Western Australia

Children and Community Services Act 2004

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Defined terms

Western Australia

Children and Community Services Act 2004

An Act —

- **to confer functions in relation to the provision of social services, the provision of financial and other assistance, and other matters concerning the wellbeing of children, other individuals, families and communities;**
- **to make provisions about the protection and care of children and the employment of children;**
- **to repeal the *Child Welfare Act 1947*;**
- **to repeal the *Community Services Act 1972*;**
- **to repeal the *Welfare and Assistance Act 1961*;**
- **to amend certain Acts [1],**

and to provide for related matters.

[Long title amended: No. 19 of 2007 s. 63.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Children and Community Services Act 2004*.

2. Commencement

(1) This Act comes into operation on a day fixed by proclamation.

(2) Different days may be fixed under subsection (1) for different provisions.

3. Terms used

In this Act, unless the contrary intention appears —

Aboriginal or Torres Strait Islander representative organisation means an Aboriginal or Torres Strait Islander representative organisation approved under section 22A(1);

Aboriginal person means a person who is a descendant of Aboriginal people of Australia, and ***Aboriginal child*** has a corresponding meaning;

adult means a person who has reached 18 years of age;

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

authorised officer means an officer designated under section 25 for the purposes of this Act or for the purposes of the provision in which the term is used;

care plan has the meaning given in section 89(2);

carer means a person who provides care for a child under a placement arrangement;

CEO means the chief executive officer of the Department;

child means a person who is under 18 years of age, and in the absence of positive evidence as to age, means a person who is apparently under 18 years of age;

child care services means —

(a) any education and care service as defined in the *Education and Care Services National Law (WA)* section 5(1); or

(b) any child care service as defined in the *Child Care Services Act 2007* section 4;

community means —

(a) in relation to an Aboriginal child — the child's Aboriginal community; or

(b) in relation to a Torres Strait Islander child — the child's Torres Strait Islander community;

Court means the Children's Court;

cultural support plan has the meaning given in section 89A;

Department means the department of the Public Service principally assisting the Minister in the administration of this Act;

disability means a disability —

(a) that is attributable to an intellectual, psychiatric, cognitive, neurological, sensory, or physical impairment or a combination of those impairments; and

(b) that is permanent or likely to be permanent; and

(c) that may or may not be of a chronic or episodic nature; and

(d) that results in —

(i) a substantially reduced capacity of the person for communication, social interaction, learning or mobility; and

(ii) a need for continuing support services;

exposed, in relation to family violence, has the meaning given in the *Restraining Orders Act 1997* section 6A(1);

family, of a child, means —

(a) for a child who is not an Aboriginal child or Torres Strait Islander child — each of the following relatives of the child (whether the relationship is established by, or traced through, consanguinity, marriage, a de facto relationship, a written law or a natural relationship) —

(i) parent, grandparent or other ancestor;

(ii) step-parent;

(iii) sibling;

(iv) uncle or aunt;

(v) cousin;

(vi) spouse or de facto partner;

or

(b) for an Aboriginal child or Torres Strait Islander child — each person regarded under the customary law or tradition of the child's community as the equivalent of a person mentioned in paragraph (a);

family violence has the meaning given in the *Restraining Orders Act 1997* section 5A(1);

first listing date, in relation to a protection application, means the day fixed under section 44(4) in respect of the application;

harm, in relation to a child, includes harm to the child's physical, emotional or psychological development;

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

in need of protection has the meaning given to that term in section 28(2);

in the CEO's care has the meaning given to that term in section 30;

interim order, except in Part 6, means an order made under section 133;

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

judge means a judge of the Court;

leaving care plan has the meaning given in section 89B;

magistrate means a magistrate of the Court;

negotiated placement agreement means an agreement under section 75(1);

officer means a person employed in, or engaged by, the Department whether as a public service officer under the *Public Sector Management Act 1994*, under a contract for services, or otherwise;

parent, of a child —

(a) means a person, other than the CEO, who at law has responsibility for —

(i) the long-term care, welfare and development of the child; or

(ii) the day-to-day care, welfare and development of the child;

and

(b) if a protection order (other than a protection order (supervision)) has been made for the child — includes a person who would have been a parent of the child if the order had not been made;

parental responsibility, in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children;

party, in relation to protection proceedings, means a person who is a party to the proceedings under section 147;

place means anywhere at all, and includes anywhere in or on something that is moving or can move;

placement arrangement means an arrangement under section 79(2) for the placement of a child;

pre-hearing conference means a conference referred to in section 136(1);

protection application means an application to the Court for a protection order (other than an application under section 69A);

protection order has the meaning given to that term in section 43;

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

protection order (supervision) has the meaning given to that term in section 47;

protection order (time-limited) has the meaning given to that term in section 54;

protection order (until 18) has the meaning given to that term in section 57;

protection proceedings means proceedings in respect of, or in connection with, a protection application or other application to the Court under Part 4 (excluding an application under section 65, 73 or 126);

provisional care plan has the meaning given in section 39(2);

provisional protection and care has the meaning given to that term in section 29(1);

public authority means —

(a) a department of the Public Service; or

(b) a State agency or instrumentality; or

(c) a local government, regional local government or regional subsidiary; or

(d) a body, whether corporate or unincorporate, or the holder of an office, post or position, established or continued for a public purpose under a written law;

remote communication means any way of communicating at a distance including by telephone, fax, email and radio;

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;

responsible parenting agreement has the meaning given in section 131C;

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

secure care decision has the meaning given in section 88G(1);

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

service provider means a person who —

(a) provides or promotes social services; or

(b) conducts research and development,

under an agreement referred to in section 15(1);

social services means services provided to assist children, other individuals, families and communities including, but not limited to, the following services —

(a) preventative services;

(b) protective services;

(c) placement services;

(d) child care services;

(e) information and advisory services;

(f) education and training services;

(g) counselling services;

(h) therapeutic services;

(i) advocacy services;

(j) mediation services;

(k) crisis services;

(l) family violence services;

(m) support services;

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);

Torres Strait Islander means a person who is a descendant of the indigenous inhabitants of the Torres Strait Islands, and ***Torres Strait Islander child*** has a corresponding meaning;

wellbeing, of a child, includes the following —

(a) the care of the child;

(b) the physical, emotional, psychological and educational development of the child;

(c) the physical, emotional and psychological health of the child;

(d) the safety of the child;

working day, except in Part 6, means a day other than a Saturday, Sunday, public holiday or public service holiday.

[Section 3 amended: No. 8 of 2009 s. 32(2); No. 49 of 2010 s. 4, 24 and 37; No. 11 of 2012 s. 27; No. 23 of 2015 s. 4 and 25; No. 26 of 2016 s. 37; No. 49 of 2016 s. 91; No. 18 of 2021 s. 4; No. 2 of 2026 s. 102.]

4. Presumptions of parentage

(1) The presumptions of parentage set out in the *Family Court Act 1997* Part 5 Division 11 Subdivision 3 apply when considering, for the purposes of Parts 4 and 5, who is a parent of a child.

(2) The *Family Court Act 1997* section 193 applies, for the purposes of Parts 4 and 5, in relation to the presumptions referred to in subsection (1).

5. Status of notes

Notes in this Act are provided to assist understanding and do not form part of this Act.

Part 2 — Objects and principles

Division 1A — Preliminary

[Heading inserted: No. 18 of 2021 s. 5.]

5A. Application of objects and principles

A person, court or tribunal is, in performing a function under this Act, to be guided by the objects of this Act and to observe the principles set out in this Part.

[Section 5A inserted: No. 18 of 2021 s. 5.]

Division 1 — Objects

6. Objects

The objects of this Act are —

(a) to promote the wellbeing of children, other individuals, families and communities; and

(b) to acknowledge the primary role of parents, families and communities in safeguarding and promoting the wellbeing of children; and

(c) to encourage and support parents, families and communities in carrying out that role; and

(da) to support and reinforce the role and responsibility of parents to appropriately and safely manage the behaviour of their children; and

(d) to provide for the protection and care of children in circumstances where their parents have not given, or are unlikely or unable to give, that protection and care; and

(e) to protect children from exploitation in employment.

[Section 6 amended: No. 19 of 2007 s. 64; No. 23 of 2015 s. 5; No. 18 of 2021 s. 6.]

Division 2 — General principles relating to children

7. Paramount consideration is best interests of child

In performing a function under this Act in relation to a child, the paramount consideration is the best interests of the child.

[Section 7 inserted: No. 18 of 2021 s. 7.]

8. Determining best interests of child

(1) In determining what is in the best interests of a child, the following matters must be taken into account —

(a) the need to protect the child from harm;

(b) the capacity of the child's parents to protect the child from harm;

(c) the capacity of the child's parents, or of any other person, to provide for the child's needs;

(d) the nature of the child's relationship with the child's parents, siblings and other members of the child's family and with other people who are significant in the child's life;

(e) the attitude to the child, and to parental responsibility, demonstrated by the child's parents;

(f) any wishes or views expressed by the child, having regard to the child's age and level of understanding in determining the weight to be given to those wishes or views;

(g) the importance of continuity and stability in the child's living arrangements and the likely effect on the child of disruption of those living arrangements, including separation from —

(i) the child's parents; or

(ii) a sibling or other member of the child's family; or

(iii) a carer or other person (including a child) with whom the child is, or has recently been, living; or

(iv) other people who are significant in the child's life;

(h) the need for the child to develop and maintain contact with the child's parents, siblings and other members of the child's family and with other people who are significant in the child's life;

(i) the child's age, maturity, sex, sexuality, background and language;

(j) the child's cultural, ethnic and religious identity (including the need for cultural support to develop and maintain a connection with the culture and traditions of the child's family or community);

(k) the child's physical, emotional, intellectual, spiritual and developmental needs;

(la) the child's educational needs;

(l) any other relevant characteristics of the child;

(m) the likely effect on the child of any change in the child's circumstances.

(2) Subsection (1) does not limit the matters that may be taken into account in determining what is in the best interests of a child.

[Section 8 amended: No. 23 of 2015 s. 26; No. 18 of 2021 s. 8.]

9. Other principles

In performing a function under this Act, other principles to be observed are as follows —

(a) the principle that the parents, family and community of a child have the primary role in safeguarding and promoting the child's wellbeing;

(b) the principle that the preferred way of safeguarding and promoting a child's wellbeing is to support the child's parents, family and community in the care of the child;

(c) the principle that every child should be cared for and protected from harm;

(d) the principle that every child should live in an environment free from violence;

(e) the principle that every child should have stable, secure and safe relationships and living arrangements;

(ea) the principle that every child should be treated as a valued member of society in a manner that respects the child's dignity and privacy;

(f) the principle that intervention action (as defined in section 32(2)) should be taken only in circumstances where there is no other reasonable way to safeguard and promote the child's wellbeing;

(g) the principle that planning for the care of a child who is in the CEO's care should occur as soon as possible in order to promote long-term stability for the child and should, as soon as possible, include consideration of whether it is appropriate to work towards returning the child to the child's parents;

(ga) the principle that objectives of planning for the care of a child who is in the CEO's care include the following —

(i) to achieve continuity and stability in the child's living arrangements;

(ii) to preserve and enhance the child's relationships with the child's family and with other people who are significant in the child's life (subject to protecting the child from harm and meeting the child's needs);

(iii) for an Aboriginal child, Torres Strait Islander child or child of a culturally or linguistically diverse background — to preserve and enhance

the child's connection with the culture and traditions of the child's family or community;

(gb) the principle that objectives of planning for a placement arrangement for a child include, subject to protecting the child from harm and meeting the child's needs, the following —

(i) to place the child with a member of the child's family;

(ii) to place the child with the child's siblings (subject also to protecting the siblings from harm);

(iii) to place the child with a person who is willing and able to encourage and support the child to develop and maintain contact with the child's parents, siblings and other members of the child's family and with other people who are significant in the child's life, subject to decisions under this Act about that contact;

[(ha) deleted]

(h) the principle that decisions about a child should be made promptly having regard to the age, characteristics, circumstances and needs of the child and to minimising the risk of detrimental effects arising from delay in decision-making;

(ia) the principle that decisions about a child with disability should be made giving special consideration to any difficulties or discrimination that may be encountered by the child because of the child's disability and should support the child's full and effective participation in society;

(i) the principle that decisions about a child should be consistent with cultural, ethnic and religious values and traditions relevant to the child;

(j) the principle that a child's parents and other people who are significant in the child's life should be given an opportunity and assistance to participate in decision-making processes under this Act that are likely to have a significant impact on the child's life;

(k) the principle that a child's parents and other people who are significant in the child's life should be given adequate information, in a manner and language that they can understand, about —

(i) decision-making processes under this Act that are likely to have a significant impact on the child's life; and

(ii) the outcome of decisions under this Act that are likely to have a significant impact on the child's life (as described in section 10(3)), including an explanation of the reasons for the decisions; and

(iii) any relevant complaint or review procedures;

(l) the principle that, as far as practicable, services of an interpreter or other appropriate person are to be made available to assist —

(i) a person who has difficulty understanding or communicating in English; or

(ii) a person whose disability prevents or restricts the person's understanding of, or participation in, a decision-making or other process or the person's expression of wishes or views.

[Section 9 amended: No. 49 of 2010 s. 39; No. 23 of 2015 s. 27; No. 18 of 2021 s. 9.]

10. Principle of child participation

(1) If a decision under this Act is likely to have a significant impact on a child's life then, for the purpose of ensuring that the child

is able to participate in the decision-making process, the child must be given —

(a) adequate information, in a manner and language that the child can understand, about —

(i) the decision to be made; and

(ii) the reasons for the Department's involvement; and

(iii) the ways in which the child can participate in the decision-making process; and

(iv) any relevant complaint or review procedures;

and

(b) the opportunity to express the child's wishes and views freely, according to the child's abilities; and

(c) any assistance that is necessary for the child to express those wishes and views; and

(d) adequate information as to how the child's wishes and views will be recorded and taken into account; and

(e) adequate information about the decision made and a full explanation of the reasons for the decision; and

(f) an opportunity to respond to the decision made.

(2) In the application of the principle set out in subsection (1), due regard must be had to the age and level of understanding of the child concerned.

(3) Decisions under this Act that are likely to have a significant impact on a child's life include but are not limited to —

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

(b) decisions in the course of preparing, modifying or reviewing care plans or provisional care plans for the child; and

(c) decisions about the provision of social services to the child; and

(d) decisions about contact with the child's parents, siblings and other members of the child's family and with other people who are significant in the child's life.

[(4) deleted]

[Section 10 amended: No. 49 of 2010 s. 5; No. 18 of 2021 s. 10.]

Division 3 — Principles relating to Aboriginal and Torres Strait Islander children

11. Relationship with principles in Division 2

The principles set out in this Division are in addition to, and do not derogate from, the principles set out in Division 2.

12. Aboriginal and Torres Strait Islander child placement principle

(1) The objective of the principle in subsection (2) is to maintain a connection with family and culture for Aboriginal children and Torres Strait Islander children who are the subject of placement arrangements or interim orders made under section 133(2)(c).

(2) In making a decision under this Act about the placement under a placement arrangement of an Aboriginal child or Torres Strait Islander child, or in making an interim order under section 133(2)(c) in relation to an Aboriginal child or Torres Strait Islander child or in varying such an order, a principle to be observed is that any placement of the child must, so far as is consistent with the child's best interests and is otherwise practicable, be in accordance with the following order of priority —

(a) placement with a member of the child's family;

(b) placement with a person who is an Aboriginal person or Torres Strait Islander in the child's community in accordance with local customary practice;

(c) placement with a person who is an Aboriginal person or Torres Strait Islander who lives in close proximity to the child's community;

(d) placement with either a person who is an Aboriginal person or Torres Strait Islander or a person who is not an Aboriginal person or Torres Strait Islander but who —

(i) lives in close proximity to the child's community; and

(ii) is responsive to the cultural support needs of the child and is willing and able to encourage and support the child to develop and maintain a connection with the culture and traditions of the child's family or community;

(e) placement with a person who is not an Aboriginal person or Torres Strait Islander but who is responsive to the cultural support needs of the child and is willing and able to encourage and support the child to develop and maintain a connection with the culture and traditions of the child's family or community.

[Section 12 amended: No. 49 of 2010 s. 40; No. 18 of 2021 s. 11.]

13. Principle of self-determination

Aboriginal people and Torres Strait Islanders have a right to participate in the protection and care of their children with as much self-determination as possible.

[Section 13 amended: No. 18 of 2021 s. 12.]

14. Principle of community participation

(1) A family, community or representative organisation of Aboriginal people or Torres Strait Islanders must be given, where appropriate, an opportunity and assistance to participate in decision-making processes under this Act that are likely to have a significant impact on the life of a child who is a member of, or represented by, the group, community or organisation.

(2) Consideration must be given to the wishes and views of the child, taking into account the maturity and understanding of the child, and the child's parents about the participation of a family, community or organisation under subsection (1).

[Section 14 amended: No. 18 of 2021 s. 13.]

Part 3 — Administrative matters

Division 1 — The Minister

15. Agreements in respect of social services

(1) The Minister may, on behalf of the State, enter into an agreement with a person for —

(a) the provision or promotion of social services by that person; or

(b) the conduct of research and development by that person in relation to the provision of social services.

(2) An agreement under subsection (1) may contain any provisions that the Minister considers appropriate.

(3) Nothing in this section limits any power that the Minister has, apart from this section, to enter into an agreement or other arrangement.

[Section 15 amended: No. 49 of 2010 s. 41.]

16. Delegation by Minister

(1) The Minister may delegate to the CEO any power or duty of the Minister under another provision of this Act.

(2) Without limiting the powers or duties that may be delegated under subsection (1), they include any power to be exercised or duty to be performed in the course of governing the affairs of the Ministerial Body under section 18(4).

(3) The delegation must be in writing signed by the Minister.

(4) The delegation may expressly authorise the CEO to further delegate the power or duty.

(5) 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.

(6) Nothing in this section limits the ability of the Minister to perform a function through an officer or agent.

[Section 16 amended: No. 49 of 2010 s. 42.]

Division 2 — The Children and Community Services Ministerial Body

[Heading amended: No. 49 of 2010 s. 43.]

17. Term used: Ministerial Body

In this Division —

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

[Section 17 amended: No. 49 of 2010 s. 44.]

18. Children and Community Services Ministerial Body

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

(2) The Ministerial Body is a body corporate with perpetual succession.

(3) Proceedings may be taken by or against the Ministerial Body in its corporate name.

(4) The Ministerial Body is to be governed by the Minister.

(5) The Ministerial Body is an agent of the State and has the status, immunities and privileges of the State.

[Section 18 amended: No. 49 of 2010 s. 45.]

19. Purpose and nature of Ministerial Body

(1) The Ministerial Body is established to provide a body corporate through which the Minister can perform any of the Minister's

functions under or for the purposes of this Act that can more conveniently be performed by a body corporate than an individual.

(2) Despite the employment under the *Public Sector Management Act 1994* of ministerial officers for the purpose of assisting the Minister to perform functions that the Minister performs through the Ministerial Body, the Ministerial Body and those officers are not an organisation for the purposes of that Act.

[Section 19 amended: No. 49 of 2010 s. 46.]

20. Execution of documents by Ministerial Body

(1) The Ministerial Body is to have a common seal.

(2) A document is duly executed by the Ministerial Body if —

(a) the common seal of the Ministerial Body is affixed to it in accordance with subsections (3) and (4); or

(b) it is signed on behalf of the Ministerial Body by the Minister; or

(c) it is signed on behalf of the Ministerial Body, as authorised under subsection (5), by the CEO or another person.

(3) The common seal of the Ministerial Body is not to be affixed to a document except as authorised by the Ministerial Body.

(4) The common seal of the Ministerial Body is to be affixed to a document in the presence of the Minister, and the Minister is to sign the document to attest that the common seal was so affixed.

(5) The Ministerial Body may, by writing under its common seal, authorise the CEO or another officer to sign documents on behalf of the Ministerial Body, either generally or subject to any conditions or restrictions specified in the authorisation.

(6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.

(7) A document executed by the CEO or another person under this section without the common seal of the Ministerial Body is not to be regarded as a deed unless it is executed as a deed as authorised under subsection (5).

(8) When a document is produced bearing a seal purporting to be the common seal of the Ministerial Body, it is to be presumed that the seal is the common seal of the Ministerial Body until the contrary is shown.

(9) For the purposes of this Act, a facsimile of —

(a) the Ministerial Body's common seal; or

(b) the signature of the Minister or a person authorised under subsection (5) to execute deeds or other documents,

may be used, and a deed or other document purporting to be endorsed with such a facsimile is, until the contrary is shown, to be regarded as bearing the facsimile under this subsection.

Division 3 — The CEO

21. Functions of CEO

(1) The functions of the CEO include —

(a) to consider and initiate, or assist in, the provision of social services to children, other individuals, families and communities; and

(b) to take, or cause to be taken, any action, not inconsistent with this Act, in respect of a child or a class or group of children that the CEO considers reasonably necessary for the purpose of safeguarding or promoting the wellbeing of the child or children concerned; and

(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

(c) to provide, and where appropriate, manage facilities (including land, buildings and other property) for purposes consistent with the objects of this Act; and

(d) to establish procedures for dealing with complaints about social services provided under this Act or otherwise relating to the administration of this Act; and

(e) to promote, encourage, conduct and publish research on matters relating to the objects of this Act; and

(f) to collect and publish, or assist in the collection and publication of, information and statistics on matters relating to the objects of this Act.

