

Western Australia

**Children and Community Services Amendment
Act 2010**

As at 24 Nov 2010

No. 49 of 2010

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Children and Community Services Amendment Act 2010

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Western Australia

Children and Community Services Amendment Act 2010

No. 49 of 2010

An Act to amend the *Children and Community Services Act 2004*, to consequentially amend the *Working with Children (Criminal Record Checking) Act 2004*, and for related purposes.

[Assented to 24 November 2010]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Children and Community Services Amendment Act 2010*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Act amended

This Act, other than Part 2 Division 2, amends the *Children and Community Services Act 2004*.

Part 2 — Secure care arrangements

Division 1 — *Children and Community Services Act 2004* amended

4. Section 3 amended

- (1) In section 3 delete the definitions of:

placed

placement

- (2) In section 3 insert in alphabetical order:

assessor means a person appointed to be an assessor under section 125A(2);

interim order (secure care) means an order under section 133(2)(ca);

residential facility means a place that —

- (a) is used to provide accommodation for children in the CEO's care; and
- (b) is operated or managed by —
 - (i) the Department; or
 - (ii) another public authority; or
 - (iii) a person who has entered into an agreement under section 15(1) for the provision of placement services,

but does not include a secure care facility;

secure care arrangement has the meaning given in section 88C(1);

secure care facility means a place declared to be a secure care facility under section 88B(1);

5. Section 10 amended

In section 10(3):

(a) delete paragraph (a) and insert:

(a) decisions about placement arrangements or secure care arrangements in respect of the child; and

(b) after paragraph (b) insert:

and

6. Section 39 amended

(1) In section 39(1) in the definition of *provisional care plan* delete paragraph (c)(i) and “and” after it and insert:

(i) decisions about placement arrangements; and

(ia) decisions about secure care arrangements; and

(2) Delete section 39(2) and insert:

(2) This section applies if —

(a) a child is taken into provisional protection and care under this Division; and

(b) the CEO decides, or is required, to make a protection application in respect of the child.

- (3A) The CEO must prepare and implement a provisional care plan for the child.
 - (3B) Unless section 88I(2) applies, the CEO must prepare the provisional care plan within 7 working days after the child is taken into provisional protection and care.
- (3) In section 39(4) delete “plan, the” and insert:

plan, whether under this section or section 88I, the

7. Section 41 amended

Delete section 41(3) and insert:

- (3) Subsection (2) does not authorise an officer to move a child to —
 - (a) a lock-up (including a place that is prescribed as a lock-up for the purposes of the *Court Security and Custodial Services Act 1999*); or
 - (b) a secure care facility.

8. Section 79 amended

After section 79(2) insert:

- (3A) Subsection (2) does not authorise the CEO to make an arrangement for the placement of a child in a secure care facility.

9. Part 4 Division 5 Subdivision 3A inserted

After Part 4 Division 5 Subdivision 2 insert:

Subdivision 3A — Secure care arrangements

88A. Terms used

In this Subdivision —

protected child means a child who is the subject of a protection order (time-limited) or protection order (until 18);

provisionally protected child means a child who is in provisional protection and care.

88B. Secure care facilities

- (1) The Minister may, by order published in the *Gazette*, declare a place to be a secure care facility.
- (2) The Minister may, by order published in the *Gazette*, amend or cancel an order under subsection (1).
- (3) An order under this section comes into operation on —
 - (a) the day on which it is published in the *Gazette* (***publication day***); or
 - (b) if it specifies a day that is later than publication day — the later day.

88C. Secure care arrangements

- (1) The CEO may from time to time make an arrangement for the placement of a provisionally protected child or a protected child in a secure care facility (a ***secure care arrangement***).

- (2) The CEO must not make a secure care arrangement unless the CEO is satisfied that —
 - (a) there is an immediate and substantial risk of the child causing significant harm to the child or another person; and
 - (b) there is no other suitable way to manage that risk and to ensure that the child receives the care the child needs.
- (3) Subsection (2) does not apply in relation to a secure care arrangement if the CEO is required to make the arrangement under an interim order (secure care).
- (4) The CEO may at any time cancel a secure care arrangement unless it is a secure care arrangement made or continued under an interim order (secure care).
- (5) As soon as practicable after making a decision under subsection (1) or (4), the CEO must give written notice of the decision to the following people —
 - (a) the child to whom the decision relates;
 - (b) each parent of the child;
 - (c) any carer of the child;
 - (d) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

88D. Period in secure care facility

- (1) The period for which a provisionally protected child is kept in a secure care facility under a secure care arrangement must not exceed —
 - (a) if the child is the subject of an interim order (secure care) — the secure care period under that order; or
 - (b) otherwise — 21 days.

- (2) The period for which a protected child is kept in a secure care facility under a secure care arrangement must not exceed the secure care period under section 88F.

88E. Application for continuation order required for provisionally protected child

- (1) In this section —
continuation order means an order under section 133(2)(ca)(ii).
- (2) This section applies in relation to a provisionally protected child who —
 - (a) is placed in a secure care facility under a secure care arrangement; and
 - (b) is not, at the time of that placement, the subject of an interim order (secure care).
- (3) If the child is not already the subject of protection proceedings but the CEO decides, or is required, under Division 2 Subdivision 3 to make a protection application in respect of the child, the CEO must make an application for a continuation order in respect of the secure care arrangement when the CEO makes the protection application, unless before then the arrangement is cancelled.
- (4) If the child is already the subject of protection proceedings, the CEO must make an application for a continuation order in respect of the secure care arrangement as soon as practicable, but in any event not more than 2 working days, after the child is placed in the secure care facility, unless before then the arrangement is cancelled.

- (5) If, on an application under subsection (3) or (4), the Court refuses to make a continuation order in respect of the secure care arrangement, the CEO must, as soon as practicable after the refusal, cancel the arrangement and ensure that the child is removed from the secure care facility.

