

Western Australia

**Parliamentary Commissioner  
Amendment Act 2009**

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As at **29 Jun 2009**

**No. 10 of 2009**

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# Parliamentary Commissioner Amendment Act 2009

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Western Australia

## **Parliamentary Commissioner Amendment Act 2009**

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**No. 10 of 2009**

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**An Act to amend the *Parliamentary Commissioner Act 1971* and as a consequence to amend the *Children and Community Services Act 2004*.**

[Assented to 29 June 2009]

The Parliament of Western Australia enacts as follows:

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**1. Short title**

This is the *Parliamentary Commissioner Amendment Act 2009*.

**2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

**3. Act amended**

This Act amends the *Parliamentary Commissioner Act 1971* unless otherwise indicated.

**4. Long title amended**

In the long title:

- (a) delete “**Investigations for**” and insert:

**Investigations with functions relating to**

- (b) after “**authorities**” insert:

**and to the deaths of certain children**

**5. Section 4 amended**

In section 4 in the definition of *staff* delete “section 9(2a);” and insert:

section 9(2a) and persons engaged under section 9(2B);

**6. Section 9 amended**

After section 9(2a) insert:

- (2B) The Commissioner may engage persons under contracts for services to provide professional, technical or other assistance for the purpose of enabling the functions of the Commissioner properly to be carried out.

**7. Part III Division 3A inserted**

After Part III Division 2 insert:

**Division 3A — Deaths of certain children**

**19A. Terms used in this Division**

- (1) In this Division —  
*CCS Act* means the *Children and Community Services Act 2004*;  
*investigable death* has the meaning given in subsection (3).
- (2) If a term is given a meaning in the CCS Act, it has the same meaning in this Division unless the contrary intention appears in this Division.
- (3) An investigable death occurs if a child dies and any of the following circumstances exists —
- (a) in the 2 years before the date of the child's death, the CEO had received information that raised concerns about the wellbeing of the child or a child relative of the child;
  - (b) in the 2 years before the date of the child's death, the CEO, under section 32(1) of the CCS Act, had determined that action should be

- taken to safeguard or promote the wellbeing of the child or a child relative of the child;
- (c) in the 2 years before the date of the child's death, any of the actions listed in section 32(1) of the CCS Act was done in respect of the child or a child relative of the child;
- (d) protection proceedings are pending in respect of the child or a child relative of the child;
- (e) the child or a child relative of the child is in the CEO's care.

**19B. Functions as to investigable deaths**

- (1) When the advisory body called the Child Death Review Committee, taken to be established under section 27 of the CCS Act, is abolished, the Commissioner is its successor for the purposes of the *State Records Act 2000* section 8 which applies accordingly.
- (2) The Commissioner, after taking account of any information and reasons given to the Commissioner under the CCS Act section 242A(3), may decide if the death of a child is or is not an investigable death.
- (3) The Commissioner's functions in relation to investigable deaths are as follows —
  - (a) to review the circumstances in which and why the deaths occurred;
  - (b) to identify any patterns or trends in relation to the deaths;
  - (c) to make recommendations to any department or authority about ways to prevent or reduce investigable deaths.
- (4) To enable the Commissioner to perform the functions in subsections (2) and (3), the Commissioner may



exercise any power the Commissioner has under Division 3 in order to obtain information relevant to the death of a child.

- (5) The Commissioner may perform the functions the Commissioner has under this Act to investigate a decision or recommendation made, or an act done or omitted, in or by a department or authority to which this Act applies in the exercise of any power or function if the decision, recommendation, act or omission relates to —
  - (a) a matter of administration; and
  - (b) an investigable death.

**8. Section 22B amended**

In section 22B:

- (a) in paragraph (d) delete “Inspector.” and insert:  
  
Inspector; or
- (b) after paragraph (d) insert:
  - (e) is disclosed to a person who is —
    - (i) the Commissioner for Children and Young People; or
    - (ii) a member of the staff of the Commissioner for Children and Young People authorised for the purposes of this subparagraph by the Commissioner, and concerns a matter that is relevant to the death of a child.