(2) In performing functions under this Act and in assisting the Minister in the administration of this Act, the CEO must have regard to —

(a) the need to promote the wellbeing of children, other individuals, families and communities;

(b) the need to encourage a collaborative approach between public authorities, non-government agencies and families —

(i) in the provision of social services directed towards strengthening families and communities and maximising the wellbeing of children and other individuals; and

(ii) in responding to child abuse and neglect;

(c) the need to promote diversity and increased participation in community life, giving particular consideration to the interests and aspirations of —

(i) children and other young people; and

(ii) Aboriginal people and Torres Strait Islanders; and

(iii) people from culturally or linguistically diverse backgrounds; and

(iv) people with disabilities; and

(v) women and men of all ages as distinct groups within society;

(d) the need to promote the development and strengthening of families and communities so that they have the capacity to achieve self-reliance and to provide for the care and wellbeing of their members.

[Section 21 amended: No. 49 of 2010 s. 47.]

22. Cooperation and assistance

(1) In performing functions under this Act, the CEO must endeavour to work in cooperation with public authorities, non-government agencies and service providers.

(2) The CEO must promote the establishment, implementation and regular review of procedures that facilitate such cooperation particularly in relation to the protection and care of children and the provision of financial or other assistance.

(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.

(4) A public authority or service provider must endeavour to comply with a request under subsection (3) promptly if compliance is consistent with its functions and does not unduly prejudice the performance of its functions.

(4AA) A public authority prescribed by the regulations as a public authority to which this subsection applies must prioritise a request under subsection (3) to provide assistance to the following —

(a) a child in the CEO's care;

(b) a person who under section 96 qualifies for assistance under Part 4 Division 6;

(c) a child under a protection order (special guardianship).

(4AB) If the relevant officer for a public authority to which subsection (4AA) applies forms the opinion that the public authority cannot comply with a request under subsection (3) consistently with its functions or so as to not unduly prejudice the performance of its functions, the relevant officer must, at the request of the CEO, give the CEO written reasons for the opinion.

(4AC) In subsection (4AB) —

relevant officer, for a public authority, means —

(a) if the public authority is 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) if the public authority is 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) if the public authority is the holder of an office, post or position referred to in paragraph (d) of the definition of ***public authority*** in section 3 — that holder.

(5) Nothing in this section is to be taken to limit the operation of section 23.

[Section 22 amended: No. 49 of 2010 s. 48; No. 18 of 2021 s. 14.]

23. CEO etc. may disclose or request relevant information

(1) In this section —

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;

corresponding authority means a person in another State or a Territory, or another country, who has functions corresponding to those of the CEO under this Act;

interested person means a person who, in the opinion of the CEO, has a direct interest in the wellbeing of —

(a) a child or a class or group of children; or

(b) a person who under section 96 qualifies for assistance for the purposes of Part 4 Division 6;

non-government provider has the meaning given in section 28A;

relevant information means —

(a) information that, in the opinion of the CEO, is, or is likely to be, relevant to —

(i) the wellbeing of a child or a class or group of children; or

(ii) the wellbeing of a person who under section 96 qualifies for assistance for the purposes of Part 4 Division 6; or

(iii) the safety of a person who has been subjected to, or exposed to, family violence; or

(iv) the performance of a function under this Act;

or

(b) other information of a kind prescribed by the regulations for the purposes of this paragraph.

(2) The CEO or an authorised officer may disclose relevant information to a public authority, a Commonwealth agency, a corresponding authority, a non-government provider or an interested person.

(3) The CEO or an authorised officer may request a public authority, a Commonwealth agency, a corresponding authority, a non-government provider or an interested person who or which holds relevant information to disclose the information to the CEO or authorised officer, as the case requires.

(4) Information may be disclosed under subsection (2), or in compliance with a request under subsection (3), despite any enactment that prohibits or restricts its disclosure.

(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 the person's employment or as unprofessional conduct.

(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).

(6) The CEO must establish procedures for the disclosure of information under subsection (2).

(7) The regulations may include provisions about —

(a) the receipt and storage of information disclosed under this section; and

(b) the restriction of access to such information.

[Section 23 amended: No. 26 of 2008 s. 4; No. 49 of 2010 s. 49; No. 23 of 2015 s. 28; No. 49 of 2016 s. 92.]

24A. Power of CEO to obtain copies of certain reports from CEO (Corrective Services)

(1) In this section —

CEO (Corrective Services) means the chief executive officer of the department of the Public Service principally assisting in the administration of the *Sentence Administration Act 2003* Part 8;

prescribed report means any of the following —

(a) a written pre-sentence report, or a record of an oral pre-sentence report, made under the *Sentencing Act 1995* Part 3 Division 3;

(b) a report prepared for the purposes of the *Sentence Administration Act 2003* section 11A, 17 or 51;

(c) a report prepared for the purposes of the *Young Offenders Act 1994* section 47, 48(1) or 159;

(d) a report —

(i) made under, or prepared for the purposes of, the *Bail Act 1982*, the former *Dangerous Sexual Offenders Act 2006*, the *High Risk Serious Offenders Act 2020*, the *Sentence Administration Act 2003*, the *Sentencing Act 1995*, the *Prisons Act 1981* or the *Young Offenders Act 1994*; and

(ii) of a kind prescribed by the regulations for the purposes of this definition.

(2) The CEO may request the CEO (Corrective Services) to give to the CEO a copy of a prescribed report if, in the opinion of the CEO, the report is, or is likely to be, relevant to the wellbeing of a child or a class or group of children.

(3) The CEO (Corrective Services) must comply with a request under subsection (2).

(4) Subsection (3) applies despite any enactment that prohibits or restricts disclosure of the report or information in it.

(5) This section does not limit the operation of section 23.

[Section 24A inserted: No. 23 of 2015 s. 29; amended: No. 29 of 2020 s. 121; No. 18 of 2021 s. 16.]

24. Delegation by CEO

(1) The CEO may delegate to an officer, a service provider or another person any power or duty of the CEO under another provision of this Act.

(2) The delegation must be in writing signed by the CEO.

(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.

(5) Nothing in this section limits the ability of the CEO to perform a function through an officer or agent.

[Section 24 amended: No. 49 of 2010 s. 51.]

Division 4 — Authorised officers

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.

[Section 25 inserted: No. 49 of 2010 s. 52.]

26. Identity cards

(1) The CEO must ensure that each authorised officer is issued with an identity card in a form approved by the CEO.

(2) An authorised officer must display his or her identity card whenever dealing with a person in respect of whom the officer has exercised, is exercising, or is about to exercise, a power under this Act.

(3) In any proceedings the production by an authorised officer of his or her identity card is conclusive evidence of his or her designation under section 25.

[Section 26 amended: No. 49 of 2010 s. 53.]

Division 5 — Advisory bodies

27. Establishment of advisory bodies

(1) In this section —

advisory body means a body established under subsection (2).

(2) The Minister may establish one or more bodies to provide advice or assistance to the Minister or the CEO on matters relevant to the operation or administration of this Act.

(3) Subsection (2) does not authorise the Minister to establish a body corporate.

(4) An advisory body is to consist of such people as the Minister thinks fit.

(5) An advisory body is to be established by an instrument signed by the Minister that —

(a) identifies the members of the body and the length and conditions of each of their appointments; and

(b) sets out the duties and responsibilities of the body; and

(c) sets out any other matters in relation to the operation of the body that the Minister considers appropriate.

(6) The Minister may, by instrument signed by the Minister, amend or cancel an instrument made under subsection (5).

(7) The Minister must cause an instrument made under this section to be published in the *Gazette*.

(8) Members of an advisory body are entitled to any remuneration and allowances that the Minister may from time to time determine on the recommendation of the Public Sector Commissioner.

[Section 27 amended: No. 39 of 2010 s. 89.]

Division 6 — Information sharing

[Heading inserted: No. 23 of 2015 s. 30.]

28A. Terms used

In this Division —

authorised entity means —

(a) the CEO of a non-government provider; or

(b) the governing body of a registered school or school system under the *School Education Act 1999* Part 4;

CEO means —

(a) in relation to a prescribed authority —

(i) if the prescribed authority is 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

(ii) if the prescribed authority is 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

(iii) if the prescribed authority is the holder of an office, post or position referred to in paragraph (d) of the definition of ***public authority*** in section 3 — that holder;

or

(b) in relation to a non-government provider —

(i) if the non-government provider is an individual — that individual; or

(ii) otherwise — the principal officer (however described) of the non-government provider;

non-government provider means —

(a) a service provider; or

(b) a person who provides social services under a contract or other agreement (excluding an agreement for a monetary grant) entered into between the person and a prescribed authority or an officer or employee of a prescribed authority;

prescribed authority means a public authority (other than the Department) prescribed by the regulations for the purposes of this definition;

relevant information means —

(a) information that is, or is likely to be, relevant to —

(i) the wellbeing of a child or a class or group of children; or

(ii) the safety of a person who has been subjected to, or exposed to, family violence;

or

(b) other information of a kind prescribed by the regulations for the purposes of this paragraph.

[Section 28A inserted: No. 23 of 2015 s. 30; amended: No. 49 of 2016 s. 93.]

28B. Disclosure of information by prescribed authority or authorised entity

(1) The CEO of a prescribed authority (the ***disclosing CEO***) may disclose information to the CEO of another prescribed authority or an authorised entity if, in the opinion of the disclosing CEO, the information is relevant information.

(2) The CEO of a prescribed authority (the ***requesting CEO***) may request the CEO of another prescribed authority or an authorised entity to disclose information to the requesting CEO if, in the opinion of the requesting CEO, the information is relevant information.

(3) An authorised entity may disclose information to the CEO of a prescribed authority if, in the opinion of the authorised entity, the information is relevant information.

(4) An authorised entity may request the CEO of a prescribed authority to disclose information to the authorised entity if, in the opinion of the authorised entity, the information is relevant information.

(5) Information may be disclosed under subsection (1) or (3), or in compliance with a request under subsection (2) or (4), despite any enactment that prohibits or restricts its disclosure.

(6) If information is disclosed, in good faith, under subsection (1) or (3) or in compliance with a request under subsection (2) or (4) —

(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.

[Section 28B inserted: No. 23 of 2015 s. 30.]

28C. Delegation of powers under s. 28B

(1) The CEO of a prescribed authority may, in writing, delegate a power conferred by section 28B(1) or (2) to an officer or employee of the prescribed authority.

(2) A delegation under subsection (1) must be in writing signed by the CEO of the prescribed authority.

(3) An authorised entity may, in writing, delegate a power conferred by section 28B(3) or (4) to —

(a) if the authorised entity is the CEO of a non-government provider — an officer or employee of the non-government provider; or

(b) if the authorised entity is the governing body of a registered school or school system —

(i) an officer or employee of the governing body; or

(ii) in the case of the governing body of a school system — the principal of a school that is a member of the school system.

(4) A delegation under subsection (3) must be in writing signed or executed by the authorised entity.

(5) A person to whom a power is delegated under this section cannot delegate the power.

(6) A person exercising a power that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(7) Nothing in this section limits the ability of the CEO of a prescribed authority or an authorised entity to exercise a power through an officer or agent.

[Section 28C inserted: No. 23 of 2015 s. 30.]

Part 4 — Protection and care of children

Division 1 — Introductory matters

28. When child in need of protection

(1) In this section —

emotional abuse includes —

(a) psychological abuse; and

(b) being exposed to family violence;

harm, in relation to a child, means any detrimental effect of a significant nature on the child's wellbeing, whether caused by —

(a) a single act, omission or circumstance; or

(b) a series or combination of acts, omissions or circumstances;

neglect includes failure by a child's parents to provide, arrange, or allow the provision of —

(a) adequate care for the child; or

(b) effective medical, therapeutic or remedial treatment for the child.

(2) For the purposes of this Act, a child is ***in need of protection*** if —

(a) the child has been abandoned by the child's parents and, after reasonable inquiries —

(i) the parents cannot be found; and

(ii) no suitable adult member of the child's family or other suitable adult can be found who is willing and able to care for the child;

or

(aa) paragraph (a) applies and, on the parent or parents subsequently being found —

(i) there is no parent who is willing and able to care for the child; and

(ii) no suitable adult member of the child's family or other suitable adult can be found who is willing and able to care for the child;

or

(b) the child's parents are dead or incapacitated and, after reasonable inquiries, no suitable adult member of the child's family or other suitable adult can be found who is willing and able to care for the child; or

(c) the child has suffered, or is likely to suffer, harm as a result of any one or more of the following —

(i) physical abuse;

(ii) sexual abuse;

(iii) emotional abuse;

[(iv) deleted]

(v) neglect,

and the child's parents have not protected, or are unlikely or unable to protect, the child from harm, or further harm, of that kind; or

(d) the child has suffered, or is likely to suffer, harm as a result of —

(i) the child's parents being unable or unwilling to provide, or arrange the provision of, adequate care for the child; or

(ii) the child's parents being unable or unwilling to provide, or arrange the provision of, effective

medical, therapeutic or other remedial treatment for the child.

[Section 28 amended: No. 23 of 2015 s. 31; No. 49 of 2016 s. 94; No. 18 of 2021 s. 17.]

29. Provisional protection and care, meaning and effect of

(1) A reference in this Act to a child being in, taken into, or placed in, provisional protection and care is a reference to the child being in, taken into, or placed in, the care of the CEO.

(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.

(3) A child ceases to be in provisional protection and care if —

(a) the child is returned to or placed in the care of a person under section 38(2) or (3)(b); or

(b) the Court makes an interim order under section 133(2)(a) that the child be returned to or placed with a parent of the child; or

(c) the Court makes an interim order under section 133(2)(c) that the child be placed with a person approved by the Court; or

(d) the Court makes a protection order in respect of the child or refuses to make such an order.

[Section 29 amended: No. 49 of 2010 s. 54; No. 18 of 2021 s. 18.]

30. When child is in CEO's care

For the purposes of this Act, a child is ***in the CEO's care*** if the child —

(a) is in provisional protection and care; or

(b) is the subject of a protection order (time-limited) or protection order (until 18); or

(c) is the subject of a negotiated placement agreement; or

(d) is provided with placement services under section 32(1)(a).

[Section 30 amended: No. 18 of 2021 s. 19.]

Division 2 — Measures to safeguard or promote child's wellbeing

[Heading amended: No. 49 of 2010 s. 55.]

Subdivision 1 — General powers and duties of CEO

[Heading amended: No. 49 of 2010 s. 56.]

31. CEO may cause inquiries to be made about child

If the CEO receives information that raises concerns about a child's wellbeing, 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.

32. CEO's duties if action needed to safeguard etc. child's wellbeing

(1) If the CEO determines that action should be taken to safeguard or promote a child's wellbeing, the CEO must do one or more of the following —

(a) provide, or arrange for the provision of, social services to the child and, if appropriate, a parent or other member of the child's family;

(b) arrange or facilitate a meeting between an officer and any one or more of the following people —

(i) a parent or other member of the child's family;

(ii) a person who is significant in the child's life;

(iii) a representative of a service provider;

(iv) a representative of a public authority,

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

(ca) enter into a responsible parenting agreement in respect of the child;

(c) enter into a negotiated placement agreement in respect of the child;

(d) cause an investigation to be conducted by an authorised officer for the purpose of ascertaining whether the child may be in need of protection;

(e) take, or cause to be taken, intervention action in respect of the child;

(f) take, or cause to be taken, any other action in respect of the child that the CEO considers reasonably necessary.

(2) In subsection (1)(e) —

intervention action means action that involves —

(a) making an application for a warrant (provisional protection and care) under section 35; or

(b) taking the child into provisional protection and care under section 37; or

(c) making a protection application.

[Section 32 amended: No. 49 of 2010 s. 57; No. 23 of 2015 s. 6; No. 18 of 2021 s. 20.]

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.

[Section 33A inserted: No. 49 of 2010 s. 58.]

33B. CEO's duties if action needed before child born to safeguard etc. child after birth

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.

[Section 33B inserted: No. 49 of 2010 s. 58.]

Subdivision 2 — Powers relating to investigation

33. Access to child for purposes of investigation

(1) If, in the course of an investigation referred to in section 32(1)(d), an authorised officer believes on reasonable grounds that —

(a) it is in the best interests of the child for the officer to have access to the child before the child's parents become aware of the investigation; or

(b) if the child's parents were to know in advance about the proposed access, the proper and effective conduct of the investigation would be likely to be jeopardised,

the authorised officer, without informing the child's parents, may have access to the child at a school, hospital or place where a child care service is provided, and remain at the school, hospital or place, for as long as the officer reasonably considers necessary for the purposes of the investigation.

(2) Before exercising the power in subsection (1), the authorised officer must notify the person in charge of the school, hospital or place of his or her intention to exercise the power.

(3) As soon as practicable after the authorised officer has had access to the child, the officer must inform at least one of the child's parents that the officer has had such access and the reasons for it.

(4) An authorised officer does not have to comply with subsection (3) if —

(a) the officer believes on reasonable grounds that a person may be charged with an offence involving harm to the child and the officer's compliance with the subsection may jeopardise an investigation of the offence; or

(b) the officer believes on reasonable grounds that compliance with the subsection may expose the child to harm or a risk of harm; or

(c) the child has requested that the child's parents not be informed and the officer believes on reasonable grounds that it is in the best interests of the child to comply with the request.

34. Warrant (access), application for and issue of

(1) An authorised officer may apply to a judge or magistrate for a warrant (access) if, in the course of an investigation referred to in section 32(1)(d), the officer —

(a) is denied access to a child; or

(b) believes that he or she will be denied such access; or

(c) is unable to obtain entry to a place where the officer suspects the child to be.

(2) An application under subsection (1) must be made in accordance with section 120.

(3) On an application under subsection (1) a judge or magistrate may issue a warrant (access) if the judge or magistrate is satisfied —

(a) as to a matter referred to in subsection (1)(a) or (c); or

(b) that there are reasonable grounds for the authorised officer to have the belief referred to in subsection (1)(b).

Note for this section:

Section 121 contains provisions about the effect of a warrant (access).

[Section 34 amended: No. 8 of 2009 s. 32(3).]

Subdivision 3 — Provisional protection and care

35. Warrant (provisional protection and care), application for and issue of

(1) An authorised officer who believes that a child is in need of protection may apply to a judge or magistrate for a warrant (provisional protection and care) if the officer —

(a) is unable to find the child; or

(b) believes that leaving the child at the place where the child is living poses an unacceptable risk to the child's wellbeing; or

(ca) in a case where the child is temporarily in a safe place (for example, a hospital) — believes that, when the child leaves that place, the child is likely to be living in circumstances that pose an unacceptable risk to the child's wellbeing; or

(c) believes that if a parent of the child or other person becomes aware of a proposed protection application in respect of the child, the child will be moved from the place where the child is living and the officer will be unable to find the child.

(2) An application under subsection (1) must be made in accordance with section 120.

(3) On an application under subsection (1) a judge or magistrate may issue a warrant (provisional protection and care) if the judge or magistrate is satisfied —

(a) that there are reasonable grounds for the authorised officer to believe that the child is in need of protection; and

(b) that —

(i) the authorised officer has been unable to find the child; or

(ii) there are reasonable grounds for the authorised officer to have a belief referred to in subsection (1)(b), (ca) or (c).

Note for this section:

Section 123 contains provisions about the effect of a warrant (provisional protection and care).

[Section 35 amended: No. 8 of 2009 s. 32(3); No. 23 of 2015 s. 32.]

36. CEO's duty if child taken into provisional protection and care under warrant

(1) This section applies in relation to a child who is taken into provisional protection and care following the execution of a warrant (provisional protection and care) issued under section 35(3).

(2) The CEO must make a protection application in respect of the child —

(a) if the child is taken into provisional protection and care in a prescribed area of the State, as soon as practicable after the child is taken into provisional protection and care; or

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

(3) The Court must endeavour to ensure that the first listing date for the protection application is not more than 3 working days after the application is made.

37. Taking child into provisional protection and care without warrant in certain circumstances

(1) In this section —

officer means an authorised officer or a police officer.

(2) An officer may, at any time, take a child into provisional protection and care if the officer suspects on reasonable grounds that there is an immediate and substantial risk to the child's wellbeing.

(3) For the purposes of subsection (2) the officer may —

(a) enter, at any time, any place where the officer suspects the child to be; and

(b) search the place for the purpose of finding the child.

(4) As soon as practicable after a police officer takes a child into provisional protection and care under this section, the police officer must notify the CEO, in a manner approved by the CEO, of his or her action and the reasons for it.

(5) An officer does not need a warrant to exercise the powers in this section.

(6) When exercising a power in this section an officer may use reasonable force and assistance.

38. CEO's duties etc. if child taken into provisional protection and care without warrant

(1) This section applies in relation to a child who is taken into provisional protection and care under section 37.

(2) If the child is not already the subject of protection proceedings when the child is taken into provisional protection and care and the CEO decides not to make a protection application or other application under this Part in respect of the child, then, unless subsection (4A) applies, the CEO must ensure that, as soon as practicable after the child is taken into provisional protection and care, the child is returned to or placed in the care of —

(a) a parent of the child; or

(b) a person who was providing day-to-day care for the child at the time the child was taken into provisional protection and care; or

(c) with the consent of a parent of the child, any other person.

