

Serial 147  
Community Welfare Amendment Act 1999  
Mr Dunham

**A BILL  
for  
AN ACT**

to amend the *Community Welfare Act*



NORTHERN TERRITORY OF AUSTRALIA  
COMMUNITY WELFARE AMENDMENT ACT 1999

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No. of 1999

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# NORTHERN TERRITORY OF AUSTRALIA

No. of 1999

## AN ACT

to amend the *Community Welfare Act*

[Assented to 1999]  
[Second reading 1999]

The Legislative Assembly of the Northern Territory enacts as follows:

**1. Short title**

This Act may be cited as the *Community Welfare Amendment Act 1999*.

**2. Commencement**

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

**3. Principal Act**

The *Community Welfare Act* is in this Act referred to as the Principal Act.

**4. Taking child in need of care into custody**

Section 11 of the Principal Act is amended by omitting subsections (3) and (4) and substituting the following:

"(3) A person taking a child into custody under subsection (1)–

- (a) subject to this Part, may have the child held in a place of safety for the period he or she considers appropriate; and

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- (b) must, not later than 48 hours after taking the child into custody, apply for a holding order under section 11A."

**5. New section**

The Principal Act is amended by inserting after section 11 the following:

**"11A. Holding order**

"(1) An application for a holding order under section 11 or 15 is to be made to a magistrate or Registrar, as defined in section 3 of the *Local Court Act* –

- (a) in person; or
- (b) if it is impracticable to make the application in person – by telephone, radio, facsimile or other facility.

"(2) If the magistrate or Registrar is satisfied on the oath of the person making the application that there are reasonable grounds for believing that the child to whom the application relates is in need of care, the magistrate or Registrar must make an order authorising the holding of the child in a place of safety.

"(3) An order under subsection (2) is to have effect for the period commencing on the day on which the child was taken into custody under section 11 or detained under section 15 until –

- (a) the day specified in the order; or
- (b) 14 days after the day the child was taken into custody or the action was taken,

whichever first occurs.

"(4) If the application for the holding order is made by telephone, radio, facsimile or other facility, the magistrate or Registrar who makes the holding order must ensure a written record is kept of the making of the application and the information in relation to the application he or she obtains from the applicant."

**6. Child in hospital**

Section 15 of the Principal Act is amended –

- (a) by omitting from paragraph (a) "for such period, not exceeding 48 hours, as is" and substituting "for the period that is"; and
- (b) by omitting paragraph (b) and substituting the following:

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"(b) if after the medical examination has been carried out the person is still of that belief – must, not later than 48 hours after detaining the child, apply for a holding order under section 11A."

**7. Responsibility of Minister when notified of action under section 11(5)**

Section 17 of the Principal Act is amended –

(a) by omitting all words before paragraph (c) and substituting the following:

"(1) If the Minister is notified under section 11(5) of the removal of a child in need of care or of the detaining of a child in a hospital under section 15, the Minister must –

- (a) assume responsibility for the care, protection and maintenance of the child;
- (b) cause the child to remain in or be removed to a place of safety that is, in the opinion of the Minister, suitable to ensure that the welfare of the child is provided for;
- (ba) subject to subsections (2) and (3) – if a holding order is made under section 11A in respect of the child, before the holding order expires –
  - (i) advise the Court in writing of his or her decision and that he or she will not be making an application under Part VI for an order that the child be found to be in need of care; or
  - (ii) make an application under Part VI to the Court for an order that the child be found to be in need of care;" and
- (b) by adding at the end the following:

"(2) The Minister must assess and decide whether –

- (a) the welfare of the child would be provided for if returned to one or both of his or her parents or a guardian or other person having the custody of the child; or
- (b) another arrangement may be made with the consent of the parents, guardian or person as to the placement of and provision of adequate care to the child,

before complying with subsection (1)(ba).

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"(3) The Minister must not make an application to the Court under subsection (1)(ba)(ii) if the Minister decides to return the child to one or both of his or her parents or the guardian or person having custody of the child or that an arrangement may be made with the consent of the parents, guardian or person that ensures the provision of care to the child."

**8. Repeal and substitution**

Section 41 of the Principal Act is repealed and the following substituted:

**"41. Attendance of child before Court**

"(1) The child the subject of an application under this Part must attend the Court in person and remain in attendance during the hearing of the application unless the Court makes an order that the child is not required to attend the hearing or a part of the hearing.

"(2) The Court may make the order under subsection (1) in any proceedings relating to the application.

"(3) The Court must not make the order unless it is satisfied on reasonable grounds that the child is not required to attend the hearing or a part of it.

"(4) In subsection (3), 'reasonable grounds' includes any of the following grounds:

- (a) that the child does not understand the nature of the hearing;
- (b) that the child is unlikely to be able to give evidence that will assist the Court whether on account of his or her age, mental state or any other circumstance of the child;
- (c) that the attendance of the child could be injurious or dangerous to the health or welfare of the child;
- (d) that the evidence of the child is not essential to the hearing and determining of the application.

"(4) If the Court makes an order that the child is not required to attend the Court, the Court may proceed to hear and determine the application during the absence of the child and, in doing so, may give the directions or make the orders it considers appropriate, including a direction or order for—

- (a) taking a written deposition or statement from the child; or
- (b) receiving an oral or written report in relation to the care of the child made by an authorised person or a person appointed by the Court to make the report.



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"(5) Notwithstanding the age or intelligence of the child or that the child may have acted under the influence of another person or not understood the duty to speak the truth, the Court may receive the written deposition or statement of the child referred to in subsection (4)(a) as evidence and give it the weight it considers appropriate."

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