88F. CEO to decide secure care period for protected child

- (1) As soon as practicable after making a secure care arrangement in respect of a protected child, the CEO must decide the period (the *secure care period*) for which the child is to be kept in a secure care facility under the arrangement.
- (2) The secure care period must not exceed 21 days unless it is extended under subsection (3).
- (3) The CEO may extend the secure care period by not more than 21 days if the CEO is satisfied that there are exceptional reasons for doing so.
- (4) The secure care period cannot be extended under subsection (3) more than once.
- (5) As soon as practicable after making a decision under subsection (1) or (3), the CEO must give written notice of the decision to the following people —
- (a) the child to whom the decision relates;
 - (b) each parent of the child;
 - (c) any carer of the child;
 - (d) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

88G. Reconsideration of certain decisions concerning protected child

- (1) In this section —
secure care decision means —
 - (a) a decision under section 88C(1) to make a secure care arrangement for a protected child;
or
 - (b) a decision under section 88F(1) as to the secure care period for a protected child; or
 - (c) a decision under section 88F(3) to extend the secure care period for a protected child.
- (2) An application for the reconsideration of a secure care decision may be made to the CEO by —
 - (a) the child to whom the decision relates; or
 - (b) a parent of the child; or
 - (c) any carer of the child; or
 - (d) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.
- (3) The application —
 - (a) must be in writing; and
 - (b) must set out the grounds on which reconsideration of the secure care decision is sought.
- (4) As soon as practicable after receiving the application, the CEO must reconsider the secure care decision and —
 - (a) confirm, vary or reverse it; or
 - (b) substitute another decision for it.

- (5) The CEO must give the applicant written notice of his or her decision under subsection (4) and written reasons for it.

88H. Review of CEO's decision

A person who is aggrieved by a decision made by the CEO under section 88G(4) may apply to the State Administrative Tribunal for a review of the decision.

88I. Requirements for care plan or provisional care plan

- (1) In this section —
care plan has the meaning given in section 89(1);
provisional care plan has the meaning given in section 39(1).

- (2) If —
- (a) a provisionally protected child is placed in a secure care facility under a secure care arrangement; and
 - (b) at the time of the placement a provisional care plan for the child has not been prepared,

the CEO must prepare the provisional care plan as soon as practicable, but in any event not more than 2 working days, after the placement and must ensure that it meets the requirements set out in subsection (5).

- (3) If —
- (a) a provisionally protected child is placed in a secure care facility under a secure care arrangement; and
 - (b) at the time of the placement a provisional care plan for the child has been prepared,

the CEO must modify the provisional care plan as soon as practicable, but in any event not more than

2 working days, after the placement so that it meets the requirements set out in subsection (5).

- (4) If a protected child is placed in a secure care facility under a secure care arrangement, the CEO must modify the care plan for the child as soon as practicable, but in any event not more than 2 working days, after the placement so that it meets the requirements set out in subsection (5).
- (5) The requirements for a care plan or provisional care plan are that it —
 - (a) identifies the needs of the child in his or her transition to other living arrangements after leaving the secure care facility; and
 - (b) outlines steps or measures designed to address those needs and to reduce the likelihood of the child being placed in a secure care facility again.

88J. Apprehension without warrant — child absent from secure care facility

- (1) In this section —
officer means an authorised officer or a police officer.
- (2) If an officer suspects on reasonable grounds that a child is absent, or has been taken, without lawful authority from a secure care facility, the officer may apprehend the child and take the child to the secure care facility or such other place as the CEO directs.
- (3) For the purposes of subsection (2) an officer may —
 - (a) enter, at any time, any place where the officer reasonably believes the child to be; and
 - (b) search the place for the purpose of finding the child.

- (4) An officer does not need a warrant to exercise the powers in this section.
- (5) When exercising a power under this section an officer may use reasonable force and assistance.
- (6) Without limiting subsection (5), when exercising a power under this section an authorised officer may be accompanied by a police officer.

10. Section 89 amended

In section 89(1) in the definition of *care plan* delete paragraph (c)(i) and “and” after it and insert:

- (i) decisions about placement arrangements; and
- (ii) secure care decisions referred to in section 88G; and

11. Part 4 Division 5 Subdivision 4 heading amended

In the heading to Part 4 Division 5 Subdivision 4 delete “**case**” and insert:

care

12. Section 91 amended

- (1) In section 91 delete the definition of *case planning decision*.
- (2) In section 91 insert in alphabetical order:

care planning decision, in relation to a child, means a decision set out in a care plan for the child but does not

include a secure care decision referred to in section 88G;

13. Section 93 amended

In section 93(1), (3)(a) and (6)(a) and (b) delete “case planning” and insert:

care planning

14. Section 97 amended

In section 97(2) delete “or body who or which has provided care for the child under a placement arrangement.” and insert:

who has provided care for the child under a placement arrangement or a secure care arrangement.

15. Part 4 Division 7 Subdivision 2 heading amended

In the heading to Part 4 Division 7 Subdivision 2 after “arrangements” insert:

or secure care arrangements

16. Section 105 amended

- (1) In section 105(1) in the definition of *child* delete “arrangement;” and insert:

arrangement or a secure care arrangement;

- (2) In section 105(1) in the definition of *place of residence* delete “arrangement.” and insert:

arrangement or a secure care arrangement.