(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.

(4) If the CEO decides to make a protection application or other application under this Part in respect of the child, the CEO must make the application —

(a) if the child is taken into provisional protection and care in a prescribed area of the State, as soon as practicable after the child is taken into provisional protection and care; or

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

(5) If a protection application is made in respect of the child, the Court must endeavour to ensure that the first listing date is not more than 3 working days after the application is made.

[Section 38 amended: No. 49 of 2010 s. 59.]

39. Provisional care plans, preparation etc. of

[(1) deleted]

(2) The CEO must prepare and implement a plan (a ***provisional care plan***) for a child if —

(a) the 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.

(2A) 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.

(2B) A provisional care plan for a child must —

(a) be in writing; and

(b) identify the needs of the child while the child is in provisional protection and care; and

(c) outline steps or measures to be taken to address those needs; and

(d) record decisions made by the CEO about the care of the child, including —

(i) decisions about a placement arrangement for the child; and

(ii) decisions about contact between the child and a parent, sibling, other member of the child's family or other person who is significant in the child's life; and

(iii) decisions about a secure care arrangement for the child;

and

(e) contain a summary of —

(i) how the principle set out in section 10 has been applied in connection with the decisions recorded in the plan; and

(ii) the wishes and views expressed by the child about the decisions recorded in the plan.

(2C) Subsection (2B)(e) only applies to the application of the principle set out in section 10, and to wishes and views expressed by the child, after the commencement of the *Children and Community Services Amendment Act 2021* section 21.

(2D) The CEO must modify a provisional care plan for a child if a decision recorded in the plan is varied, revoked or substituted or a further decision about the care of the child is made by the CEO.

(2E) The modification must be made as soon as practicable after the decision is varied, revoked or substituted or the further decision is made.

[(3A), (3B) deleted]

(3) The CEO may modify a provisional care plan at any time if the CEO considers that it is appropriate to do so.

(4) As soon as practicable after the CEO prepares or modifies a provisional care plan, whether under this section or section 88I, the CEO must ensure that a copy of the care plan or modification, as the case requires, is given to —

(a) the child; and

(b) a parent of the child; and

(c) any carer of the child; and

(d) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

[Section 39 amended: No. 49 of 2010 s. 6; No. 18 of 2021 s. 21.]

Subdivision 4 — Other powers

40. Power to keep child under 6 years of age in hospital

(1) In this section —

officer in charge, in relation to a hospital, means the person for the time being in charge of the hospital.

(2) If —

(a) a child under 6 years of age is brought to a hospital for observation, assessment or treatment or is admitted to a hospital; and

(b) the officer in charge believes on reasonable grounds that the child is in need of protection,

the officer in charge may keep the child in the hospital for the purpose of observation, assessment or treatment or otherwise to safeguard or promote the wellbeing of the child.

(3) A child may be kept in a hospital under subsection (2) whether or not a parent of the child consents to that action.

(4) If a child is kept in a hospital under subsection (2), the officer in charge must notify the CEO of that action as soon as practicable.

(5) Notification under subsection (4) may be given orally or in writing, but if given orally must be confirmed in writing as soon as practicable after it is given.

(6) The officer in charge may give to the CEO any information relating to the child that the officer in charge reasonably believes is necessary to safeguard or promote the wellbeing of the child.

(7) A child must not be kept in a hospital under subsection (2) for more than 2 working days.

(8) A person must not take a child who is being kept in a hospital under subsection (2) from the hospital except with the consent of the CEO or the officer in charge.

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

(9) The officer in charge must consult with the CEO before giving consent for the purposes of subsection (8).

(10) It is a defence in proceedings for an offence under subsection (8) to prove that the person charged did not know, and could not reasonably have known, that the child was being kept in the hospital under subsection (2).

[Section 40 amended: No. 49 of 2010 s. 85; No. 18 of 2021 s. 76.]

41. Power to move child to safe place

(1) In this section —

appropriate person, in relation to a child, means —

(a) a parent of the child; or

(b) an adult, other than a parent of the child, who is a member of the child's family; or

(c) an adult, other than a parent or other member of the child's family, with whom the child usually lives;

officer means an authorised officer or a police officer.

(2) An officer may move a child to a safe place if the officer finds the child at a place other than the child's usual place of residence and the officer believes on reasonable grounds —

(a) that the child is not under the immediate supervision of a parent of the child or an adult capable of adequately supervising the child; and

(b) that —

(i) there is a risk to the wellbeing of the child because of the nature of the place where the child is found, the behaviour or vulnerability of the child at that place, or any other circumstance; or

(ii) the child is an absentee student as defined in the *School Education Act 1999* section 32.

(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.

(4) An officer does not need a warrant to exercise the power in subsection (2).

(5) When exercising the power in subsection (2) an officer may use reasonable force and assistance.

(6) If, in the exercise of the power in subsection (2), an officer moves a child to a place other than the child's usual place of residence or school, the officer must immediately —

(a) cause reasonable steps to be taken to contact an appropriate person and inform that person —

(i) that the child has been moved to a safe place; and

(ii) of the location of that place;

and

(b) if the officer is a police officer, cause the CEO to be informed of the matters mentioned in paragraph (a)(i) and (ii).

(7) If an appropriate person is contacted under subsection (6), an officer must immediately cause arrangements to be made for the child to be placed in, or returned to, the care of that person.

(8) If an appropriate person cannot be contacted under subsection (6), an officer must immediately cause arrangements to be made for the care of the child until the child is placed in, or returned to, the care of an appropriate person or otherwise dealt with under this Part.

Note for this section:

Division 8 confers certain powers on authorised officers and police officers in relation to children moved to a safe place under this section.

[Section 41 amended: No. 49 of 2010 s. 7; No. 23 of 2015 s. 33; No. 18 of 2021 s. 22.]

Division 3 — Protection orders

Subdivision 1 — Introductory matters

42. Terms used

In this Division —

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;

party to the initial proceedings, in relation to a protection order, means a person who was a party to the protection proceedings in which the order was made.

[Section 42 amended: No. 49 of 2010 s. 25; No. 18 of 2021 s. 23.]

43. Term used: protection order

A reference in this Act to a protection order is a reference to any of the following types of order —

(a) a protection order (supervision);

(b) a protection order (time-limited);

(c) a protection order (until 18);

(d) a protection order (special guardianship).

[Section 43 amended: No. 49 of 2010 s. 35; No. 18 of 2021 s. 24.]

Subdivision 2 — Applications for, and making of, protection orders

44. Application for protection order

(1) A protection application can be made only by the CEO.

(2) A protection application must —

(a) be lodged with the Court; and

(b) specify the type of protection order sought and any proposed conditions of the order; and

(c) state the grounds under section 28(2) on which it is made; and

(d) otherwise comply with any applicable rules of court.

(3) If a protection order (special guardianship) is sought, the protection application must nominate the proposed special guardian.

(4) When a protection application is lodged, the Court must fix the day, time and place for the Court to first deal with the application.

(5) As soon as practicable after lodging a protection application, the CEO must give a copy of it to —

(a) the child; and

(b) a parent of the child; and

(c) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

(6) Each copy of a protection application given under subsection (5) must be accompanied by notice of the first listing date.

[Section 44 amended: No. 49 of 2010 s. 26; No. 18 of 2021 s. 25.]

45. Court may make protection order

If, on a protection application, the Court finds that the child is in need of protection the Court may, subject to this Part —

(a) make the protection order sought in respect of the child; or

(b) make another protection order in respect of the child.

46. No order principle

The Court must not, on a protection application, make a protection order in respect of a child unless the Court is satisfied that making the order would be better for the child than making no order at all.

Subdivision 3 — Protection orders (supervision)

47. Protection order (supervision)

(1) A protection order (supervision) is an order providing for the supervision of the wellbeing of a child by the CEO for the period specified in the order.

(2) A protection order (supervision) does not affect the parental responsibility of any person for the child except to the extent (if any) necessary to give effect to the order.

48. Duration of protection order (supervision)

(1) A protection order (supervision) remains in force for the period specified in it unless it is extended under section 49 or revoked under Subdivision 7.

(2) The period specified in the order must not exceed 2 years and must end before the child reaches 18 years of age.

49. Extension of protection order (supervision)

(1) The CEO may apply to the Court for the extension of a protection order (supervision).

(2) If an application under subsection (1) is made but not determined before the end of the period referred to in section 48(1), the order remains in force until the application is determined.

(3) On an application under subsection (1) the Court may, if satisfied that it is in the best interests of the child to do so, extend the order for a period not exceeding 2 years that ends before the child reaches 18 years of age.

(4) A protection order (supervision) must not be extended more than once under this section.

(5) If, on an application under subsection (1), the Court is satisfied that each party to the initial proceedings consents to the application, the Court may extend the order in the absence of the parties.

(6) The reference in subsection (5) to each party to the initial proceedings does not include the child unless —

(a) the child has legal representation; or

(b) the Court is satisfied that the child has sufficient maturity and understanding to give consent.

50. Conditions of protection order (supervision)

(1) It is a condition of every protection order (supervision) that a parent of the child keeps the CEO informed about where the child is living.

(2) A protection order (supervision) may include conditions to be complied with by —

(a) the child if, in the opinion of the Court, the child is able to understand the condition; or

(b) a parent of the child; or

(c) an adult with whom the child is living.

(3) A protection order (supervision) may include a condition requiring the child to live with a specified parent of the child, but otherwise must not include a condition about —

(a) the person or persons with whom the child is to live; or

(b) who is to have responsibility for the day-to-day care, welfare and development of the child.

[Section 50 amended: No. 18 of 2021 s. 26.]

51. Variation of conditions of protection order (supervision)

(1) In this section —

condition means a condition of a protection order (supervision) other than the condition referred to in section 50(1).

(2) A party to the initial proceedings may apply to the Court for the variation, addition or substitution of a condition.

(3) On an application under subsection (2) the Court may —

(a) vary a condition in any manner that the Court considers appropriate; or

(b) add or substitute a condition.

(4) The Court must not grant an application under subsection (2) unless it is satisfied that —

(a) new facts or circumstances have arisen since the condition was imposed or last varied, as the case may be; or

(b) each party to the initial proceedings consents to the application.

(5) The reference in subsection (4)(b) to each party to the initial proceedings does not include the child unless —

(a) the child has legal representation; or

(b) the Court is satisfied that the child has sufficient maturity and understanding to give consent.

52. Access to child by authorised officer while protection order (supervision) in force

(1) While a protection order (supervision) is in force in respect of a child, an authorised officer may have access to the child at any reasonable time.

(2) An authorised officer may apply to a judge or magistrate for a warrant (access) if the officer —

(a) is denied access to the child; or

(b) is unable to find the child for the purposes of access.

(3) An application under subsection (2) must be made in accordance with section 120.

(4) On an application under subsection (2) a judge or magistrate may issue a warrant (access) if the judge or magistrate is satisfied as to a matter referred to in subsection (2)(a) or (b).

Note for this section:

Section 121 contains provisions about the effect of a warrant (access).

[Section 52 amended: No. 8 of 2009 s. 32(3).]

53. Provision of social services

While a protection order (supervision) is in force in respect of a child the CEO must ensure that the child and the child's parents are provided with any social services that the CEO considers appropriate.

Subdivision 4 — Protection orders (time-limited)

54. Protection order (time-limited)

(1) A protection order (time-limited) is an order giving the CEO parental responsibility for a child for the period specified in the order.

(2) While a protection order (time-limited) is in force in respect of a child the CEO has parental responsibility for the child to the exclusion of any other person.

55. Duration of protection order (time-limited)

(1) A protection order (time-limited) remains in force for the period specified in the order unless it is extended or revoked under section 56 or revoked under Subdivision 7.

(2) The period specified in the order must not exceed 2 years and must end before the child reaches 18 years of age.

56. Extension of protection order (time-limited)

(1) The CEO may apply to the Court for the extension of a protection order (time-limited).

(2) An application under subsection (1) may be made at any time while the order is in force but only after a review of the care plan for the child has been carried out under section 90.

(3) If an application under subsection (1) 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.

(4) On an application under subsection (1) the Court may, if satisfied that it is in the best interests of the child to do so —

(a) extend the order for a period not exceeding 2 years that ends before the child reaches 18 years of age; or

(b) revoke the order and, subject to this Part, make another protection order in respect of the child.

(5) A protection order (time-limited) may be extended more than once under this section.

(6) If, on an application under subsection (1), the Court is satisfied that each party to the initial proceedings consents to the application, the Court may extend the order in the absence of the parties.

(7) The reference in subsection (6) to each party to the initial proceedings does not include the child unless —

(a) the child has legal representation; or

(b) the Court is satisfied that the child has sufficient maturity and understanding to give consent.

Subdivision 5 — Protection orders (until 18)

57. Protection order (until 18)

(1) A protection order (until 18) is an order giving the CEO parental responsibility for a child until the child reaches 18 years of age.

(2) While a protection order (until 18) is in force in respect of a child the CEO has parental responsibility for the child to the exclusion of any other person.

58. Restriction on making protection order (until 18)

The Court must not make a protection order (until 18) in respect of a child unless the Court is satisfied that long-term arrangements should be made for the wellbeing of the child.

59. Duration of protection order (until 18)

A protection order (until 18) remains in force until the child reaches 18 years of age unless it is revoked under Subdivision 7.

Subdivision 6 — Protection orders (special guardianship)

[Heading amended: No. 49 of 2010 s. 35.]

60. Protection order (special guardianship)

(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) A protection order (special guardianship) cannot give parental responsibility for a child to the CEO or a parent of the child.

(3) While a protection order (special guardianship) is in force in respect of a child the special guardian has parental responsibility for the child to the exclusion of any other person.

[Section 60 amended: No. 49 of 2010 s. 27.]

61. Restriction on making protection order (special guardianship)

[(1) deleted]

(2) The Court must not make a protection order (special guardianship) in respect of a child unless the Court is satisfied —

(a) that long-term arrangements should be made for the wellbeing of the child; and

(b) that the proposed special guardian is —

(i) a suitable person to provide long-term care for the child; and

(ii) willing and able to provide such care.

(2A) The Court must, in assessing the suitability of the proposed special guardian, have regard to the following as if the order were a placement arrangement —

(a) for an Aboriginal child or Torres Strait Islander child — the principle set out in section 12;

(b) for a child of a culturally or linguistically diverse background — the guidelines established under section 80;

(c) in any case — other principles set out in Part 2 affecting the placement of a child who is in the CEO's care.

(2B) The Court must not make a protection order (special guardianship) for an Aboriginal child or Torres Strait Islander child if no Aboriginal person or Torres Strait Islander is to be the special guardian unless the CEO has given the Court a written report prepared by a person who meets criteria prescribed by the regulations.

(3) The CEO must provide the Court with a written report that —

(a) contains information addressing the matters referred to in subsections (2)(b)(i) and (ii) and (2A); and

(b) outlines the proposed arrangements for the wellbeing of the child; and

(c) without limiting paragraph (b), outlines the proposed arrangements for encouraging and supporting the child to develop and maintain contact with the child's parents, siblings and other members of the child's family and with other people who are significant in the child's life, subject to decisions under this Act about that contact; and

(d) for an Aboriginal child, Torres Strait Islander child or child of a culturally or linguistically diverse background — is accompanied by a cultural support plan for the child.

(4) However, the report need not be accompanied by a cultural support plan if the application for the protection order (special guardianship) is made under section 69A.

(5) The Court must, before making a protection order (special guardianship), consider each report given to the Court under this section.

(6) The CEO must give a copy of each report given to the Court under this section to the other parties to the proceedings.

[Section 61 amended: No. 49 of 2010 s. 28; No. 18 of 2021 s. 27.]

62. Duration of protection order (special guardianship)

A protection order (special guardianship) remains in force, unless it is revoked under Subdivision 7, until the earlier of —

(a) the child reaching 18 years of age; or

(b) an adoption order being made in relation to the child under the *Adoption Act 1994*.

[Section 62 inserted: No. 23 of 2015 s. 34.]

63. Conditions of protection order (special guardianship)

(1) A protection order (special guardianship) may include conditions to be complied with by the special guardian about —

(a) contact between the child and another person; or

(b) for an Aboriginal child, Torres Strait Islander child or child of a culturally or linguistically diverse background — matters that could be included in a cultural support plan for the child.

(2) It is a condition of a protection order (special guardianship) that the special guardian must not, except with the permission of the Court, make an application under the *Births, Deaths and Marriages Registration Act 1998* section 19(1), 23(1) or 31(3) (a ***change of name application***) in relation to the child.

(3) The Court may, on an application made by the special guardian, permit the making of a change of name application if it is satisfied that —

(a) there are exceptional reasons for the change of name; and

(b) for a child who it is satisfied has sufficient maturity and understanding to consent to the change of name — the child consents to the change.

(3A) The Family Court may, on an application made by the special guardian, permit the making of a change of name application if —

(a) the change of name application is to change a given name or given names of a child; and

(b) the change of name application is made at the same time as the special guardian makes an application to the Family Court under the *Births, Deaths and Marriages Registration Act 1998* section 36L or 36N; and

(c) the Family Court is satisfied that it is in the best interests of the child to permit the making of the change of name application.

(4) A protection order (special guardianship) must not include any conditions other than those referred to in this section.

[Section 63 inserted: No. 18 of 2021 s. 28; amended: No. 31 of 2024 s. 22.]

64. Variation of conditions

(1) In this section —

condition means a condition of a protection order (special guardianship) other than the condition referred to in section 63(2).

(2) A party to the initial proceedings may apply to the Court for the variation, addition or substitution of a condition.

(3) On an application under subsection (2) the Court may —

(a) vary a condition in any manner that the Court considers appropriate; or

(b) add or substitute a condition.

(4) The Court must not grant an application under subsection (2) unless it is satisfied that —

(a) new facts or circumstances have arisen since the condition was imposed or last varied, as the case may be; or

(b) each party to the initial proceedings consents to the application.

(5) The reference in subsection (4)(b) to each party to the initial proceedings does not include the child unless —

(a) the child has legal representation; or

(b) the Court is satisfied that the child has sufficient maturity and understanding to give consent.

[Section 64 amended: No. 49 of 2010 s. 29; No. 18 of 2021 s. 29.]

65. Court may order payments to special guardian

(1) On the making of a protection order (special guardianship), or at any time while such an order is in force, the Court may, on the application of a party to the initial proceedings, order the CEO to pay to the special guardian amounts in accordance with the prescribed scale at such intervals as are prescribed.

(2) The CEO must give effect to an order made under subsection (1).

(3) The Court may, on the application of a party to the initial proceedings, revoke an order made under subsection (1).

(4A) An order made under subsection (1) ceases to be in force if the protection order (special guardianship) in relation to which it was made ceases to be in force.

(4) For the purposes of this section, the regulations —

(a) are to prescribe the scale of amounts payable; and

(b) may prescribe different amounts for different classes of children; and

(c) are to prescribe the intervals at which payments are to be made.

[Section 65 amended: No. 49 of 2010 s. 30; No. 23 of 2015 s. 35.]

66. Provision of social services

Without limiting section 21(1)(a), while a protection order (special guardianship) is in force in respect of a child the CEO may cause the child and the special guardian to be provided with any social services that the CEO considers appropriate.

[Section 66 amended: No. 49 of 2010 s. 31.]

Subdivision 7 — Revocation and replacement of protection orders

67. Revocation of protection order

(1) A party to the initial proceedings may apply to the Court for the revocation of a protection order.

(2) On an application under subsection (1) the Court may, if satisfied that it is in the best interests of the child to do so —

(a) confirm the order; or

(b) revoke the order; or

(c) revoke the order and, subject to this Part, make another protection order in respect of the child.

68. Replacement of protection order: application by CEO

(1) The CEO may apply to the Court for the revocation of a protection order and the making of another protection order in respect of a child.

(2) An application under subsection (1) must specify the type of protection order sought.

(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.

(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.

[Section 68 amended: No. 49 of 2010 s. 32 and 60.]

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.

[Section 69A inserted: No. 49 of 2010 s. 33.]

69B. Replacement of protection order (special guardianship) on notification by CEO

(1) If the CEO becomes aware that each individual who is a special guardian under a protection order (special guardianship) has died, the CEO must give written notice of that fact to the Court as soon as practicable.

(2) If the CEO gives written notice to the Court under subsection (1), the protection order (special guardianship) is revoked and replaced by a protection order (time-limited) in respect of the child on the day (***notification day***) on which the CEO gives the notice.

(3) The protection order (time-limited) —

(a) comes into force on notification day; and

(b) for the purposes of Subdivision 4, is taken to specify the shorter of the following periods —

(i) the period of 2 years beginning on notification day;

(ii) the period beginning on notification day and ending on the day before the day on which the child reaches 18 years of age.

(4) As soon as practicable after notification day, the CEO must give written notice of the protection order (time-limited) to the following —

(a) the child;

(b) each other party to the initial proceedings (other than the special guardian);

(c) each other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

(5) Section 67 applies in relation to a protection order (time-limited) that comes into force under this section as if the reference in section 67(1) to a party to the initial proceedings were a reference to a person notified of the order under subsection (4).

[Section 69B inserted: No. 18 of 2021 s. 30.]

Subdivision 8 — General

69. Applications for extension, variation, revocation or replacement of protection orders

(1) This section applies to an application under this Division for the extension, variation, revocation or replacement of a protection order.

