

Serial 51  
Care and Protection of Children Amendment (Legal Representation and Other  
Matters) Bill 2013  
Mr Elferink

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

# NORTHERN TERRITORY OF AUSTRALIA

## CARE AND PROTECTION OF CHILDREN AMENDMENT (LEGAL REPRESENTATION AND OTHER MATTERS) ACT 2013

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Act No. [ ] of 2013

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# NORTHERN TERRITORY OF AUSTRALIA

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Act No. [ ] of 2013

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

[Assented to [ ] 2013]  
[Second reading [ ] 2013]

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 (Legal Representation and Other Matters) Act 2013*.

### 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*.

## Part 2                      Amendments about legal representation

### **4                      Part 2.3, Division 6A inserted**

After section 143

*insert*

## **Division 6A              Legal representation for children**

### **143A              Legal representative for child**

- (1) In proceedings under this Act, the Court may order the appointment of a legal practitioner to represent a child to whom the proceedings relate if the Court considers doing so is in the best interests of the child.
- (2) A legal practitioner may represent more than one child in the same proceedings unless the Court orders otherwise.

### **143B              Basis of representation**

- (1) A legal representative who is appointed on the order of the Court for a child must:
  - (a) if subsection (2) applies – act on the instructions of the child; or
  - (b) otherwise:
    - (i) act in the best interests of the child regardless of any instructions from the child; and
    - (ii) present the views and wishes of the child to the Court.
- (2) This subsection applies:
  - (a) if the child is of sufficient maturity and understanding to be able to give instructions in relation to the proceedings; and
  - (b) to the extent that the child gives instructions.
- (3) For this section, it is presumed, unless the contrary is proved, that:
  - (a) a child who is under 10 years of age does not have sufficient maturity and understanding to be able to give instructions in relation to the proceedings; and

- (b) a child who is at least 10 years of age does have sufficient maturity and understanding to be able to give instructions in relation to the proceedings.
- (4) A legal representative for a child must inform the Court whether or not he or she is acting on instructions from the child.

### **143C Duties of legal practitioner**

- (1) A legal representative for a child must:
  - (a) take all reasonable steps to ascertain whether the child is of sufficient maturity and understanding to be able to give instructions in relation to the proceedings; and
  - (b) take all reasonable steps to:
    - (i) if the child is of sufficient maturity and understanding – obtain instructions from the child; or
    - (ii) otherwise – ascertain the views and wishes of the child for the purposes of section 143B(1)(b)(ii).
- (2) A legal representative for a child must take all reasonable steps to actively and professionally represent the child as if the legal practitioner had been engaged by the child.

### **143D Duration of appointment**

- (1) A person appointed as the legal representative for a child remains the child's representative until one of the following occurs:
  - (a) the proceedings for which the appointment was made are finally concluded;
  - (b) with leave of the Court, the legal representative withdraws as the child's representative;
  - (c) the Court revokes the appointment.
- (2) For this section, proceedings are *finally concluded* when one of the following occurs:
  - (a) the proceedings are discontinued;
  - (b) the Court makes a final order in the proceedings and either:
    - (i) the time within which an appeal may be lodged against that order lapses without an appeal being lodged; or

- 
- (ii) if an appeal is lodged within that period – the appeal proceedings are finally concluded.
  - (3) The Court may revoke the appointment of a legal practitioner as the legal representative for a child at any time if satisfied that:
    - (a) the practitioner has failed to perform his or her duty under section 143C; or
    - (b) it is otherwise no longer in the best interests of the child for the practitioner to represent the child.
  - (4) The Court may do so on application by a party or on the Court's own initiative.

### **143E Regulations**

The regulations may make provision for any of the following:

- (a) eligibility criteria for appointment under this Division as a legal representative for a child;
- (b) responsibilities of, and standards to be met by, legal representatives appointed under this Division.

## **5 Section 146 repealed**

Section 146

*repeal*

## **6 Part 5.6, Division 3 inserted**

After section 335

*insert*

### **Division 3 Transitional matters for Care and Protection of Children (Legal Representation and Other Matters) Act 2013**

#### **336 Legal representation**

- (1) Part 2.3, Division 6A applies in relation to proceedings commenced after the commencement of section 4 of the *Care and Protection of Children (Legal Representation and Other Matters) Act 2013* (the ***commencement date***).