17. Sections 125A and 125B inserted

At the beginning of Part 4 Division 10 insert:

125A. Assessors

- (1) In this section —
facility means a residential facility or a secure care facility.
- (2) The CEO may, in writing, appoint a person to be an assessor if the CEO is satisfied that the person has the experience, skills, attributes or qualifications the CEO considers appropriate to enable the person to effectively exercise the powers in subsection (3).
- (3A) An officer is not eligible for appointment under subsection (2).
- (3B) An assessor is to be paid such remuneration and allowances (if any) as the CEO, on the recommendation of the Minister for Public Sector Management, determines.
- (3) An assessor may, at any time, visit a facility and do one or more of the following —
- (a) enter and inspect the facility;
 - (b) inquire into the operation and management of the facility;
 - (c) inquire into the wellbeing of any child in the facility;

- (d) see and talk with any child in the facility;
 - (e) inspect any document relating to the facility or to any child in the facility.
- (4A) A child in a facility, or a parent or other relative of a child in a facility, may request the person in charge of the facility to arrange for an assessor to visit the facility and see and talk with the child.
- (4) An assessor must provide a written report to the CEO about each visit made by the assessor under this section.

125B. Identity cards for assessors

- (1) The CEO must ensure that each assessor is issued with an identity card in a form approved by the CEO.
- (2) An assessor must display his or her identity card when visiting a facility under section 125A(3).
- (3) In any proceedings the production by an assessor of his or her identity card is conclusive evidence of his or her appointment under section 125A(2).

18. Section 133 amended

- (1) Delete section 133(1) and insert:
 - (1) The Court may at any time in the course of protection proceedings make an interim order.
- (2A) Except in the case of an interim order (secure care), an interim order may be made —
 - (a) on the Court's own initiative; or
 - (b) on the application of a party.
- (2B) An interim order (secure care) may be made only on the application of the CEO.

- (2) After section 133(2)(b) insert:
- (ca) if the child is in provisional protection and care, that —
 - (i) the CEO is to make a secure care arrangement in respect of the child; or
 - (ii) a secure care arrangement made by the CEO in respect of the child is to continue;

19. Section 134A inserted

After section 133 insert:

134A. Provisions about interim orders (secure care)

- (1) The Court must not make an interim order (secure care) unless the Court is satisfied that —
 - (a) there is an immediate and substantial risk of the child causing significant harm to the child or another person; and
 - (b) there is no other suitable way to manage that risk and to ensure that the child receives the care the child needs.
- (2) An interim order (secure care) must specify the period (the *secure care period*) for which the child is to be kept in a secure care facility under the secure care arrangement to which the order relates.
- (3) If the order is made under section 133(2)(ca)(i), the secure care period must not exceed 21 days unless it is extended under subsection (6).
- (4) If the order is made under section 133(2)(ca)(ii), the aggregate of the secure care period and the period for

which the child has already been kept in a secure care facility under the secure care arrangement to which the order relates must not exceed 21 days unless the secure care period is extended under subsection (6).

- (5) The CEO may apply to the Court for the variation of an interim order (secure care) to extend the secure care period.
- (6) On an application under subsection (5) the Court may extend the secure care period by not more than 21 days if the Court is satisfied that there are exceptional reasons for doing so.
- (7) The secure care period cannot be extended under subsection (6) more than once.
- (8) If, on an application under section 134(1), the Court revokes an interim order (secure care), the CEO must, as soon as practicable after the revocation, cancel the secure care arrangement to which the order relates and ensure that the child is removed from the secure care facility.

20. Section 134 amended

After section 134(1) insert:

- (2A) In subsection (1) —
variation does not include a variation referred to in section 134A(5).

21. Section 243 amended

In section 243 delete “a person is” and insert:

the person or another person is an assessor or

Note: The heading to amended section 243 is to read:

Impersonating an assessor or authorised officer

Division 2 — *Working with Children (Criminal Record Checking) Act 2004* amended

22. Act amended

This Division amends the *Working with Children (Criminal Record Checking) Act 2004*.

23. Section 6 amended

In section 6(1)(a)(vi) after “arrangement” insert:

or secure care arrangement

Part 3 — Protection orders (special guardianship)

24. Section 3 amended

- (1) In section 3 delete the definition of *protection order (enduring parental responsibility)*.
- (2) In section 3 insert in alphabetical order:

protection order (special guardianship) has the meaning given in section 60;

25. Section 42 amended

- (1) In section 42 delete the definitions of:
child
enduring parental carer
- (2) In section 42 insert in alphabetical order:

child means —

- (a) in relation to a protection application or other application under this Division — the child to whom the application relates; or
- (b) in relation to a protection order — the child to whom the order relates;

special guardian means the individual who is given, or the 2 individuals who are jointly given, parental responsibility for a child under a protection order (special guardianship).

- (3) In section 42 in the definition of *party to the initial proceedings* delete “made.” and insert:

made;

26. Section 44 amended

Delete section 44(3) and insert:

- (3) If a protection order (special guardianship) is sought, the protection application must nominate the individual or individuals to whom parental responsibility for the child is proposed to be given under the order.

27. Section 60 amended

(1) Delete section 60(1) and insert:

- (1) A protection order (special guardianship) is an order giving an individual, or 2 individuals jointly, parental responsibility for a child until the child reaches 18 years of age.

(2) In section 60(2) delete “(enduring parental responsibility)” and insert:

(special guardianship)

(3) In section 60(3):

(a) delete “(enduring parental responsibility)” and insert:

(special guardianship)

(b) delete “enduring parental carer” and insert:

special guardian

s. 28

Note: The heading to amended section 60 is to read:

Protection order (special guardianship)

28. Section 61 amended

(1) Delete section 61(1) and insert:

(1) In this section —

proposed special guardian means the individual or each individual to whom parental responsibility for the child is proposed to be given under the protection order (special guardianship).

(2) In section 61(2):

(a) delete “(enduring parental responsibility)” and insert:

(special guardianship)

(b) in paragraph (b) delete “carer or each proposed carer” and insert:

special guardian

(3) In section 61(4) and (5) delete “a proposed carer” and insert:

the proposed special guardian

Note: The heading to amended section 61 is to read:

Restriction on making protection order (special guardianship)

29. Section 64 amended

In section 64(1) delete the definition of *condition* and insert:

condition means a condition of a protection order
(special guardianship).