(2) The application must —

(a) be lodged with the Court; and

(b) comply with any applicable rules of court.

(3) When the application is lodged, the Court must fix the day, time and place for the hearing of the application.

(4) The applicant must, as soon as practicable after lodging the application, give a copy of it to all other parties to the initial proceedings.

(5) Each copy of the application given under subsection (4) must be accompanied by notice of the day, time and place fixed under subsection (3).

70. Form of protection order

(1) A protection order must be in writing and must state the child's name and date of birth.

(2) A protection order, if made on a protection application, must state the basis under section 28 for finding that the child is in need of protection.

71. Child's date of birth

(1) In the absence of evidence of the child's date of birth, the Court must determine a date of birth for the child for the purposes of section 70(1).

(2) The date of birth of a child stated in a protection order is to be taken to be the child's date of birth for the purposes of this Act unless the Court otherwise determines.

72. Parties to proceedings to be given copy of protection order

If the Court makes a protection order it must take all reasonable steps to ensure that each party is given a copy of the order.

73. Maintenance of children under certain orders

(1) In this section —

relevant person means —

(a) if the order concerned is a protection order (time-limited) or a protection order (until 18), the CEO; or

(b) if the order concerned is a protection order (special guardianship), the special guardian.

(2) On the making of a protection order (time-limited), protection order (until 18) or protection order (special guardianship) in respect of a child, or at any time while such an order is in force, the Court may, on the application of a party to the initial proceedings, order a parent of the child who is able to pay for, or contribute towards, the maintenance of the child to pay to the relevant person —

(a) any amount for the past maintenance of the child by the relevant person; and

(b) any amount, or such periodical amounts, for the future maintenance of the child by the relevant person,

that the Court considers appropriate.

(3) The Court may make an order under subsection (2) in the absence of the parent concerned if it is satisfied that the parent has received adequate notice of the application.

(4) If an order is made under subsection (2), the Court must cause a certified copy of the order to be sent to —

(a) the Family Court; or

(b) a court of a kind referred to in the *Family Court Act 1997* section 39(a) that can, under that section, exercise the Family Court's non-federal jurisdictions,

whichever is nearest to the place at which the order was made, for registration in accordance with the *Family Court Act 1997* and the order, when so registered, is to be taken for all purposes to be an order made under that Act by the Family Court or the court referred to in paragraph (b), as the case requires.

[Section 73 amended: No. 49 of 2010 s. 34.]

Division 4 — Negotiated placement

74. Term used: child

In this Division —

child, in relation to a negotiated placement agreement, means the child in respect of whom the agreement is made.

75. Negotiated placement agreement

(1) Where the parents of a child are unable to care for the child, the parents acting together and the CEO may enter into an agreement under which the CEO is required to make a placement arrangement for the child.

(2) The parents of the child acting together and the CEO may, at any time before the expiry or termination of a negotiated placement agreement, extend the agreement.

(3) Despite the requirement in subsections (1) and (2) for the parents of the child to act together, a negotiated placement

agreement may be entered into or extended by a parent of the child if —

(a) after reasonable inquiries any other parent of the child cannot be found; or

(b) any other parent of the child has failed to respond within a reasonable time to a request that he or she enter into or extend a negotiated placement agreement; or

(c) any other parent of the child does not have ongoing contact with the child; or

(d) it is not, in all the circumstances of the case, reasonably practicable to request any other parent of the child to enter into or extend a negotiated placement agreement.

(4) In deciding whether to enter into, extend or terminate a negotiated placement agreement, the CEO must take into account any views expressed by the child.

(5) The CEO must not enter into or extend a negotiated placement agreement in respect of a child if there are reasonable grounds to believe that the child is in need of protection.

(6) A negotiated placement agreement and any extension of the agreement must be —

(a) in writing; and

(b) signed by —

(i) the CEO; and

(ii) the parents of the child or, if subsection (3) applies, the parent who is entering into or extending the agreement.

76. Duration of negotiated placement agreement

A negotiated placement agreement has effect for the period specified in the agreement or any extension of the agreement unless it is terminated under section 77.

77. Termination of negotiated placement agreement

A negotiated placement agreement may be terminated at any time by —

(a) the CEO; or

(b) a parent of the child (whether or not the parent is a party to the agreement),

by written notice given to the parties, or other parties, to the agreement.

Division 5 — Children in the CEO's care

Subdivision 1 — Charter of Rights

78. Preparation etc. of Charter of Rights

(1) Within 12 months after the commencement of this Part, the CEO must prepare a Charter of Rights for all children in the CEO's care.

(2) The CEO must promote compliance with the Charter of Rights.

(3) The CEO must ensure that all children in the CEO's care are given a copy of the Charter of Rights and written information about it.

(4) The CEO must cause the Charter of Rights to be published in a manner that the CEO considers appropriate.

(5) The Charter of Rights must be laid before each House of Parliament by the Minister within 6 sitting days after the Charter is published by the CEO.

Subdivision 2 — Placement arrangements

79. CEO may arrange placement of child

(1) In this section —

child means a child who is in the CEO's care.

(2) The CEO may make —

(a) an arrangement for the placement of a child —

(i) with an individual approved by the CEO in accordance with the regulations; or

(ii) with a person who has entered into an agreement under section 15(1) for the provision of placement services; or

(iii) in a residential facility operated or managed by the Department or another public authority; or

(iv) as otherwise prescribed by the regulations;

or

(b) any other arrangement for the placement of the child that the CEO considers appropriate.

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

(3) The CEO may at any time cancel a placement arrangement made in respect of a child and make another placement arrangement in respect of the child.

(4) Without limiting section 248(1), the regulations may make provision for and in relation to the approval of individuals for the purposes of subsection (2)(a)(i).

[Section 79 amended: No. 49 of 2010 s. 8 and 61; No. 18 of 2021 s. 31.]

80. Guidelines for placement of certain children

(1) Within 12 months after the commencement of this Part, the CEO must establish written guidelines (the ***guidelines***) to be observed when making placement arrangements for children from culturally or linguistically diverse backgrounds.

(2) Without limiting the scope of the guidelines, they are to address the need to preserve and enhance a child's cultural, ethnic and religious identity.

(3) The CEO may amend or replace the guidelines.

(4) The guidelines are not to apply to Aboriginal or Torres Strait Islander children.

Note for this subsection:

Section 12 sets out the relevant principle relating to the placement of Aboriginal or Torres Strait Islander children.

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.

[Section 81 inserted: No. 49 of 2010 s. 62.]

82. Payment for care under placement arrangement

The CEO may make payments to a person for or in relation to the provision of care for a child under a placement arrangement.

83. Inspection of place where child living

An authorised officer may, at any time, enter a place where a child is living under a placement arrangement for the purpose of inspecting the place and making any inquiries in relation to the

wellbeing of the child that the authorised officer considers appropriate.

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 for this subsection: a fine of $12 000 and imprisonment for one year.

[Section 84 inserted: No. 49 of 2010 s. 63; amended: No. 18 of 2021 s. 76.]

85. Warrant (apprehension) where child not handed over

(1) If a person does not comply with a requirement of an authorised officer under section 84 the officer may apply to a judge or magistrate for a warrant (apprehension).

(2) An application under subsection (1) must be made in accordance with section 120.

(3) On an application made under subsection (1) a judge or magistrate may issue a warrant (apprehension) if the magistrate is satisfied that the person has not complied with the requirement.

Note for this section:

Section 122 contains provisions about the effect of a warrant (apprehension).

[Section 85 amended: No. 8 of 2009 s. 32(3); No. 49 of 2010 s. 64.]

86. Warrant (apprehension) where child absent or taken without authority

(1) If an authorised officer or a police officer believes on reasonable grounds that a child is absent, or has been taken, without lawful authority from a place where the child was living under a placement arrangement the officer may apply to a judge or magistrate for a warrant (apprehension).

(2) An application under subsection (1) must be made in accordance with section 120.

(3) On an application made under subsection (1) a judge or magistrate may issue a warrant (apprehension) if the judge or magistrate is satisfied that there are reasonable grounds for the belief mentioned in that subsection.

Note for this section:

Section 122 contains provisions about the effect of a warrant (apprehension).

[Section 86 amended: No. 8 of 2009 s. 32(3); No. 49 of 2010 s. 65.]

87. Apprehension without warrant in certain circumstances

(1) In this section —

officer means an authorised officer or a police officer.

(2) If an officer suspects on reasonable grounds that —

(a) a child is absent, or has been taken, without lawful authority from a place where the child was living under a placement arrangement; and

(b) there is —

(i) an immediate or substantial risk to the wellbeing of the child; or

(ii) a significant likelihood that unless the child is apprehended immediately the officer will not be able to find the child,

the officer may apprehend the child and take the child to the place mentioned in paragraph (a) or such other place as the CEO directs.

(3A) An officer may apprehend a child and take the child to such place as the CEO directs if —

(a) a person has failed to comply with a requirement under section 84 to hand over the child; and

(b) the officer suspects on reasonable grounds that there is an immediate or substantial risk to the wellbeing of the child.

(3) For the purposes of subsection (2) or (3A) 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.

[Section 87 amended: No. 23 of 2015 s. 36.]

Subdivision 3A — Secure care arrangements

[Heading inserted: No. 49 of 2010 s. 9.]

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.

[Section 88A inserted: No. 49 of 2010 s. 9.]

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.

[Section 88B inserted: No. 49 of 2010 s. 9.]

88C. Secure care arrangements for certain children

(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.

(6) The removal of a child from a secure care facility on a temporary basis or in an emergency situation, in accordance with procedures approved by the CEO for the secure care facility, does not affect the secure care arrangement to which the child is subject.

[Section 88C inserted: No. 49 of 2010 s. 9; amended: No. 18 of 2021 s. 33.]

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.

[Section 88D inserted: No. 49 of 2010 s. 9.]

88E. Continuation order required for certain provisionally protected children

(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.

[Section 88E inserted: No. 49 of 2010 s. 9.]

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.

[Section 88F inserted: No. 49 of 2010 s. 9.]

88G. Reconsideration of certain decisions as to 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.

[Section 88G inserted: No. 49 of 2010 s. 9.]

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.

[Section 88H inserted: No. 49 of 2010 s. 9.]

88I. Requirements for care plan or provisional care plan

[(1) deleted]

(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; and

(c) contains a summary of —

(i) how the principle set out in section 10 has been applied in connection with the matters referred to in paragraphs (a) and (b); and

(ii) the wishes and views expressed by the child in connection with those matters.

(6) Subsection (5)(c) only applies to the application of the principle set out in section 10, and to wishes and views expressed by the child, after the commencement of the *Children and Community Services Amendment Act 2021* section 34.

[Section 88I inserted: No. 49 of 2010 s. 9; amended: No. 18 of 2021 s. 34.]

88J. Apprehension without warrant of 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.

[Section 88J inserted: No. 49 of 2010 s. 9.]

Subdivision 3 — Plans

[Heading inserted: No. 18 of 2021 s. 35.]

*[**88.** Deleted: No. 18 of 2021 s. 36.]*

89. Care plan

[(1) deleted]

(2) As soon as practicable after a child first comes into the CEO's care, the CEO must prepare and implement a plan (a ***care plan***) for the child.

(3) Subsection (2) does not apply in the case of a child taken into provisional protection and care.

Note for this subsection:

Section 39 requires the CEO to prepare and implement a provisional care plan for a child taken into provisional protection and care.

(3A) A care plan for a child must —

(a) be in writing; and

(b) identify the needs of the child; and

(c) outline steps or measures to be taken to address the needs of the child; and

(d) for an Aboriginal child, Torres Strait Islander child or child of a culturally or linguistically diverse background — incorporate a cultural support plan for the child; and

(e) for a child who has reached 15 years of age (subject to subsection (3F)) — incorporate a leaving care plan for the child; and

(f) record decisions made by the CEO about the care of the child, including —

(i) decisions about a placement arrangement for the child; and

(ii) decisions about contact between the child and a parent, sibling, other member of the child's family or other person who is significant in the child's life; and

(iii) secure care decisions;

and

(g) contain a summary of —

(i) how the principle set out in section 10 has been applied in connection with the decisions recorded in the plan; and

(ii) the wishes and views expressed by the child about the decisions recorded in the plan.

(3B) Subsection (3A)(d), (e) and (g) do not apply to a care plan in existence immediately before the commencement of the *Children and Community Services Amendment Act 2021* section 37 until the completion of the first review of the plan under section 90 after that commencement.

(3C) Subsection (3A)(g) only applies to the application of the principle set out in section 10, and to wishes and views expressed by the child, after the commencement of the *Children and Community Services Amendment Act 2021* section 37.

(3D) The CEO must modify a care plan if a decision recorded in the plan is varied, revoked or substituted or a further decision about the care of the child is made by the CEO.

(3E) The modification must be made as soon as practicable after the decision is varied, revoked or substituted or the further decision is made.

(3F) The CEO must modify a care plan to include a leaving care plan as soon as practicable after the child reaches 15 years of age.

(4) The CEO may modify a care plan at any time if the CEO considers that it is appropriate to do so.

[(5A) deleted]

(5) However, the CEO cannot modify a care plan in a manner that would be contrary to section 94(3).

(6) As soon as practicable after the CEO prepares or modifies a care plan, the CEO must give a copy of the care plan or modification, as the case requires, to —

(a) the child; and

(b) each parent of the child; and

(c) any carer of the child; and

(d) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

(7) Despite subsection (6), the CEO may decide not to give a copy of the care plan or modification to a person mentioned in that subsection if the CEO considers that to do so would pose an unacceptable risk to the safety of the child or another person.

(8) If the CEO decides under subsection (7) not to give a person a copy of the care plan or modification, the CEO must give the person written notice of the decision and written reasons for it.

[Section 89 amended: No. 49 of 2010 s. 10; No. 23 of 2015 s. 37; No. 18 of 2021 s. 37.]

89A. Cultural support plan

A ***cultural support plan*** for a child is a plan that contains arrangements for developing and maintaining the child's connection with the culture and traditions of the child's family or community.

[Section 89A inserted: No. 18 of 2021 s. 38.]

89B. Leaving care plan

A ***leaving care plan*** for a child is a plan that —

(a) identifies the needs of the child in preparing to leave the CEO's care and in transitioning to other living arrangements; and

(b) outlines steps or measures to be taken to assist the child to meet those needs (including the social services proposed to be provided when the child leaves the CEO's care).

[Section 89B inserted: No. 18 of 2021 s. 38.]

90. Review of care plan

(1) The CEO must carry out a review of the operation and effectiveness of every care plan at regular intervals not exceeding 12 months.

(2) In the course of the review the CEO must have regard to any views expressed by —

(a) the child; and

(b) a parent of the child; and

(c) any carer of the child; and

(d) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

(3) The CEO must prepare a written report on the outcome of the review and must ensure that, where practicable, a copy of the report is given to each of the people mentioned in subsection (2).

(4) The CEO must keep a record of reviews carried out, and reports prepared, under this section in a manner that the CEO considers appropriate.

Subdivision 4 — Review of certain decisions

[Heading amended: No. 49 of 2010 s. 11; No. 23 of 2015 s. 38.]

91. Terms used

In this Subdivision, unless the contrary intention appears —

applicant means a person who makes an application under section 93(1) or (2A);

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;

care plan review panel means the care plan review panel established under section 92.

[Section 91 amended: No. 49 of 2010 s. 12; No. 23 of 2015 s. 39; No. 18 of 2021 s. 41.]

92. Care plan review panel

(1) The CEO must establish a care plan review panel for the purposes of this Subdivision.

(2) The care plan review panel is to consist of not less than 3 members appointed by the CEO.

(3) The members of the care plan review panel are to be people who have such experience, skills, attributes or qualifications as the CEO considers appropriate to enable them to effectively perform their review function.

(3A) At least 1 member of the care plan review panel must be an Aboriginal person or Torres Strait Islander.

(4) An officer is not eligible to be appointed, or hold office, as a member of the care plan review panel.

(5) The CEO may remove and replace members of the care plan review panel.

(6) The CEO must appoint one of the members of the care plan review panel to be the chairperson.

(7) The CEO may —

(a) direct that the members of the care plan review panel (other than an employee as defined in the *Public Sector Management Act 1994* section 3(1)) are to be paid remuneration or allowances or both; and

(b) determine the amount of any such payments on the recommendation of the Public Sector Commissioner.

(8) The CEO must provide the care plan review panel with such support services as it may reasonably require.

(9) If there are more than 3 members of the care plan review panel —

(a) the panel to which an application under section 93(1) or (2A) is referred must be constituted by 3 members; and

(b) the panel, separately constituted under paragraph (a), may sit simultaneously to hear and determine separate applications referred to the panel.

(10) If an application referred to the care plan review panel concerns an Aboriginal child or Torres Strait Islander child, the panel

constituted for the review must include at least 1 Aboriginal person or Torres Strait Islander.

[Section 92 amended: No. 39 of 2010 s. 89; No. 23 of 2015 s. 40; No. 18 of 2021 s. 42.]

93. Initial review

(1) An application for the review of a care planning decision may be made to the CEO by —

(a) the child; 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.

(2A) An application for the review of a decision under section 89(7) may be made to the CEO by the person given notice of the decision under section 89(8).

(2) An application under subsection (1) or (2A) —

(a) must be in writing; and

(b) must set out the grounds on which a review is sought.

(3) An application under subsection (1) must be made within —

(a) 14 days after the day on which the applicant received a copy of a care plan or modification of a care plan setting out the relevant care planning decision; or

(b) any longer period that the CEO in special circumstances allows.

(4A) An application under subsection (2A) must be made within —

(a) 14 days after the day on which the applicant received written notice of the decision under section 89(8); or

(b) any longer period that the CEO in special circumstances allows.

(4) The CEO must refer an application under subsection (1) or (2A), together with such other material as the CEO considers relevant, to the care plan review panel.

(5) On a referral under subsection (4) the care plan review panel must consider the application and other material (if any) and report to the CEO on its recommendations in respect of the application.

(6) The CEO, after considering the report of the care plan review panel and other information available to the CEO, must —

(a) confirm, vary or reverse the care planning decision or decision under section 89(7); or

(b) substitute another decision for the care planning decision or decision under section 89(7); or

(c) refer the matter back to the care plan review panel for further consideration and report.

(7) The CEO must give the applicant written notice of his or her decision under subsection (6) and written reasons for it.

(8) If an application is made under subsection (1), the decision that is the subject of the application continues to have effect pending the review unless the CEO otherwise directs.

[Section 93 amended: No. 49 of 2010 s. 13; No. 23 of 2015 s. 41.]

94. Review of CEO's decision

(1) A person who is aggrieved by a decision made by the CEO under section 93(6)(a) or (b) may apply to the State Administrative Tribunal for a review of the decision.

(2) Subsection (3) applies if —

(a) an application is made to the State Administrative Tribunal under subsection (1); and

(b) the State Administrative Tribunal's decision on the application (the ***Tribunal decision***) results in the modification of a care plan (the ***relevant modification***).

(3) The CEO must not, within the period of 12 months after the Tribunal decision, exercise the power to modify a care plan so as to affect the relevant modification unless the CEO is satisfied that there has been a significant change in facts or circumstances, or that new facts or circumstances have arisen, since the Tribunal decision was made.

[Section 94 amended: No. 23 of 2015 s. 42; No. 18 of 2021 s. 43.]

95. Procedure

(1) The CEO may give directions in writing to the care plan review panel as to its procedure, but otherwise, subject to subsection (2), the care plan review panel may determine its own procedure.

(2) The care plan review panel must give each applicant a reasonable opportunity to make submissions in respect of the application.

[Section 95 amended: No. 23 of 2015 s. 43.]

Division 6 — Provisions about leaving the CEO's care

96. People who qualify for assistance

For the purposes of this Division a person qualifies for assistance if —

(a) the person has left the CEO's care; and

(b) the person is under 25 years of age; and

(c) the person at any time after the person reached 15 years of age —

(i) was the subject of a protection order (time-limited) or a protection order (until 18); or

(ii) was the subject of a negotiated placement agreement in force for a continuous period of at least 6 months; or

(iii) was provided with placement services under section 32(1)(a) for a continuous period of at least 6 months.

97. Child's entitlement to personal material

(1) In this section —

personal material, in relation to a child, means —

(a) the child's birth certificate; or

(b) the child's passport; or

(c) any school report or other report relating to the child's education; or

(d) any photograph of the child; or

(e) any other document or material relating to the child that is prescribed, or of a class prescribed, in the regulations.

(2) When a child leaves the CEO's care, the child has a right to the possession, free of charge, of any personal material held by the Department or by any person who has provided care for the child under a placement arrangement or a secure care arrangement.

[Section 97 amended: No. 49 of 2010 s. 14.]

98. Provision of social services

(1) The CEO must ensure that a child who leaves the CEO's care is provided with social services that the CEO considers appropriate having regard to the needs of the child.

(2) Subsection (1) does not apply to a child who ceases to be in provisional protection and care.

[Section 98 amended: No. 18 of 2021 s. 44.]

99. Provision of assistance to obtain accommodation etc.

The CEO must ensure that a person who qualifies for, and seeks, assistance is provided with services to assist the person to do any one or more of the following —

(a) obtain accommodation;

(b) undertake education and training;

(c) obtain employment;

(d) obtain legal advice;

(e) access health services;

(f) access counselling services.

