

Serial 194
Care and Protection of Children Amendment (Information Sharing) Bill 2012
Mr Vatskalis

A Bill for an Act to amend the *Care and Protection of Children Act*, and for
related purposes

NORTHERN TERRITORY OF AUSTRALIA

CARE AND PROTECTION OF CHILDREN AMENDMENT (INFORMATION SHARING) ACT 2012

Act No. [] of 2012

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2012

An Act to amend the *Care and Protection of Children Act*, and for related purposes

[Assented to [] 2012]
[Second reading [] 2012]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Care and Protection of Children Amendment (Information Sharing) Act 2012*.

2 Commencement

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

Part 2 Amendment of Care and Protection of Children Act

3 Act amended

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

4 Section 5 amended

Section 5(d)

omit

all words after "Children's Commissioner,"

insert

a framework for sharing information about children, review teams and other administrative measures (see Chapter 5).

5 Section 13 amended

(1) Section 13, definition *administrative guidelines*

omit

(2) Section 13

insert (in alphabetical order)

administrative guidelines means:

- (a) for the making of a decision by the Authority – administrative guidelines made under section 191(1); or
- (b) for the operation of Part 5.1A – administrative guidelines made under section 293H.

information about a child, for Part 5.1A, see section 293B.

information sharing authority, for Part 5.1A, see section 293C.

6 Section 34 amended

(1) Section 34(2), after "about the child"

insert

or another person (for example, a family member of the child) that directly or indirectly relates to the inquiry

(2) Before section 34(2)(a)

insert

- (aa) a person whom the officer reasonably believes has the specified information;

7 Section 126 amended

Section 126(1)

omit, insert

- (1) The Court may hear the application in the absence of a parent of the child if:
 - (a) the Court is satisfied the CEO has given the parent a notice that complies with section 124(1); or
 - (b) the CEO has not given the parent a notice that complies with section 124(1) but the Court is satisfied the application should be heard in the absence of the parent despite the non-compliance.

8 Part 5.1A inserted

After section 293

insert

Part 5.1A Sharing information for safety and wellbeing of children**Division 1 Preliminary matters****293A Object and underlying principle of Part**

- (1) The object of this Part is to ensure the safety and wellbeing of children by enabling particular persons and bodies having responsibilities for a child to request or give particular information about the child.
- (2) For achieving that object, it is the underlying principle of this Part that rules about protecting confidentiality and privacy of individuals should not prevent the sharing of information for ensuring the safety and wellbeing of children.
- (3) Anyone exercising a power or performing a function under this Part must, as far as practicable, uphold the principle.

293B Information about a child

- (1) For this Part, *information* about a child is any information that relates to the safety or wellbeing of the child.

- (2) Without limiting subsection (1), **information** about a child includes information about a person other than the child (for example, a family member of the child) that directly or indirectly relates to the safety or wellbeing of the child.

293C Information sharing authorities

- (1) For this Part, each of the following is an **information sharing authority**:
- (a) the CEO;
 - (b) a person who, as the Chief Executive Officer of an Agency or a public sector employee, is acting under a law of the Territory in relation to a child;
 - (c) a carer who is acting under this Act in relation to a child;
 - (d) an approved provider of an education and care service operated under the *Education and Care Services National Law (NT)* who provides, or is required to provide, services in relation to a child;
 - (e) a person in charge of an organisation that receives funding from the Commonwealth or Territory to provide a service, or perform a function, for or in connection with children;
 - (f) a person in charge of an organisation that receives funding from the Territory under an agreement to provide drug or alcohol treatment;
 - (g) a person employed or engaged (for a fee) by an organisation mentioned in paragraph (e) or (f) in relation to providing the service or treatment, or performing the function, mentioned in that paragraph;
 - (h) the principal, as defined in section 4 of the *Education Act*, of:
 - (i) a government school declared under that Act; or
 - (ii) a non-government school registered under that Act;
 - (i) a teacher registered under the *Teacher Registration (Northern Territory) Act*;
 - (j) a person in charge of:
 - (i) a hospital as defined in section 5 of the *Medical Services Act*, or

- (ii) a private hospital as defined in section 4A of the *Private Hospitals Act*,
 - (k) a person in charge of an approved treatment facility as defined in section 4 of the *Mental Health and Related Services Act*,
 - (l) a person registered under the Health Practitioner Regulation National Law to practise a health profession (other than as a student);
 - (m) a provider of services as defined in section 2(1) of the *Disability Services Act*,
 - (n) a lawyer;
 - (o) a police officer;
 - (p) a person prescribed by regulation.
- (2) The regulations may specify that a person who would otherwise be an information sharing authority under subsection (1) is not an information sharing authority.