- (2) Section 146 as in force immediately before the commencement date continues to apply in relation to proceedings that were commenced before the commencement date.

## **Part 3                      Amendments about monitoring and investigation of harm**

### **7                      Part 2.2, Division 4A heading and sections 83A and 83B inserted**

After section 83

*insert*

## **Division 4A              Monitoring wellbeing of children in CEO's care**

### **83A              Power of authorised officers to monitor child in CEO's care**

- (1) An authorised officer may monitor the wellbeing of a child who is in the CEO's care.
- (2) For the purpose of doing so, the authorised officer may do either or both of the following:
- (a) make inquiries about the child under section 83B;
  - (b) carry out an inspection under section 84.
- (3) The authorised officer may do so whether or not the officer has received information that raises concerns about the child's wellbeing.

### **83B              Inquiries**

- (1) For the purpose of monitoring the wellbeing of the child, the authorised officer may request any of the following persons to give the officer specified information about the child or another person (for example, a family member of the child) that directly or indirectly relates to the wellbeing of the child:
- (a) a person whom the officer reasonably believes has the specified information;
  - (b) the carer of the child;
  - (c) a parent or another family member of the child;
  - (d) a police officer;



- 
- (e) a person employed or engaged by an Agency;
  - (f) an operator of child-related services;
  - (g) an approved provider of an education and care service operated under the *Education and Care Services National Law (NT)*;
  - (h) a health practitioner;
  - (i) the person in charge of a hospital or any other facility for health services;
  - (j) the person in charge of a school or any other educational institution;
  - (k) a service provider for a vulnerable child;
  - (l) any other person prescribed by regulation.
- (2) The person must comply with the request.
- Maximum penalty: 200 penalty units.
- (3) It is a defence to a prosecution for an offence against subsection (2) if:
- (a) the defendant has a reasonable excuse; or
  - (b) the Commissioner of Police certifies in writing that compliance with the request would:
    - (i) prejudice the investigation of any unlawful conduct; or
    - (ii) disclose a confidential source of information in relation to the administration of law; or
    - (iii) prejudice the effectiveness of a method or procedure in relation to the administration of law; or
    - (iv) facilitate a person's escape from lawful custody; or
    - (v) endanger the safety of a person.

## **8 Section 84 amended**

- (1) Section 84(1)

*omit*

under the arrangement

---

*insert*

in order

- (2) Section 84(2), after "The"

*insert*

authorised

## **9 Section 85 replaced**

Section 85

*repeal, insert*

### **84A Power to investigate**

- (1) This section applies if the CEO believes on reasonable grounds that a child who is in the CEO's care:
- (a) has suffered harm or exploitation while in the CEO's care; or
  - (b) is suffering harm or exploitation; or
  - (c) is likely to suffer harm or exploitation while in the CEO's care.
- (2) The CEO may initiate an investigation into the suspected or potential harm or exploitation.

### **84B Investigation – access to information**

- (1) For an investigation about a child under section 84A, the CEO may request a person mentioned in section 83B(1)(d) to (l) to give the CEO access to specified information about the child.
- (2) The CEO need not inform the child's carer of the request.
- (3) The person must comply with the request.

Maximum penalty: 200 penalty units.

- (4) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

### **84C Report of investigation**

On completing an investigation, the CEO must:

- (a) consider whether any changes need to be made in relation to the care of the child; and

- 
- (b) if the investigation disclosed that the child has suffered harm or exploitation while in the CEO's care – report that matter to the Commissioner as soon as practicable.

#### **84D Protection of persons providing access or information**

A person acting in good faith in complying with a request under the Division is not civilly or criminally liable, or in breach of any professional code of conduct, for complying with the request.

#### **85 Authorised officer's power to apprehend child**

- (1) If a child who is in the CEO's care is absent from the place where the child ordinarily resides, an authorised officer may apprehend the child in order to return the child to the place.
- (2) If the officer reasonably believes the child may be found at a place, the officer may do one or more of the following:
  - (a) at any time, enter the place;
  - (b) search the place in order to find the child;
  - (c) stay at the place for as long as the officer considers reasonably necessary to find and apprehend the child.
- (3) If the officer apprehends the child, the officer must:
  - (a) return the child to the place where the child ordinarily resides;  
or
  - (b) if it is not practicable or appropriate to do so:
    - (i) move the child to a safe place (as defined in section 57(6)); and
    - (ii) keep the child at the safe place; and
    - (iii) make any arrangement for the care and protection of the child at the safe place.
- (4) The officer may use any reasonable force or assistance in acting under this section.