[Section 99 amended: No. 18 of 2021 s. 45.]

100. Provision of financial assistance

(1) The CEO may provide a person who qualifies for assistance with financial assistance in the form of —

(a) a contribution to expenses incurred in obtaining, furnishing and equipping accommodation; or

(b) a contribution to expenses incurred by the person in living near the place where the person is, or will be —

(i) employed or seeking employment; or

(ii) undertaking education or training;

or

(c) a grant to enable the person to meet expenses connected with his or her education or training.

(2) Financial assistance may be provided under this section on any terms and conditions that the CEO considers appropriate.

(3) Without limiting subsection (2), the terms and conditions may include provisions as to repayment and the recovery of outstanding amounts.

100A. Provision of explanation to child

The CEO must ensure that, before a child leaves the CEO's care, the child is provided with a written explanation of the assistance that may or must be provided to the child under this Division.

[Section 100A inserted: No. 18 of 2021 s. 46.]

Division 7 — Offences

Subdivision 1 — Children generally

101. Failing to protect child from harm

(1) A person who has the care or control of a child and who engages in conduct —

(a) knowing that the conduct may result in the child suffering harm as a result of any one or more of the following —

(i) physical abuse; or

(ii) sexual abuse; or

(iii) emotional abuse as defined in section 28(1); or

[(iv) deleted]

(v) neglect as defined in section 28(1);

or

(b) reckless as to whether the conduct may have that result,

is guilty of a crime, and is liable to imprisonment for 10 years.

(1A) It is a defence to a charge under subsection (1) involving conduct that may result in a child suffering harm as a result of emotional abuse comprised of exposure to family violence for the accused to prove that the accused was a victim of that family violence.

(2) In subsection (1) —

engage in conduct means —

(a) to do an act; or

(b) to omit to do an act;

harm has the meaning given to that term in section 28(1).

[Section 101 amended: No. 23 of 2015 s. 44; No. 18 of 2021 s. 47.]

102. Leaving child unsupervised in vehicle

A person who has the care or control of a child and who leaves the child in a motor vehicle (as defined in the *Road Traffic (Administration) Act 2008* section 4) without proper supervision for such period or in such circumstances that —

(a) the child becomes or is likely to become emotionally distressed; or

(b) the child's health becomes or is likely to become permanently or temporarily impaired,

is guilty of a crime, and is liable to imprisonment for 5 years.

Summary conviction penalty: a fine of $36 000 and imprisonment for 3 years.

[Section 102 amended: No. 49 of 2010 s. 66; No. 8 of 2012 s. 54.]

103. Tattooing or branding

(1) A person must not in any manner tattoo or brand any part of the body of a child who has not reached 16 years of age.

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

(2) A person must not in any manner tattoo or brand any part of the body of a child who has reached 16 years of age unless the person has first obtained the written consent of a parent of the

child to tattoo or brand the child in that manner and on that part of the child's body.

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

(3) This section does not apply to tattooing or branding carried out for a medical or therapeutic purpose.

[Section 103 inserted: No. 23 of 2015 s. 45; amended: No. 18 of 2021 s. 76.]

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 for this subsection: 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 for this subsection: 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.

[Section 104A inserted: No. 49 of 2010 s. 67; amended: No. 18 of 2021 s. 76.]

104. Providing long-term care for young children

(1) In this section —

parenting order means a parenting order made under the *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1997* which deals with —

(a) the person or persons with whom a child is to live; or

(b) the time a child is to spend with another person or other persons; or

(c) the communication a child is to have with another person or other persons; or

(d) the allocation of parental responsibility for a child;

prescribed period, in relation to —

(a) a child who is under 12 months of age, means one month; or

(b) any other young child, means a period of 3 consecutive months;

provide care, in relation to a young child, means to exercise responsibility for the day-to-day care, welfare and development of the child;

young child means a child who has not reached an age at which the child is required to be enrolled in an educational programme under the *School Education Act 1999* section 9(1).

(2) A person must not provide care for a young child for longer than the prescribed period unless the person is —

(a) a parent of the child; or

(b) an adult member of the child's family; or

(c) a carer of the child; or

(d) a person who has made an application for a parenting order in relation to the child, at any time before the application is finally determined; or

(e) a person in whose favour a parenting order has been made in relation to the child, while the order is in force; or

(fa) caring for the child under a surrogacy arrangement, as defined in the *Surrogacy Act 2008*, and not more than one year has elapsed since the day on which the child was born; or

(f) a person who is providing care for the child in accordance with an approval under subsection (3).

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

(3) The CEO may give a person approval to provide care for a young child.

(4) An approval under subsection (3) —

(a) must be in writing; and

(b) has effect for such period not exceeding 12 months as is specified in the approval; and

(c) may be subject to such conditions as the CEO considers appropriate; and

(d) may be revoked at any time; and

(e) cannot be renewed.

[Section 104 amended: No. 35 of 2006 s. 201; No. 47 of 2008 s. 57; No. 49 of 2010 s. 85; No. 18 of 2021 s. 48 and 76.]

Subdivision 2 — Children under placement arrangements or secure care arrangements

[Heading amended: No. 49 of 2010 s. 15.]

105. Terms used

(1) In this Subdivision —

child means a child who is the subject of a placement arrangement or a secure care arrangement;

place of residence, in relation to a child, means the place where the child lives under a placement arrangement or a secure care arrangement.

(2) For the purposes of this Subdivision there is lawful authority for an act if —

(a) the act is done with the written consent of the CEO; or

(aa) for a child who is the subject of a secure care arrangement — the act is done in accordance with procedures approved by the CEO for the secure care facility where the child lives; or

(b) except in section 106, the act is done by, or with the written consent of, a carer of the child concerned; or

(c) in the case of a child who is the subject of a negotiated placement agreement, the act is done by, or with the written consent of, a parent of the child.

[Section 105 amended: No. 49 of 2010 s. 16; No. 18 of 2021 s. 49.]

106. Removing child from State

A person must not, without lawful authority, remove a child, or cause or permit a child to be removed, from the State.

Penalty: a fine of $24 000 and imprisonment for 2 years.

[Section 106 amended: No. 49 of 2010 s. 85.]

107. Removing child from place of residence

(1) In this section —

another law means a law of another State or a Territory or New Zealand.

(2) A person must not, without lawful authority, remove a child from the child's place of residence.

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

(3) A person must not, without lawful authority, counsel, induce or assist a child to leave the child's place of residence.

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

(4) Subsections (2) and (3) apply whether the conduct constituting the offence is carried out wholly within or wholly outside the State or partly within and partly outside the State.

(5) If conduct constitutes an offence under this section and an offence under another law, a person who is convicted, found guilty or acquitted of the offence under another law is not liable to be prosecuted for the offence under this section.

[Section 107 amended: No. 49 of 2010 s. 85; No. 18 of 2021 s. 76.]

108. Harbouring child absent from place of residence

A person must not harbour a child if the person knows that the child has left, or has been removed from, the child's place of residence without lawful authority.

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

[Section 108 amended: No. 49 of 2010 s. 85.]

109. Preventing child's return to place of residence

A person must not prevent the return of a child to the child's place of residence if the person knows that the child has left, or has been removed from, the child's place of residence without lawful authority.

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

[Section 109 amended: No. 49 of 2010 s. 85.]

110. CEO may prohibit communication with child

(1) The CEO may, by written notice, direct a person not to communicate, or attempt to communicate, in any way with a child specified in the notice.

(2) A person who fails to comply with a direction under subsection (1) commits an offence.

Penalty for this subsection: a fine of $6 000.

[Section 110 amended: No. 49 of 2010 s. 85; No. 18 of 2021 s. 76.]

111. Evidentiary provision

In proceedings for an offence under this Subdivision, an averment in the charge that an act was done without lawful authority is, on proof that the act was done, proof that the act was done without lawful authority unless the contrary is proved.

[Section 111 amended: No. 84 of 2004 s. 80.]

Division 8 — Powers of restraint, search and seizure

112. Terms used

In this Division —

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;

disposable article means —

(a) a disposable hypodermic needle or syringe; or

(b) a disposable cigarette lighter; or

(c) any other thing that is disposable in character and that does not exceed the prescribed amount in value;

firearm article means a firearm, major firearm part, prohibited accessory, or ammunition, as those terms are defined in the *Firearms Act 2024* section 5;

intoxicant means —

(a) alcohol; or

(b) a drug or other substance capable of intoxicating a person;

prohibited article means a prohibited drug or a prohibited plant as those terms are defined in the *Misuse of Drugs Act 1981* section 3(1);

weapon means a controlled weapon, an edged weapon or a prohibited weapon as those terms are defined in the *Weapons Act 1999* section 3.

[Section 112 amended: No. 49 of 2010 s. 68; No. 13 of 2022 s. 82(2) and (3); No. 23 of 2024 s. 443; No. 33 of 2024 s. 26.]

113A. Approving persons 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.

(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.

[Section 113A inserted: No. 49 of 2010 s. 69.]

113. Prerequisites for exercise of power

(1) A power conferred by this Division may be exercised by an authorised officer only if —

(a) the child concerned —

(i) is in the CEO's care; or

(ii) is being moved, or has been moved, to a safe place under section 41;

and

(b) the authorised officer 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.

(2) A power conferred by this Division may be exercised by a police officer only if —

(a) the child concerned is being moved, or has been moved, to a safe place under section 41 or to a secure care facility under a secure care arrangement; and

(b) the police officer 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.

(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.

[Section 113 amended: No. 49 of 2010 s. 70.]

114. Child may be restrained

An authorised person may restrain a child but only for the period, and to the extent, necessary, in the opinion of the authorised person, to prevent the child —

(a) endangering the health or safety of the child or another person; or

(b) causing serious damage to property.

[Section 114 amended: No. 49 of 2010 s. 84.]

115. Child may be searched

(1) An authorised person may search a child, and any thing found on or with the child, for any thing or substance that can be seized under section 116.

(2) The search of a child must be done —

(a) by an authorised person, or a person designated under subsection (3); and

(b) in the presence of at least one other adult.

(3) If it is reasonably necessary in order to do the search, an authorised person may designate another person to do the search or to assist in doing the search.

(3A) In determining the appropriateness of a person to do the search or assist in doing the search —

(a) if there is no reason to suspect that the child is transgender or intersex — the person must be of the same sex as the child; and

(b) in any other case, consideration must be given to —

(i) whether the child and the person identify as male, female, transgender or intersex; and

(ii) the views of the child (taking into account the maturity and understanding of the child); and

(iii) any known views of a member of the child's family or other person who is significant in the child's life.

(4) A person designated under subsection (3) —

(a) may do the search or assist in doing the search; and

(b) must obey any lawful and reasonable direction of the authorised person.

(5) Nothing in this section authorises a search that involves —

(a) the removal of some or all of a child's clothing; or

(b) an examination of the body cavities of a child.

[Section 115 amended: No. 49 of 2010 s. 84; No. 18 of 2021 s. 50.]

116. Certain articles may be seized

An authorised person may seize from a child any thing or substance the seizure of which is necessary, in the opinion of the authorised person —

(a) to prevent the child endangering the health or safety of the child or another person; or

(b) to prevent the child causing serious damage to property.

[Section 116 amended: No. 49 of 2010 s. 84.]

117. How seized articles to be dealt with

(1) In this section —

seized means seized under section 116.

(2) If a firearm article, weapon or prohibited article is seized from a child by an authorised officer or approved person, the authorised officer or approved person must deliver it into the custody of a police officer as soon as practicable after it is seized.

(3) If a disposable article or an intoxicant (other than a prohibited article) is seized from a child, an authorised person may destroy it.

(4) Any thing or substance seized from a child that is not dealt with under subsection (2) or (3) —

(a) must be kept in safe keeping for such period as an authorised person considers necessary —

(i) to protect the health or safety of the child or another person; or

(ii) to prevent the child causing serious damage to property;

and

(b) at the end of that period, must be returned to the child or dealt with under subsection (5).

(5) If, at the end of the period referred to in subsection (4)(a), it is not reasonably practicable (for whatever reason) to return the thing or substance seized to the child, an authorised person must deal with the thing or substance in accordance with the regulations.

[Section 117 amended: No. 49 of 2010 s. 71 and 84; No. 13 of 2022 s. 82(4).]

118. Use of reasonable force

Reasonable force may be used to do a search under section 115 and to seize any thing or substance that can be seized under section 116.

119. Prescribed procedures

The regulations may prescribe procedures to be followed in relation to the exercise of the powers conferred by this Division, and an authorised person must ensure that those procedures are complied with when exercising those powers.

[Section 119 amended: No. 49 of 2010 s. 84.]

Division 9 — Warrants

120. Applying for warrants

[(1) deleted]

(2) This section applies to and in respect of an application for a warrant if another section in this Part requires the application to be made in accordance with this section.

(3) The application must be made, and any information in support of it must be given, on oath.

(4) The application must be made in person before a judge or magistrate unless —

(a) the warrant is needed urgently; and

(b) the applicant reasonably believes that a judge or magistrate is not known to be available within a reasonable distance of the applicant,

in which case it may be made to a judge or magistrate by remote communication.

(5) If the application is made to a judge or magistrate by remote communication —

(a) the applicant must prepare a written application and if practicable send it to the judge or magistrate; and

(b) if it is not practicable to send the written application to the judge or magistrate, the applicant may make the application orally; and

(c) if it is not practicable to comply with subsection (3), the applicant may make the application, and give any information in support of it, in unsworn form; and

(d) the judge or magistrate must not grant the application unless satisfied that there are grounds under subsection (4) for the application not to be made in person.

(6) If the application is made orally under subsection (5)(b), the judge or magistrate must complete a written application.

(7) If information in support of the application is given orally, the judge or magistrate must make a record of it.

(8) If —

(a) the applicant gives the judge or magistrate unsworn information under subsection (5)(c); and

(b) the judge or magistrate issues a warrant,

the applicant must send the judge or magistrate an affidavit containing all that information as soon as practicable after the warrant is issued.

(9) If the application is made by remote communication and the judge or magistrate issues a warrant, then —

(a) if it is reasonably practicable to send a copy of the warrant to the applicant by remote communication, the judge or magistrate must immediately do so; or

(b) if it is not reasonably practicable to send a copy of the warrant to the applicant by remote communication —

(i) the judge or magistrate must immediately give the applicant by remote communication any information that is required to be set out in the warrant; and

(ii) the applicant must complete a form of the warrant with the information given by the judge or magistrate; and

(iii) the applicant must give the judge or magistrate a copy of the completed form as soon as practicable after the warrant is issued; and

(iv) the judge or magistrate must attach the copy of the completed form to the original warrant issued by the judge or magistrate and any affidavit received from the applicant in support of the application, and make them available for collection by the applicant.

(10) If a copy of a warrant is received by remote communication under subsection (9)(a) or a form of warrant is completed in accordance with subsection (9)(b)(ii) it has the same effect as the original warrant issued by the judge or magistrate.

[Section 120 amended: No. 8 of 2009 s. 32(3); No. 18 of 2021 s. 51.]

121. Warrant (access), effect of

(1) In this section —

warrant (access) means a warrant (access) issued under section 34(3), 52(4) or 135(5).

(2) A warrant (access) authorises any authorised officer —

(a) to enter, at any time, any place where the officer reasonably believes the child to be; and

(b) to search the place for the purpose of finding the child; and

(c) to remain at the place for as long as the officer considers reasonably necessary to find the child; and

(d) if the child is found, to remain at the place and have access to the child for as long as the officer considers reasonably necessary.

(3) The entitlement to have access to the child referred to in subsection (2)(d) includes an entitlement to both see and talk with the child without a parent of the child or any other person being present.

122. Warrant (apprehension), effect of

(1) In this section —

warrant (apprehension) means a warrant (apprehension) issued under section 85(3) or 86(3).

(2) A warrant (apprehension) authorises any authorised officer or police officer —

(a) to enter, at any time, any place where the officer reasonably believes the child to be; and

(b) to search the place for the purpose of finding the child; and

(c) to remain at the place for as long as the officer considers reasonably necessary to find the child; and

(d) if the child is found, to apprehend the child and —

(i) in the case of a warrant issued under section 85, to take the child to such place as the CEO directs; or

(ii) in the case of a warrant issued under section 86, to take the child to the place referred to in section 86(1) or such other place as the CEO directs.

123. Warrant (provisional protection and care), effect of

(1) In this section —

warrant (provisional protection and care) means a warrant (provisional protection and care) issued under section 35(3) or 133(3).

(2) A warrant (provisional protection and care) authorises any authorised officer or police officer —

(a) to enter, at any time, any place where the officer reasonably believes the child to be; and

(b) to search the place for the purpose of finding the child; and

(c) to remain at the place for as long as the officer considers reasonably necessary to find the child; and

(d) if the child is found, to take the child into provisional protection and care and to such place as the CEO directs.

124. Execution of warrant

(1) When executing a warrant issued under this Part, an authorised officer or police officer, as the case may be —

(a) may use reasonable force and assistance; and

(b) must produce the warrant or a copy of the warrant if asked to do so by a person at the place where the warrant is, or is to be, executed.

(2) Without limiting subsection (1)(a), an authorised officer who is executing a warrant issued under this Part may call on the assistance of a police officer.

(3) A police officer who provides assistance under subsection (2) may use reasonable force when doing so.

Division 9A — Reporting sexual abuse of children

[Heading inserted: No. 26 of 2008 s. 5.]

124A. Terms used

In this Division —

boarding facility means a place used to provide residential accommodation for children while they attend a school as defined in the *School Education Act 1999* section 4;

boarding supervisor means a person who holds an office or position at a boarding facility the duties of which include the supervision of children living at the facility;

commencement day means the following —

(a) in relation to a doctor, nurse, midwife, police officer or teacher — the day on which the *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008* section 5 came into operation;

(b) in relation to a boarding supervisor — the day on which the *Children and Community Services Legislation Amendment and Repeal Act 2015* section 47 came into operation;

(c) in relation to a minister of religion — the day on which the *Children and Community Services Amendment Act 2021* section 52(9) came into operation;

(d) in relation to an assessor — the day on which the *Children and Community Services Amendment Act 2021* section 52(10) came into operation;

(e) in relation to a departmental officer — the day on which the *Children and Community Services Amendment Act 2021* section 52(11) came into operation;

(f) in relation to an early childhood worker — the day on which the *Children and Community Services*

Amendment Act 2021 section 52(12) came into operation;

(g) in relation to an out-of-home care worker — the day on which the *Children and Community Services Amendment Act 2021* section 52(13) came into operation;

(h) in relation to a psychologist — the day on which the *Children and Community Services Amendment Act 2021* section 52(14) came into operation;

(i) in relation to a school counsellor — the day on which the *Children and Community Services Amendment Act 2021* section 52(15) came into operation;

(j) in relation to a youth justice worker — the day on which the *Children and Community Services Amendment Act 2021* section 52(16) came into operation;

departmental officer —

(a) means an officer —

(i) who is a public service officer; or

(ii) who holds an office or position prescribed, or of a class prescribed, for the purposes of this subparagraph; or

(iii) whose duties include duties prescribed, or of a class prescribed, for the purposes of this subparagraph;

but

(b) does not include an officer who is —

(i) employed or engaged as a student or volunteer; or

(ii) under 18 years of age;

doctor means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession (other than as a student);

early childhood worker means an adult who is —

(a) any of the following for the purposes of the *Education and Care Services National Law (WA)* —

(i) an approved provider;

(ii) a person with management or control of an education and care service;

(iii) a nominated supervisor for an approved education and care service;

(iv) an educator;

(v) a family day care co-ordinator;

(vi) a family day care educator assistant;

or

(b) a licensee as defined in the *Child Care Services Act 2007* section 3; or

(c) a supervising officer as defined in the *Child Care Services Act 2007* section 5A(1); or

(d) a member of staff of a child care service, as defined in the *Child Care Services Act 2007* section 4, whose duties include the provision of education and care to children;

identifying information, in relation to a reporter, means information —

(a) that identifies the reporter; or

(b) that is likely to lead to the identification of the reporter; or

(c) from which the identity of the reporter could be deduced;

midwife means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the midwifery profession (other than as a student);

minister of religion —

(a) means a person who is recognised in accordance with the practices of a faith or religion as a person who is authorised to conduct services or ceremonies in accordance with the tenets of the faith or religion; and

(b) includes such a person regardless of how the person's position or title is described (for example, member of the clergy, priest, minister, imam, rabbi or pastor);

nurse means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing profession (other than as a student);

out-of-home care service provider means a person who has entered into an agreement under section 15(1) for the provision of placement services;

out-of-home care worker —

(a) means an adult who holds an office or position with, or is otherwise employed or engaged by, an out-of-home care service provider and whose duties include —

(i) the provision of social services to children who are the subject of a placement arrangement or to carers of those children; or

(ii) duties prescribed, or of a class prescribed, for the purposes of this subparagraph;

but

(b) does not include an adult who —

(i) provides care, at the adult's usual place of residence, for children who are the subject of a placement arrangement; or

(ii) is employed or engaged as a student or volunteer;

psychologist means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the psychology profession (other than as a student);

report means a report under section 124B(1);

reporter —

(a) means a person who makes a report; and

(b) in sections 124F, 124G and 124H includes a person who, in good faith —

(i) provides information on the basis of which a report is made; or

(ii) is otherwise concerned in making a report or causing a report to be made,

except the child about whom a report is made, being the child believed by the reporter to be the subject of sexual abuse;

school counsellor —

(a) means an adult who is employed or engaged in a school, as defined in the *School Education Act 1999* section 4, to provide counselling or pastoral care to children who attend the school; but

(b) does not include an adult who is employed or engaged as a student or volunteer;

sexual abuse, in relation to a child, includes sexual behaviour in circumstances where —

(a) the child is the subject of bribery, coercion, a threat, exploitation or violence; or

(b) the child has less power than another person involved in the behaviour; or

(c) there is a significant disparity in the developmental function or maturity of the child and another person involved in the behaviour;

teacher means —

(a) a person who is registered under the *Teacher Registration Act 2012*; or

[(b) deleted]

(c) a person who provides instruction in a course that is —

(i) mentioned in the *School Education Act 1999* section 11B(1)(a), (b) or (e); and

(ii) prescribed for the purposes of this definition;

or

(d) a person who instructs or supervises a student who is participating in an activity that is —

(i) part of an educational programme of a school under an arrangement mentioned in the *School Education Act 1999* section 24(1); and

(ii) prescribed for the purposes of this definition;

or

(e) a person employed by the chief executive officer as defined in the *Young Offenders Act 1994* section 3 to teach detainees at a detention centre as defined in that section;

youth justice worker —

(a) means an adult who is —

(i) a custodial officer, as defined in the *Young Offenders Act 1994* section 3, whose duties include the supervision or monitoring of children; or

(ii) a member of the council, as defined in the *Young Offenders Act 1994* section 17A, of an Aboriginal community and is involved in the supervision of a child under an agreement entered into by the council under section 17B of that Act; or

(iii) appointed as a monitor under the *Young Offenders Act 1994* section 17C(1); or

(iv) appointed as a Juvenile Justice Team Coordinator under the *Young Offenders Act 1994* section 36(1); or

(v) assigned as a supervising officer under the *Young Offenders Act 1994* section 77, 108 or 139; or

(vi) employed or engaged in the department of the Public Service principally assisting in the administration of the *Children's Court of Western Australia Act 1988* or the *Young Offenders Act 1994* and whose duties include duties prescribed, or of a class prescribed, for the purposes of this subparagraph;

but

(b) does not include an adult who is employed or engaged as a student or volunteer.