Note: The heading to amended section 64 is to read:

Variation of conditions

30. Section 65 amended

In section 65(1):

(a) delete “(enduring parental responsibility),” and insert:

(special guardianship),

(b) delete “enduring parental carer” and insert:

special guardian

Note: The heading to amended section 65 is to read:

Court may order payments to special guardian

31. Section 66 amended

In section 66:

(a) delete “(enduring parental responsibility)” and insert:

(special guardianship)

(b) delete “enduring parental carer” and insert:

special guardian

32. Section 68 amended

- (1) In section 68(1) delete “the child.” and insert:

a child.
- (2) Delete section 68(3) and insert:
- (3) If a protection order (special guardianship) is sought, the application must nominate the individual or individuals to whom parental responsibility for the child is proposed to be given under the order.

Note: The heading to amended section 68 is to read:

Replacement of protection order: application by CEO

33. Section 69A inserted

At the end of Part 4 Division 3 Subdivision 7 insert:

69A. Replacement of protection order (time-limited) or protection order (until 18): application by carer

- (1) An individual is eligible to make an application under subsection (2) in respect of a child if —
 - (a) the individual has been the carer of the child;
and
 - (b) the child has been the subject of one or more of the following types of protection order —
 - (i) a protection order (time-limited);
 - (ii) a protection order (until 18),

for at least the period of 2 years immediately preceding the day on which the application is made.

- (2) An individual who is the carer of a child may, if eligible to do so under subsection (1), apply to the Court for the revocation of a protection order (time-limited) or protection order (until 18) and the making of a protection order (special guardianship) in respect of the child.
- (3) An application under subsection (2) must nominate the individual or individuals to whom parental responsibility for the child is proposed to be given under the protection order (special guardianship).
- (4) The applicant must be the individual or one of the individuals nominated in the application.
- (5) If an application under subsection (2) for the revocation of a protection order (time-limited) is made but not determined before the day on which the order would otherwise expire, the order remains in force until the application is determined.
- (6) On an application under subsection (2) the Court may, if satisfied that it is in the best interests of the child to do so, revoke the order and, subject to this Part, make a protection order (special guardianship) or another protection order in respect of the child.

34. Section 73 amended

- (1) In section 73(1) in the definition of *relevant person* delete paragraph (b) and insert:
 - (b) if the order concerned is a protection order (special guardianship), the special guardian.

s. 35

- (2) In section 73(2) delete “(enduring parental responsibility)” and insert:

(special guardianship)

35. Various references to “enduring parental responsibility” amended

In the provisions listed in the Table:

- (a) delete “enduring parental responsibility” and insert:

special guardianship

- (b) delete “**enduring parental responsibility**” and insert:

special guardianship

Table

s. 43(d)	Pt. 4 Div. 3 Subdiv. 6 heading
s. 62	s. 63(1) and (2)
s. 143(3)(c) and (5)(b)	s. 147(d)

Notes:

1. The heading to amended section 62 is to read:
Duration of protection order (special guardianship)
2. The heading to amended section 63 is to read:
Conditions of protection order (special guardianship)

Part 4 — Determination of parentage

36. Part 5 Division 3A inserted

After Part 5 Division 2 insert:

Division 3A — Orders for determination of parentage

136A. Terms used

In this Division —

parentage testing order means an order under section 136C(1);

parentage testing procedure means a medical procedure prescribed, or included in a class of medical procedures prescribed, for the purposes of this definition.

136B. Orders requiring person to give evidence

- (1) If the parentage of a child is a question in issue in protection proceedings, the Court may make an order requiring any person to give such evidence as is material to the question.
- (2) The Court may make an order under subsection (1) —
 - (a) on its own initiative; or
 - (b) on the application of a party.

136C. Parentage testing orders

- (1) If the parentage of a child is a question in issue in protection proceedings, the Court may make an order requiring a parentage testing procedure to be conducted in relation to a person mentioned in subsection (3) for the purpose of obtaining information to assist in determining the parentage of the child.

- (2) The Court may make a parentage testing order —
 - (a) on its own initiative; or
 - (b) on the application of a party.
- (3) A parentage testing order may be made in relation to —
 - (a) the child; or
 - (b) a person known to be the mother of the child; or
 - (c) any other person, if the Court is of the opinion that, if the parentage testing procedure were conducted in relation to the person, the information that could be obtained might assist in determining the parentage of the child.
- (4) A parentage testing order may be made subject to terms and conditions.
- (5) This section does not limit the operation of section 136B.

136D. Orders associated with parentage testing orders

- (1) If the Court makes a parentage testing order, it may also make orders under subsection (2) or (4).
- (2) The Court may make any orders that it considers necessary or desirable —
 - (a) to enable the parentage testing procedure to be conducted; or
 - (b) to make the parentage testing procedure more effective or reliable.
- (3) Some examples of the kinds of orders the Court may make under subsection (2) are as follows —
 - (a) an order requiring a person to submit to a medical procedure;

- (b) an order requiring a person to provide a bodily sample;
 - (c) an order requiring a person to provide information relevant to the person's medical or family history.
- (4) The Court may make any orders that it considers just in relation to costs incurred in relation to —
- (a) conducting the parentage testing procedure or other orders made by the Court in relation to the parentage testing procedure; or
 - (b) the preparation of reports relating to the information obtained as a result of conducting the parentage testing procedure.

136E. Orders directed to adults

- (1) If an adult contravenes a parentage testing order or an order under section 136D, the adult is not liable to any penalty in relation to the contravention.
- (2) The Court may draw such inferences from the contravention as appear just in the circumstances.

