

Children and Young People Amendment Regulation 2025 (No 1)

Subordinate law SL2025-13

made under the

Children and Young People Act 2008, s 888 (Regulation-making power)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Children and Young People Amendment Regulation 2025 (No 1)* (Amendment Regulation). It has been prepared in order to assist the reader of the Amendment Regulation. It does not form part of the Amendment Regulation and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the Amendment Regulation. It is not, and is not meant to be, a comprehensive description of the Amendment Regulation. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

BACKGROUND

As one of the Territory's most comprehensive and complex laws, the *Children and Young People Act 2008* (the CYP Act) has been instrumental in protecting the wellbeing of children and young people.

The *Children and Young People Amendment Act 2024 (No 2)* (the Amendment Act) introduced a merits review process for child protection decisions which will commence on 1 July 2025. The introduction of an internal and external merit review process into legislation supports greater accountability, transparency, equity and responsiveness in decision-making for children and young people in the care of the Director-General. The decisions eligible for review are set out in Schedule 1 of the *Children and Young People Regulation 2009* (the Regulation).

During implementation of the *Children and Young People Amendment Act 2024 (No 2)*, concerns were raised that the list of decisions eligible for review under the Regulation was broader than was originally intended. The Amendment Regulation supports the operationalisation of an effective merits review process as intended and agreed on with key stakeholders, carers and service providers.

OVERVIEW OF THE AMENDMENT REGULATION

The Amendment Regulation will achieve the original intent of the merits review process by clarifying that reviewable decisions are those that are of an important and long-term nature and may alter the life course of a child or young person. It was not intended that daily or routine decisions regarding children and young people would be subject to the merit review process. The Amendment Act achieves the objectives of the merit review scheme by ensuring that certain administrative decisions made under the CYP Act by the Director-General can be thoroughly re-evaluated by CYF and/or the ACT Civil and Administrative Tribunal (ACAT).

The Amendment Regulation inserts a new definition of a ‘long-term decision’ in relation to a child or young person. This is defined as a decision that is likely to have implications for the child or young person’s long-term wellbeing, including their physical, emotional and psychological wellbeing.

The definition of ‘long term decision’ excludes decisions that are routine in nature or of temporary effect. This is to exclude from merits review decisions that are minor or day to day decisions whose inclusion would impact the ability of children and young people, their carers and others to live their lives uninterrupted by bureaucratic processes. It also excludes decisions such as one-off changes to activities or events, cancelling contact due to temporary illness, the giving of over-the-counter medication, routine medical appointments or minor medical treatment.

To assist with accessibility, usage and understanding, further clarification is provided by a ‘note’ identifying examples of what may be routine decisions and are therefore may not be a ‘long-term decision’. Including these routine decisions in merits review

would be cumbersome and impractical, introducing unnecessary delays and confusion into processes meant to support children's wellbeing and best interest.

However, where a minor or temporary decision becomes part of a repeated pattern, those decision may become 'long-term decisions' as they will have significant, lasting effects and they will become eligible for review. For example, where contact is consistently cancelled or rearranged such that the contact arrangements outlined in the Care Plan are not being followed, this becomes a long-term decision as it is in effect changing the long-term contact arrangements and should be reviewable. Another example might be where a child remains in an 'interim' or 'emergency' placement following a placement breakdown for a longer period than intended, this should be considered as a placement decision that has ongoing implications for that child and should be reviewable. Where a repeated temporary or daily decisions becomes a long-term decision will differ depending on each individual child or young person and the family's circumstance and the context of the decision. Whether a decision is reviewable, should ultimately be determined by the nature of the decision and its impact on a child or young person's long-term wellbeing.

The definition of long-term decision also excludes decisions that have been or can be reviewed by another entity. This is to exclude those decisions that already have an external review process through an alternative pathway, such as a panel process for a health decision or a review under the Drug Use Standards. This is to ensure that decisions that have already been finalised through a review process, for example a decision about health treatment for a young person cannot be continually re-opened. It also ensures that decisions are reviewed by the most appropriate entity, such as an expert panel.

Further guidance is provided for what could be a 'long-term decision' in relation to decisions about culture, education and religion. This clarifies what is included in a significant and long-term decision regarding culture, education, and religion, without limiting what might be considered significant.

Culture

A significant cultural decision is defined as a ‘long-term decision’ and includes decisions about child or young person regularly participating in cultural activities or education. The definition of significant cultural decision is open-ended, and does not exclude other cultural decisions from being significant decisions in relation to significant cultural decisions (Item 9 in Schedule 1) or implementation of a cultural plan (Item 14 in Schedule 1) that would be not considered long-term decisions may include a one-off change to participating in cultural activities due to illness or other personal circumstances. A decision to not support a child or young person participating in a cultural activity, even a one-off event, would be considered a long-term decision depending on the impact and implications for the child or young person’s connection to their culture.