[Section 124A inserted: No. 26 of 2008 s. 5; amended: No. 35 of 2010 s. 39; No. 16 of 2012 s. 163; No. 23 of 2015 s. 46; No. 4 of 2018 s. 102; No. 18 of 2021 s. 52; No. 2 of 2026 s. 102.]

124B. Duty of certain people to report sexual abuse of children

(1) A person who —

(a) is a person specified in the Table (a ***specified person***); and

Table

assessor	boarding supervisor
departmental officer	doctor
early childhood worker	midwife
minister of religion	nurse
out-of-home care worker	police officer
psychologist	school counsellor

teacher	youth justice worker

(b) believes on reasonable grounds that a child —

(i) has been the subject of sexual abuse that occurred on or after commencement day; or

(ii) is the subject of ongoing sexual abuse;

and

(c) forms the belief —

(i) in the course of the person's work (whether paid or unpaid) as a specified person; and

(ii) on or after commencement day,

must report the belief as soon as practicable after forming the belief.

Penalty for this subsection: a fine of $6 000.

(2) For the purposes of subsection (1) the report must be made to —

(a) the CEO; or

(b) a person approved by the CEO; or

(c) a person who is a member of a class of persons approved by the CEO.

(3) In a prosecution for an offence under subsection (1) it is a defence for the person charged to prove that he or she honestly and reasonably believed that —

(a) all of the reasonable grounds for his or her belief were the subject of a report made by another person; or

(b) the CEO had caused, or was causing, inquiries to be made under section 31 about the child's wellbeing; or

(c) the CEO had taken, or was taking, action under section 32 in respect of the child's wellbeing.

(4) The duty that a person has under subsection (1) is in addition to, and does not affect, any other function that the person has in

respect of the child in the course of the person's work as a specified person.

[Section 124B inserted: No. 26 of 2008 s. 5; amended: No. 49 of 2010 s. 85; No. 23 of 2015 s. 47; No. 18 of 2021 s. 53 and 76.]

124BA. Provisions for ministers of religion

(1) In this section —

religious confession means a confession made by a person to a minister of religion in the minister's capacity as a minister of religion in accordance with the tenets of the minister's faith or religion.

(2) For the purposes of section 124B(1)(c)(i), a minister of religion who forms a belief on the basis of information disclosed to the minister in the minister's capacity as a minister of religion is taken to form the belief in the course of the minister's work.

(3) A minister of religion is not excused from criminal responsibility for an offence under section 124B(1) on the grounds that —

(a) the minister's belief is based on information disclosed to the minister during a religious confession; or

(b) disclosure of the minister's belief or information on which the belief is based is otherwise contrary to the tenets of the minister's faith or religion.

[Section 124BA inserted: No. 18 of 2021 s. 54.]

124C. Reports under s. 124B, form and content of

(1) A report may be written or oral but if oral the reporter must make a written report as soon as practicable after the oral report is made.

Penalty for this subsection: a fine of $3 000.

(2) A written report may, but does not need to be, in a form approved by the CEO.

(3) A report is to contain —

(a) the name and contact details of the reporter; and

(b) the name of the child or, if the child's name cannot be obtained after reasonable inquiries, a description of the child; and

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

(i) the child's date of birth; and

(ii) information about where the child lives; and

(iii) the names of the child's parents or other appropriate persons as defined in section 41(1);

and

(d) the grounds for the reporter's belief that the child has been the subject of sexual abuse or is the subject of ongoing sexual abuse; and

(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

(e) any other information that is prescribed.

(4) A person mentioned in section 124B(2)(b) or (c) who receives —

(a) a written report must give the report to the CEO as soon as practicable after receiving it; or

(b) an oral report must inform the CEO of the contents of the report as soon as practicable after receiving it.

Penalty for this subsection: a fine of $6 000.

(5) As soon as practicable after receiving a written report the CEO must advise the reporter of the receipt.

[Section 124C inserted: No. 26 of 2008 s. 5; amended: No. 49 of 2010 s. 72 and 85; No. 23 of 2015 s. 48; No. 18 of 2021 s. 76.]

124D. CEO to give copies of reports under s. 124B to police

(1) In this section —

Commissioner of Police means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*.

(2) The CEO is to give a copy of each written report to the Commissioner of Police as soon as practicable after the report is received by the CEO.

(3) Nothing in subsection (2) affects the functions of the CEO or any other person under section 23, 31 or 32.

[Section 124D inserted: No. 26 of 2008 s. 5.]

124E. Time limit for prosecuting offences under s. 124B and 124C

A prosecution for an offence under section 124B(1) or 124C(4) —

(a) must be commenced within 36 months after the date on which the offence was allegedly committed; or

(b) with the consent of the Attorney General, may be commenced at a later time.

[Section 124E inserted: No. 26 of 2008 s. 5.]

124F. Confidentiality of reporter's identity

(1) In this section —

child means the child about whom a report is made by the reporter, being the child believed by the reporter to be the subject of sexual abuse.

(2) A person who, in the course of duty, becomes aware of the identity of a reporter, must not disclose identifying information to another person unless —

(a) the disclosure is made for the purpose of, or in connection with, performing functions under this Act; or

(b) the disclosure is made with the written consent of the reporter; or

(c) the disclosure is made to or by a police officer for the purpose of, or in connection with —

(i) an investigation of a suspected offence under a written law in relation to the child; or

(ii) the conduct of a prosecution of an offence under a written law in relation to the child;

or

(d) the disclosure is made for the purpose of, or in connection with, the prosecution of an offence —

(i) in relation to the reporter, under —

(I) section 124B(1) in the case where a report is made; or

(II) section 124C(1) or 124F(2);

or

(ii) under section 124C(4) or 244 in relation to the report;

or

(e) the disclosure is made by an officer for the purposes of protection proceedings in relation to the child; or

(f) the disclosure is made by an officer for the purposes of an application under section 94 for the review of a decision relating to the child; or

(g) the disclosure is made by an officer for the purposes of a matter or proceedings relating to the child arising under

the *Family Law Act 1975* of the Commonwealth Part VII or the *Family Court Act 1997* Part 5; or

(h) the disclosure is made by an officer for the purposes of an application to, or appeal from a decision of, the Family Court under the *Adoption Act 1994* that relates to the child; or

(i) the disclosure is made by an officer for the purposes of any other legal proceedings of a kind prescribed for the purposes of this subsection and relating to the child; or

(j) the disclosure is made in legal proceedings with the leave of the court or tribunal concerned; or

(k) the identifying information has already been disclosed in legal proceedings and the court or tribunal concerned has not made an order prohibiting further disclosure.

Penalty for this subsection: a fine of $24 000 and imprisonment for 2 years.

[Section 124F inserted: No. 26 of 2008 s. 5; amended: No. 49 of 2010 s. 85; No. 18 of 2021 s. 76.]

124G. Evidence and legal proceedings

(1) A written report or a written record as to the contents of an oral report is to be taken to be a document that is not required to be disclosed under the *Criminal Procedure Act 2004* section 35, 42, 61, 62, 95 or 96 unless —

(a) the proceedings are for the prosecution of an offence mentioned in section 124F(2)(d); or

(b) the court concerned orders otherwise.

(2) A party to any legal proceedings cannot require a person to produce to the party, or the court or tribunal concerned, a report or evidence of the contents of a report unless —

(a) the proceedings are for the prosecution of an offence mentioned in section 124F(2)(d); or

(b) the court or tribunal concerned gives leave to do so.

(3) A report or evidence of the contents of a report is not admissible in any legal proceedings unless —

(a) the proceedings are for the prosecution of an offence mentioned in section 124F(2)(d); or

(b) the report or the evidence of the contents of the report is given by an officer and the proceedings are of a kind mentioned in section 124F(2)(e) to (i) inclusive; or

(c) the court or tribunal concerned orders otherwise.

(4) In any legal proceedings a person must not be asked and, if asked, is entitled to refuse to answer, any question the answer to which would give identifying information in relation to a reporter unless —

(a) the proceedings are for the prosecution of an offence mentioned in section 124F(2)(d); or

(b) the person is an officer and the proceedings are of a kind mentioned in section 124F(2)(e) to (i) inclusive; or

(c) the court or tribunal concerned gives leave to do so.

(5) In any legal proceedings a person must not be asked and, if asked, is entitled to refuse to answer, any question as to whether a particular matter is the subject of a report unless —

(a) the proceedings are for the prosecution of an offence mentioned in section 124F(2)(d); or

(b) the person is an officer and the proceedings are of a kind mentioned in section 124F(2)(e) to (i) inclusive; or

(c) the court or tribunal concerned gives leave to do so.

(6) Any other evidence as to identifying information in relation to a reporter must not be adduced in any legal proceedings unless —

(a) the proceedings are for the prosecution of an offence mentioned in section 124F(2)(d); or

(b) the evidence is adduced by an officer and the proceedings are of a kind mentioned in section 124F(2)(e) to (i) inclusive; or

(c) the court or tribunal concerned orders otherwise.

[Section 124G inserted: No. 26 of 2008 s. 5.]

124H. Orders, leave of courts etc. under s. 124F or 124G

(1) In this section —

leave means leave for the purposes of section 124F(2)(j) or 124G(2)(b), (4)(c) or (5)(c);

order means an order for the purposes of section 124G(1)(b), (3)(c) or (6)(c).

(2) A court or tribunal must not make an order or grant leave unless —

(a) it is satisfied that to safeguard and promote the wellbeing of the child about whom the report was made it is necessary for the order to be made or for the leave to be given; or

(b) it is satisfied that —

(i) the identifying information, or the content of the report (as is relevant in the case) is of critical importance in the proceedings; and

(ii) there is compelling reason in the public interest for disclosure of the identifying information, or disclosure, production or adducing of the report or evidence (as is relevant in the case);

or

(c) in a case concerning the disclosure of identifying information in relation to a reporter, the reporter consents to the disclosure.

(3) The court or tribunal may make an order or grant leave on any condition that it thinks fit having regard to the need to prevent, as far as practicable, further disclosure of the information that is the subject of the order or leave.

(4) An application for an order or leave —

(a) must not be heard in public; and

(b) must be dealt with in a way that protects, as far as practicable, the identity of the reporter pending a decision on the application.

[Section 124H inserted: No. 26 of 2008 s. 5.]

Division 10 — General

125A. Assessors, appointment and functions of

(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 Public Service Commissioner, 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 member of the child's family, 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.

[Section 125A inserted: No. 49 of 2010 s. 17; amended: No. 17 of 2014 s. 18; No. 18 of 2021 s. 55.]

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).

[Section 125B inserted: No. 49 of 2010 s. 17.]

125. Access to child, meaning of

If a provision of this Part authorises an authorised officer to have access to a child, the officer is entitled to both see and talk with the child without a parent of the child or any other person being present.

126. Recovery of certain expenditure

(1) In this section —

child means a child —

(a) who is in provisional protection and care; or

(b) who is the subject of a protection order (supervision); or

(c) who is the subject of a negotiated placement agreement; or

(d) to whom placement services are provided under section 32(1)(a).

(2) If the Court is satisfied, on the application of the CEO, that expenses have been or are likely to be incurred by the Department in connection with the performance of functions under this Part in respect of a child, the Court may order a parent of the child to pay to the Department such amount in reimbursement or anticipation of those expenses as the Court considers appropriate.

(3) If the child concerned is the subject of a negotiated placement agreement, an order is not to be made under subsection (2) that is inconsistent with the terms of the agreement.

(4) An order is not to be made under subsection (2) in respect of a person who is not present before the Court unless the Court is satisfied that the person has received adequate notice of the application.

(5) If an order is made under subsection (2), the Court must cause a certified copy of the order to be sent to —

(a) the Family Court; or

(b) a court of a kind referred to in the *Family Court Act 1997* section 39(a) that can, under that section, exercise the Family Court's non-federal jurisdictions,

whichever is nearest to the place at which the order was made, for registration in accordance with the *Family Court Act 1997* and the order, when so registered, is to be taken for all purposes to be an order made under that Act by the Family Court or the court referred to in paragraph (b), as the case requires.

127. CEO may give consent in lieu of parent in some cases

(1) In this section —

consent includes authorisation and permission.

(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.

[Section 127 inserted: No. 49 of 2010 s. 73.]

128. Records of children in CEO's care to be kept

(1) The CEO must ensure that records are kept in respect of every child who is or has been in the CEO's care.

(2) The records are to contain prescribed information.

129. Protection from liability for giving information

(1) This section applies if a person acting in good faith —

(a) gives information to the CEO or another officer about any aspect of the wellbeing of a child; or

(ba) gives information of the kind described in section 33A to the CEO or another officer; or

(b) gives information to the CEO or another officer for the purposes of, or in connection with, an investigation referred to in section 32(1)(d) or 33B(c); or

(c) gives information to the CEO or another officer for the purposes of, or in connection with, a protection

application or any other application to the Court under this Part; or

(d) gives information to the CEO under section 40(6); or

(e) makes a report under section 124B(1); or

(f) notifies the CEO of an allegation in accordance with a requirement to do so under regulations made under the *Child Care Services Act 2007*.

(2) In giving the information or making the report or notification the person —

(a) does not incur any civil or criminal liability; and

(b) is not to be taken to have breached any duty of confidentiality or secrecy imposed by law; and

(c) is not to be taken to have breached any professional ethics or standards or any principles of conduct applicable to the person's employment or to have engaged in unprofessional conduct.

(3) The protection given by subsection (2) also applies to a person who, in good faith —

(a) performs a duty that the person has under section 124C(4); or

(b) provides information on the basis of which —

(i) the information mentioned in subsection (1)(a), (ba), (b), (c) or (d) is given; or

(ii) a report is made under section 124B(1); or

(iii) the CEO is notified as mentioned in subsection (1)(f);

or

(c) is otherwise concerned in —

(i) providing the information mentioned in subsection (1)(a), (ba), (b), (c) or (d) or causing the information to be provided; or

(ii) making a report under section 124B(1) or causing a report to be made; or

(iii) notifying the CEO as mentioned in subsection (1)(f) or causing the CEO to be so notified.

[Section 129 amended: No. 26 of 2008 s. 6; No. 49 of 2010 s. 74.]

130. General powers of police officers not affected

The powers conferred by this Part on a police officer are in addition to, and do not limit, the powers that a police officer would have if this Part had not been enacted.

Part 5A — Responsible parenting agreements

[Heading inserted: No. 23 of 2015 s. 7.]

131A. Terms used

In this Part —

authorised CEO means —

(a) the CEO; or

(b) the CEO (Corrective Services); or

(c) the CEO (Education);

CEO (Corrective Services) means the chief executive officer of the department of the Public Service principally assisting in the administration of the *Young Offenders Act 1994*;

CEO (Education) means the chief executive officer of the department of the Public Service referred to in the *School Education Act 1999* section 228;

corrective services officer means a person employed or engaged in the department of the Public Service principally assisting in the administration of the *Young Offenders Act 1994*, whether as a public service officer under the *Public Sector Management Act 1994*, under a contract for services, or otherwise;

education officer means a person employed or engaged in the department of the Public Service referred to in the *School Education Act 1999* section 228, whether in a category described in section 235(1) of that Act, under a contract for services, or otherwise;

official means an officer as defined in section 3, a corrective services officer, an education officer or another person employed or engaged in a public authority;

parenting includes the provision of day-to-day care for a child by a responsible person for the child;

responsible person, for a child, means —

(a) a parent of the child; or

(b) an adult, other than a parent of the child, with whom the child usually lives and who provides day-to-day care for the child.

[Section 131A inserted: No. 23 of 2015 s. 7.]

131B. Principle to be observed in administration of this Part

(1) In the administration of this Part a principle to be observed is that public authorities should work together cooperatively and effectively to give responsible persons for a child the best chance of —

(a) safeguarding and promoting the child's wellbeing; and

(b) appropriately and safely managing the behaviour of the child; and

(c) complying with any responsible parenting agreement they may enter into.

(2) The principle set out in subsection (1) is in addition to, and does not derogate from, the principles set out in Part 2 Divisions 2 and 3.

[Section 131B inserted: No. 23 of 2015 s. 7; amended: No. 18 of 2021 s. 56.]

131C. Responsible parenting agreements

A ***responsible parenting agreement*** is an agreement in respect of a child or children between —

(a) any or all of the authorised CEOs; and

(b) one or more responsible persons for the child or children.

[Section 131C inserted: No. 23 of 2015 s. 7.]

131D. Entering into responsible parenting agreement

An authorised CEO may enter into a responsible parenting agreement if the authorised CEO is satisfied, in relation to each child in respect of whom the agreement is entered into, that —

(a) the child engages in any of the following behaviour (the ***relevant behaviour***) —

(i) criminal or antisocial behaviour;

(ii) persistent failure to attend school;

and

(b) the relevant behaviour is having, or is likely to have, a detrimental effect on the wellbeing of the child; and

(c) the parenting of the child may be contributing to the child engaging in the relevant behaviour; and

(d) the responsible parenting agreement may assist the responsible person or persons to appropriately and safely manage the behaviour of the child.

[Section 131D inserted: No. 23 of 2015 s. 7; amended: No. 18 of 2021 s. 57.]

131E. Content of responsible parenting agreement

(1) A responsible parenting agreement must be about one or more of the following matters —

(a) the responsible person engaging with a counselling service, a support service or any other relevant social service;

(b) the responsible person taking all reasonable steps to ensure that the child attends school;

(c) the responsible person taking all reasonable steps to ensure that the child avoids contact with a particular person or particular persons;

(d) the responsible person taking all reasonable steps to ensure that the child avoids a particular place or particular places;

(e) other matters relating to the effective parenting of the child;

(f) the assistance to be given to the responsible person or the child by a public authority to assist the responsible person to comply with the agreement.

(2) If more than one responsible person enters into the responsible parenting agreement, a reference in subsection (1) to the responsible person is a reference to any or all of those responsible persons.

(3) If the responsible parenting agreement is entered into in respect of more than one child, a reference in subsection (1) to the child is a reference to any or all of those children.

[Section 131E inserted: No. 23 of 2015 s. 7.]

131F. Formal requirements

A responsible parenting agreement must —

(a) be in writing; and

(b) specify the period covered by the agreement; and

(c) be signed by each authorised CEO, and each responsible person, who enters into the agreement.

[Section 131F inserted: No. 23 of 2015 s. 7.]

131G. Effect of responsible parenting agreement

(1) A responsible parenting agreement does not create obligations that are enforceable.

(2) An action in tort does not lie against the State, a Minister of the State, a public authority or an official for any failure of a person to comply with a responsible parenting agreement.

[Section 131G inserted: No. 23 of 2015 s. 7.]

131H. Delegation by CEO (Corrective Services) and CEO (Education)

(1) The CEO (Corrective Services) may delegate to a corrective services officer any power or duty of the CEO (Corrective Services) under another provision of this Part or section 237(3) or (4).

(2) The CEO (Education) may delegate to an education officer any power or duty of the CEO (Education) under another provision of this Part or section 237(3) or (4).

(3) A delegation under this section must be in writing signed by the CEO (Corrective Services) or the CEO (Education), as the case requires.