136F. Orders directed to children

- (1) This section applies if a parentage testing order, or an order under section 136D, requires a medical procedure or other act to be carried out in relation to a child who is not in provisional protection and care or the subject of a protection order (time-limited) or protection order (until 18).
- (2) The procedure or act must not be carried out without the consent of a parent of the child.
- (3) The Court may draw such inferences from a failure or refusal to consent as mentioned in subsection (2) as appear just in the circumstances.

136G. No liability if parent or CEO consents

- (1) A person who conducts, or who assists in conducting, a medical procedure or other act in relation to a child under a parentage testing order, or an order under section 136D, is not liable to any civil or criminal action in relation to the proper conducting of the procedure or act if it is done with the consent of —
 - (a) a parent of the child; or
 - (b) the CEO, if the child is in provisional protection and care or is the subject of a protection order (time-limited) or protection order (until 18).
- (2) Subsection (1) does not affect any liability of a person for an act done negligently, or negligently omitted to be done, in relation to conducting the medical procedure or act.

136H. Regulations about parentage testing procedures

The regulations may provide for —

- (a) the conduct of parentage testing procedures under parentage testing orders; and
- (b) the preparation of reports relating to the information obtained as the result of conducting such procedures.

136I. Reports of information obtained may be received in evidence

- (1) A report made in accordance with regulations under section 136H(b) may be received in evidence in protection proceedings.
- (2) If, under subsection (1), a report is received in evidence in protection proceedings, the Court may make an order requiring the person who made the report, or any

person whose evidence may be relevant in relation to the report, to appear before the Court and give evidence in relation to the report.

- (3) The Court may make an order under subsection (2) —
- (a) on its own initiative; or
 - (b) on the application of a party.

Part 5 — Other amendments

37. Section 3 amended

- (1) In section 3 in the definition of *authorised officer* delete “appointed” and insert:

designated

- (2) In section 3 in the definition of *service provider* delete “or body who or which —” and insert:

who —

38. Section 7 amended

In section 7 delete “person or the Court” and insert:

person, the Court or the State Administrative Tribunal

39. Section 9 amended

After section 9(g) insert:

- (ha) the principle that if a child is removed from the child’s family then, so far as is consistent with the child’s best interests, planning for the child’s care should occur as soon as possible in order to ensure long-term stability for the child;

40. Section 12 amended

In section 12(2):

- (a) after “placement” (first occurrence) insert:

under a placement arrangement

- (b) delete “must be considered as far as is practicable in” and insert:

must, so far as is consistent with the child’s best interests and is otherwise practicable, be in accordance with

41. Section 15 amended

In section 15(1):

- (a) delete “or body” (first and third occurrences);
(b) in paragraph (a) delete “person or body; or” and insert:

person; or

42. Section 16 amended

In section 16(2) delete “Community Development”.

43. Part 3 Division 2 heading amended

In the heading to Part 3 Division 2 delete “**Community Development**” and insert:

Children and Community Services

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44. Section 17 amended

In section 17 delete the definition of *Ministerial Body* and insert:

Ministerial Body means the body referred to in section 18(1).

45. Section 18 amended

Delete section 18(1) and insert:

- (1) The body previously established by this section as the Community Development Ministerial Body is renamed the Children and Community Services Ministerial Body.

Note: The heading to amended section 18 is to read:

The Children and Community Services Ministerial Body

46. Section 19 amended

In section 19(1) after “under” insert:

or for the purposes of

47. Section 21 amended

In section 21(1):

- (a) after paragraph (b) insert:
 - (ca) to control and manage the property of children who are the subject of a protection order (time-limited) or protection order (until 18); and

(b) after each of paragraphs (a), (b), (c) and (d) insert:

and

48. Section 22 amended

(1) Delete section 22(3) and insert:

(3) If the CEO considers that a public authority or service provider can assist in the performance of functions under this Act, the CEO may request the assistance of that authority or provider, specifying the assistance that is sought.

(4A) In subsection (3) —

assistance includes the provision of advice, facilities and services.

(2) In section 22(4) after “subsection (3)” insert:

promptly

49. Section 23 amended

(1) In section 23(1) insert in alphabetical order:

Commonwealth agency means —

- (a) a department of the Public Service of the Commonwealth; or
- (b) a Commonwealth agency or instrumentality; or
- (c) a body, whether corporate or unincorporate, or the holder of an office, post or position, established or continued for a public purpose under a law of the Commonwealth;

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(2) In section 23(1) in the definition of *corresponding authority*:

- (a) delete “or body”;
- (b) delete “that” and insert:

who

(3) In section 23(1) in the definition of *interested person* delete “or body who or which,” and insert:

who,

(4) In section 23(2) and (3) after “a public authority,” insert:

a Commonwealth agency,

(5) Delete section 23(4) and insert:

- (4) Information may be disclosed under subsection (2), or in compliance with a request under subsection (3), despite any written law relating to secrecy or confidentiality.

(6) After section 23(5) insert:

- (6A) Subsection (5) does not apply to the disclosure of information by a Commonwealth agency or a corresponding authority in compliance with a request under subsection (3).

Note: The heading to amended section 23 is to read:

Exchange of information involving the Department

50. Section 24A inserted

After section 23 insert:

24A. Exchange of information involving other public authorities

(1) In this section —

CEO, of a prescribed authority, means —

- (a) for an entity referred to in paragraph (a), (b) or (c) of the definition of *public authority* in section 3 — the principal officer (however described) of that entity; or
- (b) for a body referred to in paragraph (d) of the definition of *public authority* in section 3 — the principal officer (however described) of that body; or
- (c) for the holder of an office, post or position referred to in paragraph (d) of the definition of *public authority* in section 3 — that holder;

prescribed authority means a public authority, other than the Department, prescribed for the purposes of this definition.