Religion

A significant religious decision is defined as a ‘long-term decision’ and includes a decision about a child being initiated into a particular religion or a child or young person in religious services or activities or religious education. Decisions that will not have a significant impact on a child or young person’s wellbeing such as one-off attendance at a religious event will not be considered a long-term decision and will not be reviewable.

Education

A significant education decision means a ‘long-term decision’ about the education of the child or young person. It includes significant decisions likely to impact a child or young person’s wellbeing such as a permanent change to their school or educational institution, such as leaving or changing schools. A range of decisions are often required to support a child's experience in an educational setting, many of these decisions will be routine or temporary in nature, such as the provision of lunches and uniforms, deciding on appropriate transport for a child to and from school, or determining after school activities. These decisions are not likely to be considered long-term decisions, unless they affect the young person’s wellbeing in the long term.

Prescribed persons

Minor clarifying updates have been made to the prescribed persons that are to be notified of reviewable decisions. This has removed children and young people from decisions about services to support a parent achieve restoration of their child or young person (Item 1 in Schedule 1) and has removed persons with daily care responsibility from decisions about drug use testing and supervision direction (Items 5 and 8 in Schedule 1). This is to protect information that is primarily about parents from being made known to other people such as children and carers. It will also better limit internal review notices to the people directly impacted by these decisions. Parents will still be able to seek reviews of these decisions that directly impact them.

These enhancements aim to support a practical, efficient and operational scheme that does not create unnecessary burden on carers and service providers, enables affected people to seek timely internal and/or external review and ensures that reviewers including the ACAT can achieve the intended objectives of the merits review scheme.

CONSISTENCY WITH HUMAN RIGHTS

During the development of the Amendment Regulation, due regard was given to its effect in relation to compatibility with human rights as set out in the *Human Rights Act 2004*. A merits review process in relation to the decisions specified in the Amendment Regulation is likely to both promote and minimise the limitations on human rights under the *Human Rights Act 2004*.

Rights Limited and Promoted

- Section 11 – Protection of the family and children

The family is the natural and basic group unit of society and is entitled to be protected by society. This right is balanced by the right that every child has the protection needed by the child because of being a child, without distinction or discrimination of any kind. The CYP Act gives the authority to protect children in situations where there are concerns about their wellbeing whilst ensuring any actions are the minimal necessary to protect both the child or young person, and the family.

The Amendment Act introduces a merits review process to promote the accountability and transparency of decisions under the CYP Act and ensures that their decisions strike

the right balance between protection of children and young person whilst maintaining the protection of the family.

The Amendment Regulation clarifies that reviewable decisions are those that are long-term and will have or are likely to have a significant impact on the wellbeing of the child or young person. This will usually exclude decisions that are routine or temporary which will ensure that decisions about the everyday care of children and young people can be made. For example, isolated decisions that are short-term in nature, such as the one-off cancelation of a contact visit due to a child's illness, would not be a reviewable decision. This is because the decision is not likely to have implications for the child's long-term wellbeing, and would not be an impact on the rights of the family. Whereas a decision to restrict family contact for an ongoing period of time would be a reviewable decision, providing an avenue to promote the right to protection of family and children.

Rights Promoted

- Section 21 – Right to a fair trial

Section 21 provides that ‘everyone has the right to have their rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing’.

The Amendment Act introduces a merits review process that supports the protection and scrutiny of decisions concerning family and children. The introduction of a merits review process enhances accountability and transparency of decision making under the Children and Young People Act 2008. This ensures that those affected by decisions made to protect young people are transparent and accountable. This will enhance decision-making under the CYP Act as there is a scheme to ensure that decisions are independent and impartial and the rights of those affected are given due recognition and consideration.

- Section 12 – Privacy and reputation

The Regulation outlines decisions that will be eligible for a merits review from 1 July 2025. The merits review process allows the reconsideration of decisions set out in Part 1.2 and 1.3 of the Regulations made by the Director-General or Delegate. The requirement at section 635B of the Amendment Act requires internal decision review

notices to be provided to affected people when a reviewable decision is made.

Affected people for a particular decision is set out in Part 1.2 and 1.3 of the Regulations. This includes at least one person.

Issuing of notices of reviewable decisions to affected people does impact on the right to privacy and reputation. This disclosure is part of the process to ensure transparency and accountability in decision making but it also means that private details, which individuals may prefer to keep confidential, are shared with all parties involved in the review process.

The Amendment Regulation clarifies that reviewable decisions as those which are long-term and significant decisions, and does not include daily, routine or temporary decisions. The Amendment Regulation reduces the number of notices that are likely to be issued and better protects the privacy and reputation of individuals affected by the decision to those situations where the decisions are likely to have a significant impact on the future, long term wellbeing of the child or young person.