(4) A delegation under this section may expressly authorise the delegate to further delegate the power or duty.

(5) 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.

(6) Nothing in this section limits the ability of the CEO (Corrective Services) to perform a function through a corrective services officer or agent or the ability of the CEO (Education) to perform a function through an education officer or agent.

[Section 131H inserted: No. 23 of 2015 s. 7.]

Part 5 — Protection proceedings

Division 1 — Terms used in this Part

131. Terms used

In this Part, unless the contrary intention appears —

child, in relation to protection proceedings, means the child who is the subject of those proceedings.

[Section 131 amended: No. 18 of 2021 s. 58.]

Division 2 — Adjournment and interim orders

132. Adjournment of proceedings

(1) The Court may at any time in the course of protection proceedings —

(a) on its own initiative; or

(b) on the application of a party,

adjourn the proceedings for any period that the Court considers appropriate.

(2) However, protection proceedings must not be adjourned if the proceedings are for an interim order (secure care).

(3) Subsection (2) does not apply if the Court is satisfied that there are exceptional reasons for an adjournment and adjourns the proceedings for a period not exceeding 2 working days.

[Section 132 amended: No. 18 of 2021 s. 59.]

133. Interim orders

(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) An interim order is an order as to any one or more of the following —

(a) that the child is to be returned to, placed with, or remain with a parent of the child;

(b) that the child is to be taken into, or remain in, provisional protection and care;

(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;

(c) that the child is to be placed with a person approved by the Court following a report, whether oral or written, from the CEO as to the person's suitability;

(d) that the child or any other party undergo counselling;

(e) that a parent of the child or any other person specified in the order who has been providing day-to-day care for the child is to give to the CEO personal possessions of the child that are specified in the order;

(f) contact between the child and a parent, sibling, other member of the child's family or other person who is significant in the child's life, including that a person specified in the order is not to have contact (whether direct or indirect) with the child;

(g) any other matter that the Court considers appropriate.

(3) If the Court makes an interim order that the child is to be taken into provisional protection and care, the Court may issue a warrant (provisional protection and care).

Note for this subsection:

Section 123 contains provisions about the effect of a warrant (provisional protection and care).

[Section 133 amended: No. 49 of 2010 s. 18; No. 18 of 2021 s. 60.]

134A. 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.

[Section 134A inserted: No. 49 of 2010 s. 19.]

134. Variation or revocation of interim order

(1) A party may apply to the Court for the variation or revocation of an interim order.

(2A) In subsection (1) —

variation does not include a variation referred to in section 134A(5).

(2) On an application under subsection (1) the Court may —

(a) confirm the interim order; or

(b) vary the interim order; or

(c) revoke the interim order; or

(d) revoke the interim order and make another interim order.

(3) The Court must not take action under subsection (2)(b), (c) or (d) unless it is satisfied that —

(a) new facts or circumstances have arisen since the interim order was made or last varied, as the case may be; or

(b) each party consents to the action.

(4) The reference in subsection (3) to each party does not include the child unless —

(a) the child has legal representation; or

(b) the Court is satisfied that the child has sufficient maturity and understanding to give consent.

[Section 134 amended: No. 49 of 2010 s. 20.]

135. Access to child by authorised officer while interim order in force

(1) While an interim order as to a matter referred to in section 133(2)(a) or (c) is in force in respect of a child, an authorised officer may have access to the child at any reasonable time.

(2) The entitlement referred to in subsection (1) includes an entitlement to both see and talk with the child without a parent of the child or any other person being present.

(3) An authorised officer may apply to a judge or magistrate for a warrant (access) if the officer —

(a) is denied access to a child; or

(b) suspects that he or she will be denied such access; or

(c) is unable to find the child for the purposes of access.

(4) An application under subsection (3) must be made in accordance with section 120.

(5) On an application under subsection (3) a judge or magistrate may issue a warrant (access) if the judge or magistrate is satisfied —

(a) as to a matter referred to in subsection (3)(a) or (c); or

(b) that there are reasonable grounds for the authorised officer to have the suspicion referred to in subsection (3)(b).

Note for this section:

Section 121 contains provisions about the effect of a warrant (access).

[Section 135 amended: No. 8 of 2009 s. 32(3).]

Division 3A — Orders for determination of parentage

[Heading inserted: No. 49 of 2010 s. 36.]

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.

[Section 136A inserted: No. 49 of 2010 s. 36.]

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.

[Section 136B inserted: No. 49 of 2010 s. 36.]

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.

[Section 136C inserted: No. 49 of 2010 s. 36.]

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.

[Section 136D inserted: No. 49 of 2010 s. 36.]

136E. Adult contravening s. 136D order, consequences of

(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.

[Section 136E inserted: No. 49 of 2010 s. 36.]

136F. Procedure etc. ordered for child, parental consent needed in some cases, consequences of refusing to consent

(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.

[Section 136F inserted: No. 49 of 2010 s. 36.]

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.

[Section 136G inserted: No. 49 of 2010 s. 36.]

136H. Parentage testing procedures, conduct of etc.

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.

[Section 136H inserted: No. 49 of 2010 s. 36.]

136I. Results of parentage testing procedures admissible in protection proceedings

(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.

[Section 136I inserted: No. 49 of 2010 s. 36.]

Division 3 — Pre-hearing conferences

136. Court may order pre-hearing conference

(1) The Court may at any time in the course of protection proceedings make an order referring the application the subject of those proceedings to a conference.

(2) The purpose of a pre-hearing conference is to give the parties to the proceedings an opportunity to discuss, and reach agreement on, any matter relevant to the application.

(3) The Court must fix a day, time and place for the pre-hearing conference.

(4) A pre-hearing conference must be presided over by —

(a) a judge or magistrate; or

(b) a convenor appointed by the Court in accordance with the regulations.

(5) At the conclusion of a pre-hearing conference the person who presided over the conference must report to the Court on its outcome unless that person is also the judge or magistrate who ordered the conference under subsection (1).

(6) The regulations may —

(a) provide for the appointment of convenors; and

(b) provide for the remuneration and allowances payable to convenors; and

(c) prescribe the classes of people who may attend a pre-hearing conference; and

(d) confer power on the Court to order the attendance of people at pre-hearing conferences; and

(e) provide for the procedure at pre-hearing conferences.

[Section 136 amended: No. 8 of 2009 s. 32(3).]

137. Confidentiality of pre-hearing conference

(1) Subject to this section, the proceedings of a pre-hearing conference are confidential.

(2) Evidence of anything said or done, or of any admission made, at a pre-hearing conference is only admissible in proceedings before any court (including the protection proceedings concerned) if the court concerned grants leave or all the people who attended the pre-hearing conference consent.

(3) A person who attends a pre-hearing conference must not disclose any statement made by another person at, or information furnished by another person to, the conference without the leave of the Court or the consent of that other person.

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

(4) Subsection (3) does not apply to —

(a) the disclosure of a statement or information in proceedings before a court in accordance with subsection (2);

(b) the making of a record of proceedings at the conference by the person presiding, a person who attended the conference, or his or her legal representative;

(c) discussions between a child who did not attend the conference and his or her legal representative who attended the conference;

(d) discussions between a party who —

(i) has a difficulty understanding or communicating in English; or

(ii) has a disability,

and any other person who attended the conference for the purpose of providing support or assistance to that party;

(e) discussions between a person who attended the conference and his or her legal representative;

(f) discussions between the legal representatives of people who attended the conference;

(g) discussions between officers, police officers, or officers and police officers, about the conference;

(h) the disclosure, in connection with a review of the operation of pre-hearing conferences generally, of information —

(i) that does not identify any person who attended the conference; or

(ii) that identifies a person who attended the conference if the person has consented to its disclosure;

(i) the disclosure of information by a person who believes on reasonable grounds that it is necessary to do so in order to protect the health or safety of any person or to prevent or minimise damage to any property.

[Section 137 amended: No. 49 of 2010 s. 85; No. 18 of 2021 s. 76.]

Division 4 — Reports about child

138. Term used: report

In this Division —

report means a report under section 139.

139. Court may require report

(1) The Court may at any time in the course of protection proceedings require a person to give the Court a report on any matter relevant to the wellbeing of the child.

(2) The person referred to in subsection (1) is to be a person appointed by the Court in accordance with the regulations.

(3) The report must be in writing unless the Court otherwise directs.

(4) The Court may specify the particular issues that the report must address but this subsection does not limit the issues that may be addressed in the report.

(5) A report is admissible as evidence in protection proceedings.

(6) The Court may give such weight as it thinks fit to the content of a report admitted under subsection (5).

(7) The regulations may —

(a) provide for and in relation to the appointment of persons for the purposes of this section; and

(b) provide for the remuneration and allowances payable to such persons; and

(c) specify who is liable to pay the costs of a report under this section.

140. Access to written report

(1) As soon as practicable after receiving a written report, the Court, subject to the terms of any order made under subsection (3), must take all reasonable steps to ensure that a copy of the report is given to each of the parties.

(2) The Court may give directions as to the manner in which a copy of the report is given to a party.

(3) The Court may order that a copy of the report, or a specified part of the report, is not to be given to a party or parties if the

Court is satisfied that there are special circumstances that make the release of the report, or the specified part, to that party or those parties inappropriate.

141. Confidentiality of report

(1) A person who prepares or is given a report must not, without the leave of the Court, disclose information contained in it to another person.

Penalty for this subsection: a fine of $6 000.

(2) Nothing in subsection (1) prevents the CEO disclosing information contained in a report —

(a) to —

(i) an authorised officer at any time; or

(ii) any other person, after the relevant protection proceedings have concluded,

if the CEO considers that it is appropriate to do so; or

(b) to a public authority, a corresponding authority, or an interested person under section 23.

(3) Nothing in subsection (1) prevents a person disclosing information contained in a report to the person's legal representative.

[Section 141 amended: No. 49 of 2010 s. 85; No. 18 of 2021 s. 76.]

142. Protection from liability for preparing or giving report

A person who, in good faith, prepares a report or gives a report to the Court —

(a) does not in doing so incur any civil or criminal liability; and

(b) is not in doing so to be taken to have breached any duty of confidentiality or secrecy imposed by law; and

(c) is not in doing so to be taken to have breached any professional ethics or standards or any principles of conduct applicable to the person's employment or to have engaged in unprofessional conduct.

[Section 142 amended: No. 26 of 2008 s. 7.]

Division 5 — Proposals about arrangements for child

143. CEO to provide Court with proposal for child

[(1) deleted]

(2) If —

(a) the CEO makes a protection application in respect of a child; and

(b) the Court finds that the child is in need of protection,

the CEO must, if the CEO has not already done so, provide the Court with a proposal for the child as soon as practicable after the finding referred to in paragraph (b).

(3) If the CEO makes —

(a) an application under section 49 for the extension of a protection order (supervision); or

(b) an application under section 56 for the extension of a protection order (time-limited); or

(c) an application under section 68 —

(i) for the replacement of a protection order (supervision) by another protection order (supervision); or

(ii) for the replacement of a protection order (time-limited), protection order (until 18) or protection order (special guardianship) by

another protection order (other than a protection order (special guardianship)),

the CEO must provide the Court with a proposal for the child when the application is made.

(4) If the CEO makes an application under section 68 for the replacement of a protection order (supervision) by a protection order (time-limited) or protection order (until 18), the CEO must provide the Court with a proposal for the child as soon as practicable after the application is made.

(5) If —

(a) an application is made under section 67(1) for the revocation of a protection order; and

(b) the Court is considering making another protection order (other than a protection order (special guardianship)) in respect of the child under section 67(2)(c),

the Court may request the CEO to provide it with a proposal for the child.

(6) The CEO must comply with a request under subsection (5) as soon as practicable after it is made.

(7) The CEO must give a copy of any proposal provided to the Court under this section to the other parties.

[Section 143 amended: No. 49 of 2010 s. 35; No. 18 of 2021 s. 61.]

143A. Content of proposal

(1) A proposal under section 143 for a protection order (supervision) must outline proposed arrangements for the supervision of the wellbeing of the child.

(2) A proposal under section 143 for a protection order (time-limited) or protection order (until 18) must outline proposed arrangements for safeguarding and promoting the wellbeing of the child, including —

(a) proposed arrangements for promoting, where appropriate, the relationship between the child and the child's family or other people who are significant in the child's life; and

(b) for an Aboriginal child, Torres Strait Islander child or child of a culturally or linguistically diverse background —

(i) proposed arrangements for placement of the child in accordance with the principle set out in section 12 or guidelines established under section 80 (as the case requires) and the principle set out in section 9(gb); and

(ii) a cultural support plan for the child.

(3) A proposal under section 143 for a protection order (time-limited) or protection order (until 18) for an Aboriginal child or Torres Strait Islander child must outline the consultation that has occurred or is proposed to occur as required under section 81.

(4) A proposal under section 143 for a protection order (time-limited) must —

(a) outline proposed arrangements for working towards the child being returned to or placed with the child's parents; or

(b) if the CEO is of the opinion that such arrangements would be contrary to the best interests of the child or not practicable — contain an explanation of the reasons for the opinion.

(5) A proposal under section 143 for the extension of a protection order (time-limited) must include plans for securing long-term stability, security and safety in the child's relationships and living arrangements.

[Section 143A inserted: No. 18 of 2021 s. 62.]

144. Court to consider proposal

(1) Before making a protection order in respect of a child or extending a protection order (supervision) or protection order (time-limited) in respect of a child the Court must first consider any proposal for the child provided under section 143.

(2) In considering a proposal that includes plans referred to in section 143A(5), the Court must have regard to the likelihood of those plans being achieved.

[Section 144 amended: No. 18 of 2021 s. 63.]

Division 6 — Procedural matters

145. Conduct of protection proceedings generally

(1) Protection proceedings are to be conducted with as little formality and legal technicality as the circumstances of the case permit.

(2) Without limiting subsection (1), if the child is present in court, protection proceedings are to be conducted in a way that is sensitive to the child's level of understanding.

(3) Protection proceedings are to be concluded as expeditiously as possible so as to minimise the risk of detrimental effects arising from delay in decision-making.

(3A) Subsection (3) does not prevent an adjournment of proceedings to allow for a trial period for particular arrangements or for other appropriate reasons.

(4) Protection proceedings are to be conducted, as far as possible, in a way that promotes cooperation and consensus.

[Section 145 amended: No. 23 of 2015 s. 49; No. 18 of 2021 s. 64.]

146. Court not bound by rules of evidence

(1) In this section —

representation includes an express or implied representation, whether oral or in writing, and a representation inferred from conduct.

(2) In protection proceedings the Court is not bound by the rules of evidence, but may inform itself on any matter in any manner it considers appropriate.

(3) Without limiting subsection (2), evidence of a representation about a matter that is relevant to the protection proceedings is admissible despite the rule against hearsay.

(4) The Court may give such weight as it thinks fit to evidence admitted under subsection (3).

147. Parties to protection proceedings

In protection proceedings each of the following people is a party to the proceedings —

(a) the child;

(b) each parent of the child;

(c) the CEO;

(d) if the proceedings relate to a protection order (special guardianship) — the special guardian or proposed special guardian;

(e) any other person considered by the Court to have a direct and significant interest in the wellbeing of the child.

[Section 147 amended: No. 49 of 2010 s. 35; No. 18 of 2021 s. 65.]

148. Legal representation of child

[(1) deleted]

(2) If, in protection proceedings, it appears to the Court that the child ought to have separate legal representation, the Court may order that the child be separately represented by a legal practitioner.

(3) The Court may make an order under subsection (2) —

(a) on its own initiative; or

(b) on the application of —

(i) the child; or

(ii) an organisation concerned with the wellbeing of children; or

(iii) any other person.

(4) A legal practitioner who represents a child in protection proceedings must act on the instructions of the child if the child —

(a) has sufficient maturity and understanding to give instructions; and

(b) wishes to give instructions,

and in any other case must act in the best interests of the child.

(5) Any question as to whether a child has sufficient maturity and understanding to give instructions is to be determined by the Court.

[Section 148 amended: No. 21 of 2008 s. 642; No. 9 of 2022 s. 334.]

149. Presence of child in court

(1) In protection proceedings the child may be present in court if the child so wishes.

(2) Subsection (1) is subject to any order made in respect of the child under —

(a) the *Children's Court of Western Australia Act 1988* section 31; or

(b) the *Evidence Act 1906* section 106K.

(3) The CEO must ensure that the child —

(a) is made aware of the child's right to be present in court under subsection (1); and

(b) is provided with any support services that the CEO considers appropriate to enable the child to participate in the proceedings.

150. Evidence of child

(1) In this section —

child includes a child who is not the subject of the protection proceedings.

(2) In protection proceedings a child may only be compelled to give evidence or be cross-examined with the leave of the Court.

(3) The Court must not grant leave for the purposes of subsection (2) unless the Court is satisfied that the child is unlikely —

(a) to suffer emotional trauma as a result of giving evidence or being cross-examined; or

(b) to be so intimidated or distressed as to be unable —

(i) to give evidence or be cross-examined; or

(ii) to give evidence or be cross-examined satisfactorily.

151. Standard of proof

The standard of proof in protection proceedings is proof on the balance of probabilities.

152. Intervention by Attorney General

(1) The Attorney General may intervene in protection proceedings.

(2) If the Attorney General intervenes in protection proceedings, the Attorney General is to be treated as a party with all the rights, duties, and liabilities of a party.

153. Court to facilitate party's participation in proceedings

(1) In protection proceedings the Court must, as far as is practicable, ensure that each party understands the nature, purpose and legal implications of the proceedings and of any order or decision of the Court.

(2) If the Court is satisfied that a party —

(a) is a person who has difficulty understanding or communicating in English; or

(b) is a person whose disability prevents or restricts the party's understanding of, or participation in, protection proceedings,

the Court must take reasonable steps to ensure that the services of an interpreter or other appropriate person are made available to the party during the proceedings to facilitate the party's understanding of, or participation in, the proceedings.

(3) Nothing in this section is to be taken to affect the operation of the *Children's Court of Western Australia Act 1988* section 34(1).

[Section 153 amended: No. 18 of 2021 s. 66.]

154. Court may dispense with requirement for service

The Court may make an order dispensing with a requirement in this Part for a party to give a document to another person if the Court is satisfied, on the application of the party, that, after reasonable inquiries, the other person cannot be found.

155. Frivolous or vexatious proceedings

(1) At any time in the course of protection proceedings the Court may, if it is satisfied that the proceedings are frivolous or vexatious —

(a) dismiss the proceedings; and

(b) make any order as to costs that it considers appropriate; and

(c) on the application of a party, order that the person who instituted the proceedings cannot, without the leave of the Court, institute protection proceedings of the kind or kinds specified in the order.

(2) An order made under subsection (1)(c) has effect despite any other provision of this Part.

(3) The Court may vary or discharge an order made under subsection (1)(c).

Part 6 — Transfer of child protection orders and proceedings

Division 1 — Introductory matters

156. Purpose of Part

The purpose of this Part is to provide for the transfer of child protection orders and proceedings between this State and another State —

(a) so that children who are in need of protection may be protected despite moving from one jurisdiction to another; and

(b) so as to facilitate the timely and expeditious determination of court proceedings relating to the protection of a child.

157. Terms used

(1) In this Part, unless the contrary intention appears —

child protection order, in relation to a child, means a final order made under a child welfare law in respect of the child that gives —

(a) a Minister of the Crown in right of a State; or

(b) a government department or statutory authority; or

(c) a person who is the chief executive officer (however described) of a government department or statutory authority or otherwise holds an office or position in, or is employed in, a government department or statutory authority; or

(d) an organisation or the chief executive officer (however described) of an organisation,

responsibility in relation to the guardianship, custody or supervision of the child, however that responsibility is described;

child protection proceeding means a proceeding brought in a court under a child welfare law for —

(a) the making of a finding that a child is in need of protection or any other finding (however described) the making of which is a prerequisite under the child welfare law to the exercise by the court of a power to make a child protection order; or

(b) the making of a child protection order or an interim order or for the variation or revocation, or the extension of the period, of such an order;

child welfare law means —

(a) Part 4; or

(b) a law of another State that, under an order in force under subsection (2), is declared to be a child welfare law for the purposes of this Part; or

(c) a law of another State that substantially corresponds to Part 4;

Children's Court means —

(a) in relation to this State, the Court; and

(b) in relation to another State, the court with jurisdiction to hear and determine a child protection proceeding at first instance;

home order means —

(a) a protection order; or

(b) a child protection order taken, by operation of section 178(1), to be a protection order;

interim order means —

(a) an order made under section 173(1); or

(b) an equivalent order made under an interstate law;

interstate law means —

(a) a law of another State that, under an order in force under subsection (3), is declared to be an interstate law for the purposes of this Part; or

(b) a law of another State that substantially corresponds to this Part;

interstate officer, in relation to another State, means —

(a) the person holding the office or position to which there is given by or under the child welfare law of that State principal responsibility for the protection of children in that State; or

(b) the holder of an office or position that, under an order in force under subsection (4), is declared to be an office or position the holder of which is the interstate officer in relation to that State for the purposes of this Part;

participating State means a State in which an interstate law is in force;

registrar of the Court means —

(a) in relation to an application made to the Court, the registrar of the Court at the place where the application was made; and

(b) in relation to a document filed in the Court, the registrar of the Court at the place where the document was filed; and

(c) in relation to the revocation by the Court of the registration of an order, the registrar of the Court at the place where the registration was revoked;

sending State means the State from which a child protection order or proceeding is transferred under this Part or an interstate law;

State means —

(a) a State or a Territory; or

(b) New Zealand;

working day means —

(a) in relation to a court, a day on which the offices of the court are open; and

(b) in relation to the CEO, a day on which the principal office of the Department is open.