- (2) The CEO of a prescribed authority (the *disclosing CEO*) may disclose information to the CEO of another prescribed authority if, in the opinion of the disclosing CEO, the information is, or is likely to be, relevant to the wellbeing of a child or a class or group of children.
- (3) The CEO of a prescribed authority (the *requesting CEO*) may request the CEO of another prescribed authority to disclose information to the requesting CEO if, in the opinion of the requesting CEO, the

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information is, or is likely to be, relevant to the wellbeing of a child or a class or group of children.

- (4) Information may be disclosed under subsection (2), or in compliance with a request under subsection (3), despite any written law relating to secrecy or confidentiality.
- (5) If information is disclosed, in good faith, under subsection (2) or in compliance with a request under subsection (3) —
 - (a) no civil or criminal liability is incurred in respect of the disclosure; and
 - (b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and
 - (c) the disclosure is not to be regarded as a breach of professional ethics or standards or any principles of conduct applicable to a person's employment or as unprofessional conduct.
- (6) The CEO of a prescribed authority may, in writing, delegate to an officer or employee of the prescribed authority the powers in subsections (2) and (3).

51. Section 24 amended

- (1) In section 24(1) delete “officer or other” and insert:

officer, a service provider or another
- (2) Delete section 24(3) and (4) and insert:
- (3) The delegation may expressly authorise the delegate to further delegate the power or duty.

- (4) A person exercising or performing a power or duty that has been delegated to the person under, or as authorised under, this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

52. Section 25 replaced

Delete section 25 and insert:

25. Designation of authorised officers

The CEO may, in writing, designate officers to be authorised officers —

- (a) generally for the purposes of this Act; or
- (b) for the purposes of a provision of this Act specified in the designation.

53. Section 26 amended

In section 26(3) delete “appointment” and insert:

designation

54. Section 29 amended

- (1) Delete section 29(2) and insert:
- (2) If a child is in provisional protection and care, the CEO, subject to any interim order in respect of the child, has responsibility for the day-to-day care, welfare and development of the child to the exclusion of any other person.

(3A) Without limiting subsection (2), the responsibility conferred by that subsection includes responsibility for making decisions about any medical or dental examination, treatment or procedure in respect of the child.

(2) In section 29(3):

(a) in paragraph (a) delete “38(2);” and insert:

38(2) or (3)(b); or

(b) after paragraph (b) insert:

or

55. Part 4 Division 2 heading amended

In the heading to Part 4 Division 2 delete “**Powers available**” and insert:

Measures

56. Part 4 Division 2 Subdivision 1 heading amended

In the heading to Part 4 Division 2 Subdivision 1 after “**powers**” insert:

and duties

57. Section 32 amended

In section 32(1) delete “any” (first occurrence).

58. Sections 33A and 33B inserted

At the end of Part 4 Division 2 Subdivision 1 insert:

33A. CEO may cause inquiries to be made before child is born

If, before a child is born, the CEO receives information that raises concerns about the child's wellbeing after the child is born, the CEO may cause any inquiries to be made that the CEO considers reasonably necessary for the purpose of determining whether action should be taken to safeguard or promote the child's wellbeing after the child is born.

33B. Further action by CEO before child is born

If the CEO determines that action should be taken before a child is born to safeguard or promote the child's wellbeing after the child is born, the CEO must do one or more of the following —

- (a) provide, or arrange for the provision of, social services to the pregnant woman;
- (b) arrange or facilitate a meeting between an officer and any one or more of the following people —
 - (i) the pregnant woman;
 - (ii) a representative of a service provider;
 - (iii) a representative of a public authority;
 - (iv) any other person the CEO considers appropriate,

for the purpose of developing a plan to address the needs of the child after the child is born in a way that ensures the best outcome for the child;

- (c) cause an investigation to be conducted by an authorised officer for the purpose of assessing the likelihood that the child will be in need of protection after the child is born.

59. Section 38 amended

- (1) In section 38(2):

- (a) after “If” insert:

the child is not already the subject of protection proceedings when the child is taken into provisional protection and care and

- (b) delete “subject to subsection (3),” and insert:

unless subsection (4A) applies,

- (2) Delete section 38(3) and insert:

- (3) If the child is already the subject of protection proceedings when the child is taken into provisional protection and care, then, unless subsection (4A) applies, the CEO must —

- (a) make an application for an interim order under section 133(2)(b) that the child is to remain in provisional protection and care; or
 - (b) ensure that the child is returned to or placed in the care of a person referred to in subsection (2)(a), (b) or (c),

as soon as practicable, but in any event not more than 2 working days, after the child is taken into provisional protection and care.

- (4A) If the child is already in the CEO's care when the child is taken into provisional protection and care, the CEO may make any arrangement for the care of the child that the CEO considers appropriate.

60. Section 68 amended

Delete section 68(4) and insert:

- (4) If an application under subsection (1) for the revocation of a protection order (supervision) or a protection order (time-limited) is made but not determined before the day on which the order would otherwise expire, the order remains in force until the application is determined.
- (5) On an application under subsection (1) the Court may, if satisfied that it is in the best interests of the child to do so, revoke the order and, subject to this Part, make the protection order sought or another protection order in respect of the child.

61. Section 79 amended

In section 79(2)(a)(ii) delete "or body who or which" and insert:

who

62. Section 81 replaced

Delete section 81 and insert:

81. Consultation before placement of Aboriginal or Torres Strait Islander child

Before making a placement arrangement in respect of an Aboriginal child or a Torres Strait Islander child the CEO must consult with at least one of the following —

- (a) an officer who is an Aboriginal person or a Torres Strait Islander;
- (b) an Aboriginal person or a Torres Strait Islander who, in the opinion of the CEO, has relevant knowledge of the child, the child's family or the child's community;
- (c) an Aboriginal or Torres Strait Islander agency that, in the opinion of the CEO, has relevant knowledge of the child, the child's family or the child's community.