REGULATORY IMPACT STATEMENT

A regulatory impact statement is not required as the Amendment Regulation does not impose any appreciable costs on the community, or part of a community under section 34 (1) of the *Legislation Act 2001*.

CLAUSE NOTES

Clause 1 – Name of regulation

Clause 1 names the regulation as *Children and Young People Amendment Regulation 2025 (No 1)*.

Clause 2 – Commencement

Clause 2 provides for the commencement of the Regulation on the later of: commencement of the *Children and Young People Amendment Act 2004 (No 2)*, part 3; or, the day after its notification day.

Clause 3 – Legislation amended

This clause states that the legislation being amended is the *Children and Young People Regulation 2009*.

Clause 4 – Schedule 1, part 1.1, new definitions

This clause adds the following definitions to Part 1.1 of Schedule 1 of the Regulation to provide clarification and assist understanding of the concepts outline in the *Children and Young People Regulation 2009*:

Definition 1

Long-term decision, in relation to a child or young person—

- (a) means a decision that will or is likely to have implications for the child's or young person's long-term wellbeing; but
- (b) does not include—
 - (i) a decision that is routine in nature or of temporary effect; or
 - (ii) a decision that has been reviewed, or is reviewable, by another entity.

Note

The definition includes a note providing examples to assist the reader's understanding:

Examples—par (b)

1. Arrangements for the temporary care of the child or young person
2. Decision that child or young person not attend an event due to temporary illness
3. Taking child or young person to routine GP or dental appointments
4. Administering over-the-counter medication for a temporary illness or prescribed medication

Definition 2

Significant cultural decision, in relation to a child or young person—

- (a) means a long-term decision about a child or young person's cultural identity; and
- (b) includes a decision that would result in either or both of the following:
 - (i) the child or young person regularly participating in activities for the purpose of observing a particular cultural group;
 - (ii) in the child or young person regularly participating in education associated with a particular cultural group.

Definition 3

Significant education decision, in relation to a child or young person—

- (a) means a long-term decision about the education of the child or young person; and
- (b) includes a decision to do any of the following:
 - (i) enrol, or change the enrolment of, the child or young person in a school, training program or apprenticeship;
 - (ii) register the child or young person for home education under the Education Act 2004, part 5.1;
 - (iii) apply for an exemption certificate for the child or young person under the Education Act 2004, part 2.3.

Definition 4

Significant religious decision, in relation to a child or young person—

- (a) means a long-term decision about the religion of a child or young person; and
- (b) includes a decision that would result in any of the following:
 - (i) the child or young person being initiated into a particular religion;

- (ii) the child or young person regularly participating in activities for the purpose of observing a particular religion;
- (iii) the child or young person regularly participating in education associated with a particular religion.

Note

The definition includes a note providing examples to assist the reader's understanding:

Example—par (a)

baptism

Examples—par (b)

attending church services, following religious dietary practices

Clause 5 – Schedule 1, part 1.2

Schedule 1, Part 1.2 of the *Children and Young People Regulation 2009* contains a table setting out an item number (column 1) the function (column 2), decision (column 3) and prescribed persons (column 4) associated with care and protection decisions.

To clarify the meaning of the listed decisions and prescribed persons, this table is substituted in whole in the Amended Regulation.

In effect, the clause inserts the following terms:

- a. 'Long-term' into column 3 of item numbers 1, 7 and 14.
- b. 'Long-term' or 'significant' into column 3 of item number 2, 3, 4, 6, 7 and 15
- c. 'Significant cultural decision' into column 3 of item number 9.
- d. 'Significant education decision' into column 3 of item number 10
- e. 'Significant health decision' into column 3 of item number 11.
- f. 'Significant religious decision' into column 3 of item number 12

In effect, the clause omits the following terms:

- a. 'Child or young person' from item 1.
- b. 'Person with daily care responsibility for parent's child or young person' from item 5.
- c. 'Person with daily care responsibility for child or young person' from item 8.

Clause 6 – Dictionary, new definitions

The following definitions have consequentially been inserted into the Dictionary to add consistency.

Definition 1

Long-term decision, in relation to a child or young person, for schedule 1 (Internally reviewable decisions—care and protection)— see schedule 1, section 1.1

Definition 2

Significant cultural decision in relation to a child or young person, for schedule 1 (Internally reviewable decisions—care and protection)—see schedule 1, section 1.1.

Definition 3

Significant education decision, in relation to a child or young person, in relation to a child or young person, for schedule 1 (Internally reviewable decisions—care and protection)—see schedule 1, section 1.1.

Definition 5

Significant religious decision, in relation to a child or young person, in relation to a child or young person, for schedule 1 (Internally reviewable decisions—care and protection)—see schedule 1, section 1.1.