

NORTHERN TERRITORY OF AUSTRALIA
CARE AND PROTECTION OF CHILDREN AMENDMENT ACT 2023

Act No. 8 of 2023

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 8 of 2023

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

[Assented to 20 April 2023]
[Introduced 15 February 2023]

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 2023*.

2 Commencement

This Act commences on the day after the day on which the Administrator's assent to this Act is declared.

3 Act amended

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

4 Section 6 amended (Principles)

Section 6(1)

omit

12.

insert

12A.

5 Section 12 amended (Aboriginal children)

(1) Section 12(1)

omit

representative

insert

Aboriginal community-controlled

(2) Section 12(2)

omit, insert

(2) When a significant decision involving an Aboriginal child is to be made:

(a) the child's family members have a right to participate, and to be enabled to participate, in an administrative or judicial process for making the decision; and

(b) the child and the child's family have a right to identify any of the following persons that the child or family would like to participate in the making of the decision:

(i) a person with cultural authority;

(ii) a member of a kinship group;

(iii) a member of an Aboriginal community-controlled organisation;

(iv) a member of a community of Aboriginal people; and

(c) a person identified in accordance with paragraph (b) has the right to participate in the making of the decision.

(2A) When a decision involving an Aboriginal child is made, the decision should be healing focussed and trauma informed.

(2B) An Aboriginal child has the right to be brought up within the child's own family and community and on the child's own country.

(2C) An Aboriginal child has a right to be supported to develop and maintain a connection with the child's family, community, culture, traditions, language and country, particularly when the child is placed with a person who is not from the child's community or kinship group.

(2D) If an Aboriginal child is to be placed with a person, the principles set out in subsections (3) and (4) apply.

(3) Section 12(3)(d)(ii)

omit

all words after "capable of"

insert

supporting the child to develop and maintain a connection with the child's family, community, culture, traditions, language and country.

(4) After section 12(4)

insert

(5) In this section:

significant decision, involving a child, means a decision likely to have a significant impact on the child's life.

Examples for definition significant decision

1 A decision about placing a child in care or about the placement arrangement for the child.

2 A decision about whether or not to apply for a child protection order for a child.

6 Section 12A inserted

After section 12, in Part 1.3

insert

12A Children with disabilities

(1) A child with a disability has a right to be treated in a way that respects the child's developing capacity and preserves their identity.

(2) In addition, a child with a disability has:

(a) the same rights as other children to express the child's wishes and views; and

(b) the right to be provided with disability and age appropriate assistance to realise the rights mentioned in paragraph (a); and

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- (c) the right to have due weight given to the child's wishes and views in accordance with the child's age, maturity and understanding on an equal basis with other children.

7 Section 13 amended (Definitions)

Section 13

insert

Aboriginal community-controlled organisation means an organisation that is controlled by and represents the interests of Aboriginal people.

Framework, for Part 5.1B, see section 293L.

reasonably believes means believes on reasonable grounds.

service organisation, for Part 5.1B, see section 293L.

young parent, for Part 2.3, Division 6B, see section 143F.

8 Section 72A amended (Participation in care plan)

Section 72A(a)(iv)

omit

representative

insert

community-controlled

9 Section 74 amended (Review of care plan)

Section 74(4)(a)(v)

omit

representative

insert

community-controlled

10 Section 101 amended (Right of representation)

Section 101(1), at the end

insert

Note for subsection (1)

See also Division 6B.

11 Chapter 2, Part 2.3, Division 6B inserted

After section 143E

insert

Division 6B Legal representation for young parents

143F Definition

In this Division:

young parent means a person who:

- (a) is the parent of a child to whom proceedings under this Part relate; and
- (b) is a child.

143G Legal practitioner may be engaged

- (1) Despite anything to the contrary in the rules made under the *Local Court Act 2015*, a young parent may engage a legal practitioner to represent the young parent in proceedings under this Part if the young parent is of sufficient maturity and understanding to be able to give instructions in relation to the proceedings.
- (2) For subsection (1), it is presumed, unless the contrary is proved, that a young parent has sufficient maturity and understanding to be able to give instructions in relation to proceedings under this Part.
- (3) Despite subsection (1), a legal practitioner must not represent a young parent in proceedings under this Part unless the practitioner has taken all reasonable steps to ascertain that the young parent is of sufficient maturity and understanding to be able to give instructions in relation to the proceedings.

143H Court may order appointment of litigation guardian

Despite section 143G, the Court may appoint a litigation guardian for a young parent if the Court considers the young parent is not of sufficient maturity or understanding to be able to give instructions in relation to the proceedings.

12 Chapter 5, Part 5.1B inserted

After section 293K

insert

Part 5.1B Child Wellbeing and Safety Partnership Framework

293L Definitions

In this Part:

Framework means the Framework established under section 293M(1).

service organisation means an organisation that provides child-related services.