63. Section 84 replaced

Delete section 84 and insert:

84. Authorised officer may require person to hand over child

- (1) In this section —
child means a child who is the subject of a placement arrangement.
- (2) An authorised officer may at any time require a carer of a child, a parent of a child or any other person who has the care or control of a child to hand the child over to the authorised officer.

- (3) A person who is required to hand over a child under subsection (2) must comply with the requirement.

Penalty: a fine of \$12 000 and imprisonment for one year.

64. Section 85 amended

- (1) In section 85(1):

- (a) delete “carer” and insert:

person

- (b) delete “request made by” and insert:

requirement of

- (2) In section 85(3):

- (a) delete “carer” and insert:

person

- (b) delete “request.” and insert:

requirement.

65. Section 86 amended

In section 86(3) delete “suspicion” and insert:

belief

66. Section 102 amended

In section 102 in the Penalty after “penalty:” insert:

a fine of

67. Section 104A inserted

After section 103 insert:

104A. Body piercing

(1) In this section —

body piercing means piercing a part of the body for the purpose of inserting a bar, pin, ring, stud or similar thing.

(2) A person must not carry out body piercing on any of the following parts of the body of a child —

- (a) the genitals;
- (b) the anal area;
- (c) the perineum;
- (d) the nipples.

Penalty: a fine of \$18 000 and imprisonment for 18 months.

(3) It is not a defence to a charge under subsection (2) that the child, or a parent of the child, consented to the body piercing.

(4) A person must not carry out body piercing on any other part of the body of a child unless the person has first obtained the written consent of a parent of the child to carry out body piercing on that part of the child’s body.

Penalty: a fine of \$12 000 and imprisonment for one year.

- (5) Subsection (4) does not apply to body piercing carried out on the ear of a child who has reached 16 years of age.
- (6) This section does not apply to body piercing carried out for a medical or therapeutic purpose.

68. Section 112 amended

- (1) In section 112 delete the definition of *officer*.
- (2) In section 112 insert in alphabetical order:

approved person means a person who is approved or belongs to a class of persons approved under section 113A(1);

authorised person means —

- (a) an authorised officer; or
- (b) a police officer; or
- (c) an approved person;

69. Section 113A inserted

After section 112 insert:

113A. Approval for purposes of this Division

- (1) The CEO may approve a person or class of persons for the purposes of this Division if the CEO is satisfied that the person has, or persons belonging to that class have, the experience and training that the CEO considers necessary for the proper exercise of the powers conferred by this Division.

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- (2) An approval under subsection (1) —
 - (a) must be in writing; and
 - (b) may be subject to such conditions as the CEO considers appropriate; and
 - (c) may be revoked at any time.

70. Section 113 amended

- (1) In section 113(1) delete “The powers” and insert:

A power

- (2) In section 113(2):

- (a) delete “The powers” and insert:

A power

- (b) in paragraph (a) delete “section 41; and” and insert:

section 41 or to a secure care facility under a secure care arrangement; and

- (3) After section 113(2) insert:

- (3) A power conferred by this Division may be exercised by an approved person only if —
 - (a) the child concerned is in the CEO’s care; and
 - (b) the approved person believes on reasonable grounds that, unless the power is exercised, the child concerned is likely to —
 - (i) endanger the health or safety of the child or another person; or
 - (ii) cause serious damage to property.

71. Section 117 amended

In section 117(2) delete “officer, the authorised officer” and insert:

officer or approved person, the authorised officer or approved person

72. Section 124C amended

In section 124C(3):

(a) in paragraph (c) delete “if known” and insert:

if, or to the extent, known

(b) after paragraph (d) insert:

(ea) if, or to the extent, known to the reporter —

(i) the name of any person alleged to be responsible for the sexual abuse; and

(ii) the person’s contact details; and

(iii) the person’s relationship to the child;

and

73. Section 127 replaced

Delete section 127 and insert:

127. Power of CEO to give consent

(1) In this section —

consent includes authorisation and permission.

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- (2) In any case where the consent of a parent of a child is required or customarily sought, the CEO may, in writing, give that consent in relation to —
 - (a) a child who is in provisional protection and care, if it is given in the exercise of the responsibility that the CEO has for the child under section 29(2); or
 - (b) a child who is the subject of a protection order (time-limited) or protection order (until 18); or
 - (c) a child who is the subject of a negotiated placement agreement, if the agreement authorises the CEO to do so.
- (3) A consent given under subsection (2) may incorporate a waiver of legal liability.

74. Section 129 amended

- (1) In section 129(1):
 - (a) after paragraph (a) insert:
 - (ba) gives information of the kind described in section 33A to the CEO or another officer; or
 - (b) in paragraph (b) delete “32(1)(d); or” and insert:

32(1)(d) or 33B(c); or
- (2) In section 129(3):
 - (a) delete “(1)” (first occurrence) and insert:

(2)

(b) in paragraphs (b)(i) and (c)(i) after “(1)(a),” insert:

(ba),

75. Section 188 amended

(1) In section 188 insert in alphabetical order:

industrial inspector has the meaning given in the
Industrial Relations Act 1979 section 7(1).

(2) In section 188 in the definition of *family business* delete
“child.” and insert:

child;

76. Section 194A inserted

After section 193 insert:

**194A. Power of CEO to prohibit or limit employment of
children in particular business or place**

(1) In this section —

notice means a notice under subsection (2).

(2) If the CEO —

(a) believes on reasonable grounds that one or
more children are, or may in the future be,
employed in a particular business or place; and

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- (b) is of the opinion that the wellbeing of those children is likely to be jeopardised because of —
 - (i) the nature of the business or place; or
 - (ii) the nature of the work carried out in the business or place,

the CEO may, by written notice given to the employer or prospective employer, as the case requires —

- (c) prohibit the employment of children; or
- (d) impose limitations on the employment of children,

in the business or place.

- (3) If a notice is given to an employer, the employer must give a copy of the notice to each child who, at the time the notice is given, is employed in the business or place to which the notice relates.