Division 2 Information sharing framework

293D Giving information without request

- (1) An information sharing authority (the *provider*) may give any information about a child, or a group of children, to another information sharing authority (the *recipient*).
- (2) The provider may do so only if:
- (a) the provider specifies the child or group of children when giving the information; and
 - (b) no request for the information has been made by the recipient to the provider under section 293E; and
 - (c) the provider reasonably believes that the information would assist the recipient to do any of the following that relates to the safety or wellbeing of the child or children:
 - (i) make a decision, assessment or plan;
 - (ii) initiate or conduct an investigation;
 - (iii) provide a service or perform a function.

293E Giving information on request

- (1) An information sharing authority (the *requesting authority*) may request another information sharing authority (the *requested authority*) to give to the requesting authority specified information (the *requested information*):
 - (a) held by the requested authority; and
 - (b) that is information about a child, or a group of children, that is specified in the request.
- (2) The requesting authority may do so only if the requesting authority reasonably believes that the requested information would assist the requesting authority to do any of the following that relates to the safety or wellbeing of the child or children:
 - (a) make a decision, assessment or plan;
 - (b) initiate or conduct an investigation;
 - (c) provide a service or perform a function.
- (3) Subject to subsection (5), the requested authority must:
 - (a) give so much of the requested information to the requesting authority as the requested authority reasonably believes would assist the requesting authority to do a thing mentioned in subsection (2) that relates to the safety or wellbeing of the child or children; and
 - (b) refuse to give any requested information in relation to which the requested authority does not hold that belief.
- (4) For the purposes of forming the belief mentioned in subsection (3)(a):
 - (a) the requested authority may ask the requesting authority to give the requested authority further information about the request; and
 - (b) the requesting authority may give the further information.
- (5) Despite subsection (3), the requested authority may refuse to give the requesting authority so much of the requested information as is covered by any of the following:
 - (a) the requested authority reasonably believes that giving the information 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;
- (b) a circumstance prescribed by regulation exists in relation to the information.
- (6) The requested authority must give the requesting authority written reasons for refusing to give any or all of the requested information.

Division 3 Other matters

293F Protection of persons giving information

A person acting in good faith in giving information under this Part is not civilly or criminally liable, or in breach of any professional code of conduct, for giving the information.

293G Restriction on use or disclosure of information

- (1) An information sharing authority given information under this Part must not use or disclose the information for any purpose not related to the safety or wellbeing of a child to whom the information relates.
- (2) To avoid doubt, a reference in subsection (1) to a child includes a reference to a child other than the child, or a member of a group of children, for whom the information is given under this Part.
- (3) Subsection (1) has effect except as otherwise provided by another law in force in the Territory.

293H Administrative guidelines

- (1) The CEO must make administrative guidelines for the operation of this Part.
- (2) Without limiting subsection (1), the CEO must, within 28 working days after the commencement of this section, make administrative guidelines providing for the following:
 - (a) a matter that may be taken into account in forming the belief mentioned in section 293D(2)(c) or 293E(2) or (3)(a);
 - (b) circumstances in which an information sharing authority should consider obtaining the consent of a person before giving information about the person under this Part.
- (3) The CEO must publish administrative guidelines made under this section in a way decided by the CEO (including, for example, on the Internet) as soon as practicable after making them.

293J Interactions with other laws and other provisions of Act

- (1) This Part has effect despite the operation of any other law of the Territory that prohibits or restricts the disclosure of information.
- (2) This Part does not affect the operation of any other provision in this Act that relates to giving information about a child.

Example for subsection (2)

This Part does not affect the operation of section 34.

Part 3 Amendment of Information Act**9 Act amended**

This Part amends the *Information Act*.

10 Section 159A inserted

After section 159

insert

159A Interaction with *Care and Protection of Children Act*

- (1) Despite section 9, this Act does not affect any request for, or giving of, information under Part 5.1A of the *Care and Protection of Children Act*.

- (2) This section does not otherwise affect the operation of this Act in relation to any other law of the Territory.