#### **10 Section 304 amended**

Section 304(3), after "to 64"

*insert*

, 84, 85

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## Part 4                      Amendments about other matters

### 11                      Section 22 amended

After section 22(2)

*insert*

- (3) To avoid doubt, a reference in this Act to a person who has parental responsibility for a child includes a person who has been given parental responsibility for the child under a law of another jurisdiction.

### 12                      Section 52 amended

- (1)                      Section 52(1)

*omit*

may:

*insert*

may do one or more of the following:

- (2)                      Section 52(1)(a), (b) and (c)

*omit, insert*

- (a) if the officer reasonably believes the child may be found at a place, do one or more of the following:

- (i) enter the place;
- (ii) search the place in order to find the child;
- (iii) stay at the place for as long as the officer considers reasonably necessary to find and apprehend the child;

- (3)                      Section 52(1)(d)

*omit*

; and

*insert*

where the child is found;

- 
- (4) Section 52(1)(e), (f) and (g)

*omit*

child; and

*insert*

child;

### **13 Section 57 amended**

- (1) Section 57(1)

*omit, insert*

- (1) The officer may apprehend the child.
- (1A) For the purpose of doing so, the officer may enter the place where the child is found.
- (1B) If the officer apprehends the child, the officer must:
- (a) return the child to the child's usual place of residence; or
  - (b) if it is not practicable or appropriate to do so:
    - (i) move the child to a safe place; and
    - (ii) keep the child at the safe place; and
    - (iii) make any arrangement for the care and protection of the child at the safe place.

- (2) Section 57(2) and (5)

*omit*

subsection (1)

*insert*

subsections (1) to (1B)

### **14 Section 60 amended**

Section 60(5) and (6)

*omit, insert*

- (5) The officer or designated person conducting the search must be someone who is of the same gender as the child.

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**15 Section 63 amended**

Section 63(2)

*omit, insert*

- (2) The warrant authorises an authorised officer to do either or both of the following:
- (a) if the officer reasonably believes the child may be found at a place, do one or more of the following:
    - (i) enter the place;
    - (ii) search the place in order to find the child;
    - (iii) stay at the place for as long as the officer considers reasonably necessary to find the child;
  - (b) if the child is found at a place – stay at the place and have contact with the child for as long as the officer considers reasonably necessary for specified purposes (whether or not in the presence of someone else).

**16 Section 108 amended**

- (1) Section 108(1)

*omit*

may:

*insert*

may do one or more of the following:

- (2) Section 108(1)(a), (b) and (c)

*omit, insert*

- (a) if the officer reasonably believes the child may be found at a place, do one or more of the following:
- (i) enter the place;
  - (ii) search the place in order to find the child;
  - (iii) stay at the place for as long as the officer considers reasonably necessary to find and apprehend the child;

## (3) Section 108(1)(e)

*omit*

; and

*insert*

where the child is found;

## (4) Section 108(1)(d), (f) and (g)

*omit*

and

**17 Section 135 amended**

Section 135(1)

*omit*

a person who was not a parent of the child

*insert*

the CEO

**18 Section 204 amended**

## (1) Section 204(1)

*omit, insert*

(1) This section applies if an authorised officer reasonably believes that a child is employed at a place.

(1A) For the purposes of monitoring compliance with this Part, the officer may, at any reasonable time, do one or more the following:

- (a) enter the place;
- (b) inspect the place and any facilities at the place;
- (c) require any person at the place to give specified information, or produce specified records, to the officer;
- (d) operate any electronic equipment at the place to retrieve information or records;

(e) make extracts or copies of the records produced or retrieved under paragraph (c) or (d).

(2) Section 204(2) and (4)(b)

*omit*

subsection (1).

*insert*

subsection (1A)(c).

## **19                      Act further amended**

The Schedule has effect.

## **Part 5                      Expiry of Act**

### **20                      Expiry**

This Act expires on the day after it commences.



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**Schedule Act further amended**

section 19

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 4(c)	have	has
section 31	Object	object
section 124(1)	must:	must give to each parent of the child:
section 124(1)(a)	whole paragraph	(a) a copy of the application; and
section 137(5)(b)	does not with 124(3)	do not with section 124(3)
section 308(1)(d)	Part	part