circumstance; and
 - (c) the person intentionally engages in conduct; and
 - (d) the conduct results in the disclosure of the information and the disclosure is not:
 - (i) required or authorised under an Act; or
 - (ii) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or
 - (iii) to a person who is otherwise entitled to the information; and
 - (e) the person is reckless in relation to the result and circumstance referred to in paragraph (d).

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

- (2) Strict liability applies to subsection (1)(a).

- (3) If the information referred to in subsection (1) relates to one or more persons, it is a defence to a prosecution for an offence against that subsection if each person to whom the information relates has consented to the disclosure of the information.

Note for subsection (3)

In addition to the circumstances mentioned in this section, a person who discloses information mentioned in this section will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

308A Authorised disclosures of information

- (1) The CEO may authorise the disclosure of confidential information to a person if:
- (a) the CEO believes on reasonable grounds that the disclosure of information is in the public interest; or
 - (b) the person to whom the information relates is not identified and their identity cannot be reasonably ascertained and the information is to be used for research purposes; or
 - (c) the CEO is satisfied on reasonable grounds that it is necessary to disclose the information for the safety or wellbeing of a child or children.
- (2) The CEO may authorise the disclosure to the Australian Institute of Criminology established under the *Criminology Research Act 1971* (Cth) of confidential information that is reasonably required for the purpose of the program monitoring national deaths in custody.

26 Part 5.6, Division 5 inserted

After section 342

insert

Division 5 Transitional matters for Territory Families Legislation Amendment Act 2021

343 Application of section 308

- (1) Section 308, as in force before the commencement of section 25 of the *Territory Families Legislation Amendment Act 2021* (the **commencement**), continues to apply in relation to offences committed before the commencement.

- (2) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

Part 3 Amendment of Youth Justice Act 2005

27 Act amended

This Part amends the *Youth Justice Act 2005*.

28 Section 214 amended (Confidentiality)

- (1) Section 214(1)(b)

omit

(including a court)

- (2) Section 214(1)(c)

omit

Act; or

insert

Act.

- (3) Section 214(1)(d)

omit

- (4) Section 214(2)(b) and (c)

omit

disclosure, publication or production

insert

disclosure or publication

- (5) After section 214(2)(c)

insert

(ca) any disclosure required or authorised by law; or

(cb) a disclosure to the Australian Institute of Criminology established under the *Criminology Research Act 1971* (Cth) of information that is reasonably required for the purpose of the program monitoring national deaths in custody; or

(6) Section 214(2)(d)

omit (all references)

or production

(7) Section 214(2)(d)(i) and (ii)

omit

information, document or thing

insert

information or document

(8) Section 214(4)

omit (all references)

record, document or thing

insert

record or document

Part 4 Amendment of Domestic and Family Violence Act 2007

29 Act amended

This Part amends the *Domestic and Family Violence Act 2007*.

30 Section 127 amended (Regulations)

Section 127(3)

omit

(f)(ii)

insert

(g)(ii)

Part 5 Repeal of Act

31 Repeal of Act

This Act is repealed on the day after it commences.