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(c) after each of paragraphs (aa) and (b) insert:

or

**9. Section 30A amended**

(1) In section 30A(1):

(a) in paragraph (b) delete “Act.” and insert:

Act; or

(b) after paragraph (b) insert:

(c) providing information about the death of a child for the purposes of Part III Division 3A.

(2) In section 30A(3) delete “(1)(a) or (b)” and insert:

(1)(a), (b) or (c)

**10. Schedule 1 replaced**

Delete Schedule 1 and insert:

**Schedule 1 — Departments and authorities, and extent, to which this Act does not apply**

[s. 13(2)(n)]

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<b>Act establishing department or authority</b>	<b>Department or authority, and extent, to which this Act does not apply</b>
<i>Auditor General Act 2006</i>	The Auditor General to the extent of the Auditor General’s functions other than that of chief executive officer of the department of the Public Service known as the Office of the Auditor General.

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<b>Act establishing department or authority</b>	<b>Department or authority, and extent, to which this Act does not apply</b>
<i>Commissioner for Children and Young People Act 2006</i>	Commissioner for Children and Young People to the extent of the Commissioner's functions other than that of chief employee under the <i>Public Sector Management Act 1994</i> .
<i>Corruption and Crime Commission Act 2003</i>	Corruption and Crime Commission. Parliamentary Inspector of the Corruption and Crime Commission.
<i>Director of Public Prosecutions Act 1991</i>	Director of Public Prosecutions. Deputy Director of Public Prosecutions.
<i>Economic Regulation Authority Act 2003</i>	Economic Regulation Authority to the extent of its functions referred to in the <i>Gas Pipelines Access (Western Australia) Act 1998</i> section 36(1) and the <i>Railways (Access) Act 1998</i> section 20(1).
<i>Electoral Act 1907</i>	Electoral Commissioner to the extent of the Electoral Commissioner's functions other than that of chief executive officer of the department of the Public Service known as the Western Australian Electoral Commission. Deputy Electoral Commissioner.
<i>Equal Opportunity Act 1984</i>	Commissioner for Equal Opportunity. Director of Equal Opportunity in Public Employment.
<i>Freedom of Information Act 1992</i>	Information Commissioner.
<i>Inspector of Custodial Services Act 2003</i>	Inspector of Custodial Services.
<i>Parliamentary Commissioner Act 1971</i>	Parliamentary Commissioner for Administrative Investigations. Deputy Parliamentary Commissioner for Administrative Investigations.

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<b>Act establishing department or authority</b>	<b>Department or authority, and extent, to which this Act does not apply</b>
<i>Public Sector Management Act 1994</i>	Commissioner for Public Sector Standards to the extent of the Commissioner's functions other than that of chief executive officer of the department of the Public Service principally assisting the Commissioner in the performance of the Commissioner's functions under the <i>Public Sector Management Act 1994</i> .
<i>Racing and Wagering Western Australia Act 2003</i>	Racing and Wagering Western Australia.
<i>Royal Commissions Act 1968</i>	Any Royal Commission.
<i>Solicitor-General Act 1969</i>	Solicitor-General.
<i>State Administrative Tribunal Act 2004</i>	State Administrative Tribunal.

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**11. Children and Community Services Act 2004 amended**

- (1) This section amends the *Children and Community Services Act 2004*.
- (2) At the beginning of Part 11 insert:

**242A. CEO to notify Ombudsman of certain deaths of children**

- (1) In this section —  
*Commissioner* has the meaning given in the *Parliamentary Commissioner Act 1971* section 4;  
*investigable death* has the meaning given in the *Parliamentary Commissioner Act 1971* section 19A.

- (2) The CEO must give the Commissioner written notice of any investigable death within 14 days after the date on which the Coroner notifies the CEO of the death.
- (3) If requested in writing by the Commissioner to do so, the CEO must give the Commissioner —
  - (a) any information in relation to the death of a child that has not been notified under subsection (2) that the Commissioner requires for the purpose of enabling the Commissioner to decide whether the death is an investigable death; and
  - (b) if the CEO is of the opinion the death is not an investigable death, reasons for the opinion.