293M Establishment of Child Wellbeing and Safety Partnership Framework

- (1) The Child Wellbeing and Safety Partnership Framework is established.
- (2) The purposes of the Framework are:
 - (a) to ensure the Northern Territory Government and service organisations are providing a coordinated response to the risks to the safety and wellbeing of children; and
 - (b) to strengthen how the Northern Territory Government, service organisations and community leaders work together alongside families; and
 - (c) to make the Northern Territory Government and service organisations accountable for partnering with community leaders to ensure children and families are safe and thriving.

293N Framework principles

The Framework must operate under the following principles:

- (a) the best interests of the child are the paramount concern;
- (b) the human rights of children and families must be upheld and respected;
- (c) decisions affecting Aboriginal people must be made in a manner that, as far as practicable, upholds the principles of section 12;
- (d) Aboriginal world views must be incorporated into the Framework;
- (e) the views of children and families must be taken into account when decisions affecting them are made;
- (f) the diversity of communities is valued so that the operation of the Framework is culturally relevant;
- (g) responsibility and accountability for the safety and wellbeing of children and families is shared between families, communities, service organisations and the Northern Territory Government;
- (h) the Northern Territory Government must exercise its responsibility mentioned in paragraph (g) in a transparent way;
- (i) the Framework should operate in a way that is healing focussed and trauma informed;
- (j) the Framework should seek to build on the strengths of individual families and communities;
- (k) any risk of domestic violence affecting children or families must be managed in a way that is consistent with the framework for family violence risk assessment and family violence risk management approved under section 124Q of the *Domestic and Family Violence Act 2007*.

293P Operating policy of Framework

- (1) The CEO must prepare a written policy detailing the operation of the Framework.
- (2) The policy must:
 - (a) reflect the principles set out in section 293N; and

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- (b) provide for the establishment of an oversight group to monitor the operation of the Framework; and
 - (c) address the following in the relation to the oversight group:
 - (i) membership of the group, which must include adequate representation of Aboriginal communities and Aboriginal community-controlled organisations;
 - (ii) the role and responsibilities of the group in monitoring the operation of the Framework; and
 - (d) provide for the establishment of Child Wellbeing and Safety Teams in communities; and
 - (e) address the following in relation to the Child Wellbeing and Safety Teams:
 - (i) the operation of the Teams in communities;
 - (ii) the role and responsibilities of the Teams in developing a coordinated response to risks to the safety and wellbeing of children and their families in a community or communities including through:
 - (A) the facilitation of community leadership meetings in communities; and
 - (B) the facilitation of meetings between Agencies and service organisations; and
 - (f) address any other matter the CEO considers relevant.
- (3) In preparing the policy, the CEO must consult with the following in relation to the operation of the Framework:
- (a) service organisations;
 - (b) communities in which Child Wellbeing and Safety Teams will operate under the policy;
 - (c) Aboriginal community-controlled organisations.
- (4) The CEO may, in consultation with the oversight group established under the policy, amend the policy.
- (5) The CEO must publish the policy, as amended from time to time, on the Agency's website.

293Q Appointment of person to undertake independent review

- (1) The Minister must appoint a qualified person to do the following:
 - (a) undertake an independent review of the effectiveness of the Framework and the extent to which the purposes of the Framework mentioned in section 293M(2) are being achieved;
 - (b) prepare a report of the review;
 - (c) give the Minister the report within 12 months after the appointment.
- (2) The appointment must be made as soon as practicable after the third anniversary of the commencement of this Part.
- (3) In making the appointment, the Minister must give preference to an Aboriginal person.
- (4) In this section:

qualified person means a person who, in the Minister's opinion, possesses the appropriate qualifications and experience to undertake the independent review mentioned in subsection (1)(a).

293R Conduct of review and content of report

- (1) As part of the review mentioned in section 293Q, the person appointed to undertake the review must consult with the following:
 - (a) the oversight group;
 - (b) the Agencies and organisations represented by members of the oversight group;
 - (c) service organisations;
 - (d) Aboriginal community-controlled organisations.
- (2) Before finalising the report of the review, the person must give any Agency, organisation or person who will be the subject of adverse comment in the report a reasonable opportunity to comment on the review findings before the report is given to the Minister.

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- (3) The report of the review must:
- (a) give an assessment of the extent to which Agencies and service organisations:
 - (i) are cooperating in ensuring there is a coordinated response to the risks to the safety and wellbeing of children; and
 - (ii) are sharing information in relation to the safety and wellbeing of children consistent with Part 5.1A and any other legislative requirements; and
 - (b) identify any Agencies or service organisations that are not:
 - (i) cooperating in ensuring there is a coordinated response to the risks to the safety and wellbeing of children; or
 - (ii) complying with Part 5.1A or other legislative requirements in relation to information sharing; and
 - (c) identify any recommended changes to the Framework or its operation; and
 - (d) incorporate any comments on the review findings received under subsection (2); and
 - (e) address any other matter requested by the oversight group or CEO.

- (4) In this section:

oversight group means the oversight group established under the policy prepared under section 293P.

293S Tabling of report

The Minister must table a copy of the report of a review mentioned in section 293Q in the Legislative Assembly within 6 sitting days after receiving the report.

13 Repeal of Act

This Act is repealed on the day after it commences.