Penalty: a fine of \$6 000.

- (4) A person must not employ a child in contravention of a notice.

Penalty: a fine of \$36 000 and imprisonment for 3 years.

- (5) It is a defence to a charge under subsection (4) for a person to prove that, at the time the offence is alleged to have been committed, the person —

- (a) had not been given the notice; and
- (b) was otherwise unaware of the contents of the notice.

77. Section 195 amended

- (1) In section 195(1) delete the definition of *authorised officer* and insert:

authorised officer means —

- (a) an officer designated to be an authorised officer under section 25 for the purposes of this Part;
or
- (b) an industrial inspector.
- (2) In section 195(2):
- (a) delete “is employed,” (second occurrence) and insert:
- is, or may in the future be, employed,
- (b) after “employment” insert:
- or prospective employment
- (3) Delete section 195(3) and insert:
- (3) An authorised officer may require any person to answer a question put to the person by the authorised officer in relation to the employment or prospective employment of a child.
- (4) After section 195(6) insert:
- (7) When exercising a power under subsection (2) an authorised officer may use reasonable force and assistance.

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- (8) When exercising a power under subsection (2) an authorised officer may be accompanied by a police officer or other person requested by the authorised officer to provide assistance.
- (9) In the case of an authorised officer who is an industrial inspector, the powers conferred by this section are in addition to, and do not limit, the powers conferred by the *Industrial Relations Act 1979* section 98(3).

78. Section 196 amended

Delete section 196(1) and insert:

- (1) The functions of an industrial inspector include —
 - (a) the provision of assistance to the CEO and other authorised officers for purposes related to the administration and enforcement of this Part; and
 - (b) the prosecution of a person for an offence under section 190(1), 193(5), 194A(3) or (4) or 195(5).

Note: The heading to amended section 196 is to read:

Role of industrial inspectors and industrial magistrate's courts

79. Section 240 amended

- (1) In section 240(1) in the definition of *notifier* after paragraph (a) insert:
 - (ba) in good faith gives information of the kind described in section 33A, or causes such information to be given, to the CEO or another officer; or

(2) After section 240(2)(a)(iii) insert:

(iva) to a legal practitioner who, as the result of an order made under section 148(2), is representing the child in protection proceedings, for the purposes of that representation; or

(3) In section 240(2)(a)(iv)(I) delete “section 240(2)” and insert:

this subsection

80. Section 246 amended

In section 246(1) delete “An action in tort” and insert:

A civil action

81. Section 249 amended

(1) Delete section 249(1)(a) and (b) and “and” after paragraph (a) and insert:

- (a) 1 January 2012; and
- (b) the expiry of each 5 yearly interval after that day.

s. 82

- (2) In section 249(2) delete “relevant anniversary or expiry,” and insert:

day referred to in subsection (1)(a) or the relevant expiry under subsection (1)(b) or (1a), as the case requires),

82. Section 250 amended

In section 250(3) delete “has effect in relation to the repeals effected by subsection (1).” and insert:

sets out transitional and savings provisions.

83. Schedule 1 amended

- (1) In the heading to Schedule 1 Division 5 after “**General**” insert:

provisions for transition to this Act

- (2) At the end of Schedule 1 insert:

Division 6 — Provisions for the *Children and Community Services Amendment Act 2010*

26. Authorised officers

An appointment that was in effect under section 25 immediately before the commencement of the *Children and Community Services Amendment Act 2010* section 52 (the **amending section**) is, on and after that commencement, to be taken to be a designation under section 25 as inserted by the amending section.

27. Ministerial Body

- (1) In this clause —

Ministerial Body has the meaning given in section 17 as amended by the *Children and Community Services Amendment Act 2010* section 44;

section 18(1) means section 18(1) as inserted by the *Children and Community Services Amendment Act 2010* section 45.

- (2) The renaming of the Ministerial Body under section 18(1) does not affect its continuity or legal status.
- (3) A reference in a written law or other document to the Community Development Ministerial Body is to be construed as a reference to the Ministerial Body as renamed under section 18(1) unless in the context it would be inappropriate to do so.

28. Protection orders (enduring parental responsibility)

- (1) In this clause —

commencement means the commencement of the *Children and Community Services Amendment Act 2010* section 27.

- (2) A protection order (enduring parental responsibility) that was in effect under this Act immediately before the commencement has effect, on and after the commencement, as if it were a protection order (special guardianship).
- (3) On and after the commencement any protection proceedings or other proceedings under this Act concerning a protection order (enduring parental responsibility) that have not been finally determined are to be dealt with and determined as if they were proceedings concerning a protection order (special guardianship).
- (4) A reference in a written law or other document to a protection order (enduring parental responsibility) under this Act is to be construed as a reference to a protection order (special guardianship) unless in the context it would be inappropriate to do so.

s. 84

84. Various references to “officer” amended

In the provisions listed in the Table delete “officer” (each occurrence) and insert:

authorised person

Table

s. 114	s. 115(1)
s. 115(2)(a)	s. 115(3)
s. 115(4)(b)	s. 116
s. 117(3)	s. 117(4)(a)
s. 117(5)	s. 119

85. Various penalties amended

In the provisions listed in the Table after “Penalty:” insert:

a fine of

Table

s. 40(8)	s. 103
s. 104(2)	s. 106
s. 107(2)	s. 107(3)
s. 108	s. 109
s. 110(2)	s. 124B(1)
s. 124C(1)	s. 124C(4)

s. 124F(2)	s. 137(3)
s. 141(1)	s. 187(1)
s. 190(1)	s. 190(3)
s. 193(5)	s. 193(6)
s. 194	s. 195(5)
s. 237(2)	s. 238(5)
s. 238(7)	s. 240(2)
s. 241(2)	s. 242
s. 243	s. 244