(2) The Minister may, by order published in the *Gazette*, declare a law of another State to be a child welfare law for the purposes of this Part if satisfied that the law substantially corresponds to Part 4.

(3) The Minister may, by order published in the *Gazette*, declare a law of another State to be an interstate law for the purposes of this Part if satisfied that the law substantially corresponds to this Part.

(4) The Minister may, by order published in the *Gazette*, declare an office or position in another State to be an office or position the holder of which is the interstate officer in relation to that State for the purposes of this Part.

(5) The Minister may, by order published in the *Gazette*, amend or revoke an order under subsection (2), (3) or (4).

[Section 157 amended: No. 18 of 2021 s. 67.]

Division 2 — Transfer of child protection orders

Subdivision 1 — Administrative transfers

158. When CEO may transfer home order

(1) The CEO may transfer a home order to a participating State if —

(a) in his or her opinion a child protection order to the same or a similar effect as the home order could be made under the child welfare law of that State; and

(b) the home order is not subject to an appeal and the time for instituting an appeal has expired; and

(c) the relevant interstate officer has consented in writing to the transfer and to the proposed terms of the order to be transferred (the ***proposed interstate order***); and

(d) any person whose consent to the transfer is required under section 159 has so consented.

(2) The CEO may include in the proposed interstate order any conditions that could be included in a child protection order of that type made in the relevant participating State.

(3) In determining whether a child protection order to the same or a similar effect as the home order could be made under the child welfare law of a participating State, the CEO must not take into account the period for which it is possible to make such an order in that State.

(4) The CEO must determine, and specify in the proposed interstate order, the period for which it is to remain in force.

(5) The period must be the lesser of —

(a) the period for which the home order would have remained in force if it were not transferred to the relevant participating State; and

(b) the maximum period for which a child protection order of that type made in the relevant participating State could remain in force.

159. Persons whose consent is required under s. 158(1)(d)

(1) For the purposes of section 158(1)(d), if the home order is a protection order (supervision), consent to the transfer is required —

(a) from the child unless, in the opinion of the CEO, the child does not have sufficient maturity and understanding to give consent; and

(b) subject to subsection (2), from the child's parents.

(2) Consent to the transfer is not required —

(a) from a parent of the child if, after reasonable inquiries, that parent cannot be found; or

(b) from a parent of the child if, in the opinion of the CEO, that parent is unable to give consent; or

(c) from a parent of the child who is residing in, or is intending to reside in, the relevant participating State.

160. CEO to have regard to certain matters

In determining whether to transfer a home order to a participating State, the CEO must have regard to —

(a) whether the CEO or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order relating to the child; and

(b) the desirability of a child protection order being an order under the child welfare law of the State where the child resides.

161. Notification of decision to transfer

(1) If the CEO has decided to transfer a home order to a participating State, the CEO must cause notice of the decision to be given to —

(a) the child unless the CEO considers that the child does not have sufficient maturity to understand the transfer and its consequences; and

(b) the child's parents; and

(c) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child,

as soon as practicable but in any event no later than 3 working days after the decision was made.

(2) A notice under subsection (1) must —

(a) state the date of the decision; and

(b) state that a person who wishes to apply to the Supreme Court for judicial review of the decision must institute the proceeding, and give written notice of it to the CEO, within 21 working days after the date of the decision; and

(c) state that a person who wishes to apply to the State Administrative Tribunal for a review of the decision must institute the proceeding within 21 working days after the date of the decision.

(3) Notice is not required to be given to a person under subsection (1) if it cannot be given after all reasonable efforts.

162. Judicial review of CEO's decision

(1) A proceeding in the Supreme Court for judicial review of a decision of the CEO to transfer a home order to a participating State must be instituted, and written notice of it must be given to the CEO, within 21 working days after the date of the decision.

(2) The Supreme Court cannot extend the time fixed by subsection (1).

(3) Subject to subsections (1) and (2), a proceeding referred to in subsection (1) must be brought in accordance with the Supreme Court's rules of court.

(4) The institution of a proceeding referred to in subsection (1) and the giving of written notice of it to the CEO stays the operation of the decision pending the determination of the proceeding.

163. Review by State Administrative Tribunal

(1) A person who is aggrieved by a decision of the CEO to transfer a home order to a participating State may apply to the State Administrative Tribunal for a review of the decision within 21 working days after the date of the decision.

(2) The State Administrative Tribunal cannot extend the time fixed by subsection (1).

(3) The institution of a proceeding for the review of a decision under subsection (1) stays the operation of the decision pending the determination of the proceeding.

Subdivision 2 — Judicial transfers

164. When Court may transfer home order

The Court may make an order transferring a home order to a participating State if —

(a) an application for the making of the order is made by the CEO; and

(b) the home order is not subject to an appeal and the time for instituting an appeal has expired; and

(c) the relevant interstate officer has consented in writing to the transfer and to the proposed terms of the order to be transferred.

165. Service of application under s. 164

The CEO must as soon as possible after making an application for an order under section 164 cause a copy of it to be given to —

(a) any person who was a party to the proceedings in which the home order to be transferred was made; and

(b) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

166. Court to have regard to certain matters

In determining whether to make an order under section 164 the Court must have regard to —

(a) whether the CEO or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order relating to the child; and

(b) the desirability of a child protection order being an order under the child welfare law of the State where the child resides.

167. Proposed interstate orders, terms of

(1) If the Court determines to transfer a home order to a participating State, the proposed terms of the order to be transferred (the ***proposed interstate order***) must be terms that could be the terms of a child protection order made under the child welfare law of the participating State and that the Court believes to be —

(a) to the same or a similar effect as the terms of the home order; or

(b) otherwise in the best interests of the child.

(2) The Court may include in the proposed interstate order any conditions that could be included in a child protection order of that type made in the relevant participating State.

(3) In determining whether an order to the same or a similar effect as the home order could be made under the child welfare law of a participating State, the Court must not take into account the period for which it is possible to make such an order in that State.

(4) The Court must determine, and specify in the proposed interstate order, the period for which it is to remain in force.

(5) The period must not be longer than the maximum period for which a child protection order of that type made in the relevant participating State could remain in force.

168. Court not to make s. 164 order without report from CEO

The Court must not make an order under section 164 unless it has received and considered a report from the CEO regarding the child.

169. Appeals

(1) A party to an application for an order under section 164 may appeal to the Supreme Court, on a question of law, from a final order made in that proceeding transferring, or refusing to transfer, a home order to a participating State.

(2) An appeal under subsection (1) —

(a) must be instituted, and (except where instituted by the CEO) written notice of it must be given to the CEO, within 10 working days after the day on which the order appealed from was made; and

(b) operates as a stay of the order.

(3) The Supreme Court cannot extend the time fixed by subsection (2)(a).

(4) Subject to subsections (2) and (3), an appeal under subsection (1) must be brought in accordance with the rules of the Supreme Court.

(5) The Supreme Court must hear and determine the appeal as expeditiously as possible.

(6) Pending the determination of the appeal, the Supreme Court may make any interim order that the Children's Court can make under section 133.

(7) On determining the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for rehearing to the Court with or without any direction in law.

(8) An order made by the Supreme Court on an appeal under subsection (1), other than an order remitting the case for rehearing to the Court, may be enforced as an order of the Supreme Court.

Division 3 — Transfer of child protection proceedings

170. When Court may transfer child protection proceeding

(1) The Court may make an order transferring a child protection proceeding pending in the Court to the Children's Court in a participating State if —

(a) an application for the making of the order is made by the CEO; and

(b) the relevant interstate officer has consented in writing to the transfer.

(2) The proceeding is discontinued in the Court on the registration in the Children's Court in the participating State in accordance with the interstate law of an order referred to in subsection (1).

171. Service of application under s. 170

The CEO must, as soon as possible after making an application for an order under section 170(1), cause a copy of it to be given to —

(a) each party to the child protection proceeding the subject of the application; and

(b) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

172. Court to have regard to certain matters

In determining whether to make an order under section 170(1) the Court must have regard to —

(a) whether any other proceedings relating to the child are pending, or have previously been heard and determined, under the child welfare law in the participating State; and

(b) the place where any of the matters giving rise to the proceeding in the Court arose; and

(c) the place of residence, or likely place of residence, of the child, the child's parents and any other people who are significant to the child; and

(d) whether the CEO or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order relating to the child; and

(e) the desirability of a child protection order being an order under the child welfare law of the State where the child resides; and

(f) any information given to the Court under subsection (2).

(2) If the CEO is aware that —

(a) a sentence or order imposed under the *Sentencing Act 1995* or the *Young Offenders Act 1994*, other than a fine, is in force in respect of the child who is the subject of the proceeding to which an application referred to in section 170(1)(a) relates; or

(b) a criminal proceeding is pending against that child in any court,

the CEO must, as soon as possible, inform the Court of that fact and of the details of the sentence, order or pending criminal proceeding.

173. Interim order

(1) If the Court makes an order under section 170(1) the Court may also make an interim order.

(2) An interim order —

(a) may give responsibility for an aspect of parental responsibility for the child to a person, subject to any conditions that the Court considers to be appropriate; and

(b) may give responsibility for the supervision of the child to the interstate officer in the participating State or any other person in that State to whom responsibility for the

supervision of a child could be given under the child welfare law of that State.

(3) An interim order remains in force for the period (not exceeding 30 days) specified in the order.

(4) The Children's Court in the participating State may vary or revoke, or extend the period of, an interim order in accordance with the relevant interstate law.

174. Appeals

(1) A party to an application for an order under section 170(1) may appeal to the Supreme Court, on a question of law, from a final order made in that proceeding transferring, or refusing to transfer, a child protection proceeding to a participating State.

(2) An appeal under subsection (1) —

(a) must be instituted, and (except where instituted by the CEO) written notice of it must be given to the CEO, within 10 working days after the day on which the order appealed from was made; and

(b) operates as a stay of the order but not of any interim order made at the same time as the order.

(3) The Supreme Court cannot extend the time fixed by subsection (2)(a).

(4) Subject to subsections (2) and (3), an appeal under subsection (1) must be brought in accordance with the rules of the Supreme Court.

(5) The Supreme Court must hear and determine the appeal as expeditiously as possible.

(6) On determining the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for rehearing to the Children's Court with or without any direction in law.

(7) An order made by the Supreme Court on an appeal under subsection (1), other than an order remitting the case for rehearing to the Children's Court, may be enforced as an order of the Supreme Court.

(8) The Supreme Court may —

(a) if an interim order was made at the same time as the order appealed from, make an order —

(i) staying the operation of the interim order; or

(ii) varying or revoking the interim order; or

(iii) extending the period of the interim order;

and

(b) make any interim order pending the determination of the appeal that the Children's Court can make under section 133.

Division 4 — Registration

175. Filing interstate orders in Court

(1) Subject to subsection (3), the CEO must, as soon as possible, file in the Court a copy of a child protection order transferred to this State under an interstate law.

(2) Subject to subsection (3), the CEO must, as soon as possible, file in the Court a copy of an order under an interstate law to transfer a child protection proceeding to this State, together with a copy of any interim order made at the same time.

(3) The CEO must not file in the Court a copy of a child protection order or of an order to transfer a child protection proceeding if, under the interstate law —

(a) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) is subject to appeal or review or a stay; or

(b) the time for instituting an appeal or seeking a review has not expired.

176. Registering interstate orders

If the CEO files a copy of an order in the Court under section 175, the registrar of the Court must register the order.

177. Notification by registrar of Court

The registrar of the Court must immediately notify the appropriate officer of the Children's Court in the sending State and the interstate officer in that State of —

(a) the registration of an order under section 176; or

(b) the revocation under section 179 of the registration of an order.

178. Effect of registration

(1) A child protection order registered in the Court under section 176 —

(a) is to be taken for all purposes (except for the purposes of appeal) to be a protection order of the relevant type made by the Court on the day on which it is registered; and

(b) may be varied or revoked, or the period for which it is in force extended, under Part 4.

(2) An interim order registered in the Court under section 176 —

(a) is to be taken for all purposes (except for the purposes of appeal) to be an order made by the Court under section 133 on the day on which it is registered; and

(b) may be varied or revoked, or the period for which it is in force extended, under Part 4.

(3) If an order under an interstate law to transfer a child protection proceeding to this State is registered under section 176, the

proceeding is to be taken to have been commenced in the Court, under Part 4, on the day on which the order is registered.

179. Revocation of registration

(1) An application for the revocation of the registration of an order under section 176 may be made to the Court by —

(a) the CEO; or

(b) the child concerned; or

(c) a parent of the child concerned; or

(d) a party to the proceeding in the Children's Court in the sending State in which the decision to transfer the order or proceeding (as the case requires) was made.

(2) The registrar of the Court must cause a copy of an application made under subsection (1) to be given as soon as possible to —

(a) the relevant interstate officer; and

(b) any person by whom the application could have been made.

(3) The Court may only revoke the registration of an order if satisfied that it was inappropriately registered because, under the interstate law —

(a) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) was at the time of registration subject to appeal or review or a stay; or

(b) the time for instituting an appeal or seeking a review had not expired.

(4) If the registration of an order is revoked, the registrar of the Court must cause the copy of the order filed under section 175 to be sent to the Children's Court in the sending State.

(5) The revocation of the registration of an order does not prevent the later re-registration of that order.

Division 5 — General

180. Legal representation of child

Section 148 applies in relation to proceedings on an application for an order under section 164 or 170(1) as if those proceedings were protection proceedings.

181. Effect of registration of transferred order

(1) In this section —

transferred order means a child protection order transferred to a participating State under section 158(1) or 164.

(2) A home order ceases to have effect on the registration of the transferred order under an interstate law of the participating State.

(3) A home order that has ceased to have effect under subsection (2) is revived if the registration of the transferred order is revoked under an interstate law of the participating State.

(4) The period for which a home order is revived is the balance of the period for which it would have remained in force but for the registration of the transferred order.

182. Transfer of Court file

The registrar of the Court must cause all documents filed in the Court in connection with a child protection proceeding, and an extract from any part of the register that relates to a child protection proceeding, to be sent to the Children's Court in a participating State if, under this Part —

(a) the child protection order or proceeding is transferred to the participating State; and

(b) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) is not subject to appeal or review or a stay; and

(c) the time for instituting an appeal or seeking a review has expired.

183. Hearing and determination of transferred proceeding

In hearing and determining a child protection proceeding transferred to the Court under an interstate law, the Court —

(a) is not bound by any finding of fact made in the proceeding in the Children's Court in the sending State before its transfer; and

(b) may have regard to the transcript of, or any evidence adduced in, the proceeding referred to in paragraph (a).

184. Disclosure of information

(1) Despite anything to the contrary in this Act, the CEO may disclose to an interstate officer any information that has come to his or her notice in the performance of duties or exercise of powers under this Act if the CEO considers that it is necessary to do so to enable the interstate officer to perform duties or exercise powers under a child welfare law or an interstate law.

(2) Any information disclosed to the CEO under a provision of a child welfare law or an interstate law that substantially corresponds to subsection (1) is to be taken for the purposes of any provision of this Act relating to the disclosure of information to have been information given directly to the CEO instead of to an interstate officer.

185. Discretion of CEO to consent to transfer

(1) If, under an interstate law, there is a proposal to transfer a child protection order to this State, the CEO may consent or refuse to consent to the transfer and the proposed terms of the child protection order to be transferred.

(2) If, under an interstate law, there is a proposal to transfer a child protection proceeding to the Court, the CEO may consent or refuse to consent to the transfer.

186. Evidence of consent of relevant interstate officer

A document or copy of a document —

(a) purporting to be the written consent of the relevant interstate officer to —

(i) the transfer of a child protection order to a participating State and to the proposed terms of the child protection order to be transferred; or

(ii) the transfer of a child protection proceeding pending in the Court to the Children's Court in a participating State;

and

(b) purporting to be signed by the relevant interstate officer or his or her delegate,

is admissible in evidence in any proceeding under this Part and, in the absence of evidence to the contrary, is proof that consent in the terms appearing in the document was duly given by the relevant interstate officer.

187. Offence to remove certain children from where they live

(1) A person must not, by any conduct carried out within the State, without lawful authority, remove a child from the place where the child lives under —

(a) a child protection order, other than a protection order under Part 4; or

(b) an interim order.

Penalty for this subsection: a fine of $24 000 and imprisonment for 2 years.

(2) If conduct constitutes an offence under subsection (1) and under a law of another State, a person who is convicted, found guilty or acquitted of the offence under that other law is not liable to be prosecuted for the offence under that subsection.

[Section 187 amended: No. 49 of 2010 s. 85; No. 18 of 2021 s. 76.]

Part 7 — Employment of children

188. Terms used

In this Part, unless the contrary intention appears —

delivery work means work that involves delivering newspapers, pamphlets or advertising material;

employ, in relation to a child, means to engage the child to carry out work —

(a) whether or not the child receives payment or other reward for the work; and

(b) whether or not the child is engaged under a contract of service, a contract for services or any other arrangement;

family business, in relation to a child, means a business, trade or occupation carried on by a member of the child's family.

[Section 188 amended: No. 49 of 2010 s. 75; No. 18 of 2021 s. 68.]

189. *School Education Act 1999* not affected

Nothing in this Part is to be taken to limit or otherwise affect the operation of the *School Education Act 1999* section 29.

Note for this section:

Section 29 of the *School Education Act 1999* relates to the employment of children during school hours.

190. Child under 15 not to be employed in business etc.

(1) A person must not employ a child under 15 years of age in a business, trade or occupation carried on for profit.

Penalty for this subsection: a fine of $24 000.

(2) It is a defence to a charge under subsection (1) for a person to prove that the person believed on reasonable grounds, at the time the offence is alleged to have been committed, that the child had reached 15 years of age.

(3) A parent of a child under 15 years of age must not permit the child to be employed in a business, trade or occupation carried on for profit.

Penalty for this subsection: a fine of $24 000.

[Section 190 amended: No. 49 of 2010 s. 85; No. 18 of 2021 s. 76.]

191. Exceptions to s. 190

(1) Section 190(1) and (3) do not apply if the child is employed in a family business.

(2) Section 190(1) and (3) do not apply if the child is employed in a dramatic or musical performance or other form of entertainment or in the making of an advertisement.

(3) Section 190(1) and (3) do not apply in relation to a child who has reached 10 years of age but is under 13 years of age if —

(a) the child is employed to carry out delivery work between 6 a.m. and 7 p.m.; and

(b) while carrying out the delivery work, the child is accompanied by —

(i) a parent of the child; or

(ii) an adult authorised in writing by a parent of the child to accompany the child.

(4) Section 190(1) and (3) do not apply in relation to a child who has reached 13 years of age if the child is employed to carry out —

(a) delivery work; or

(b) work in a shop, other retail outlet or restaurant; or

(c) any other work of a kind prescribed for the purposes of this subsection,

between 6 a.m. and 10 p.m. with the written permission of a parent of the child.

(5) Section 190(1) and (3) do not apply if —

(a) the child is exempted under the *School Education Act 1999* section 11(1) and the conditions (if any) of the exemption are being complied with; or

(b) the employment of the child is included in the educational programme (as defined in the *School Education Act 1999* section 4) applicable to the child and is consistent with the terms and conditions of the programme.

192. Children not to be employed to perform in indecent manner etc.

(1) A person who employs a child to perform in an indecent, obscene or pornographic manner in the course of participating in an entertainment or exhibition or in the making of an advertisement is guilty of a crime, and is liable to imprisonment for 10 years.

(2) A parent of a child who permits the child to be employed to perform in an indecent, obscene or pornographic manner in the course of participating in an entertainment or exhibition or in the making of an advertisement is guilty of a crime, and is liable to imprisonment for 10 years.

(3) For the purposes of this section but without limiting its application —

(a) a child is employed to perform in an indecent, obscene or pornographic manner if, in the course of the child's employment, the child —

(i) is engaged in an activity of a sexual nature; or

(ii) is in the presence of another person who is engaged in an activity of a sexual nature; or

(iii) is required to pose or move in a manner calculated to give prominence to sexual organs, the anus or, in the case of a female child or a

transgender or intersex child who identifies as female, the breasts;

and

(b) a child's performance is in the course of participating in an entertainment or exhibition if the performance —

(i) consists in whole or in part of modelling or posing of any kind; or

(ii) is only for the person employing the child or for some other particular person or a class of people; or

(iii) is communicated in any way to an audience of one or more people; or

(iv) is recorded in any way for later visual or audible presentation to an audience of one or more people; or

(v) can be viewed on the Internet or in any other way.

(4) Without limiting the definition of ***employ*** in section 188, if a child participates in an entertainment or exhibition carried on for profit or in the making of an advertisement for commercial purposes, then for the purposes of this section the person who carries on the entertainment or exhibition or makes the advertisement employs the child.

[Section 192 amended: No. 18 of 2021 s. 69.]

193. CEO may prohibit or limit employment of child

(1) In this section —

notice means a notice under subsection (2).

(2) If the CEO is of the opinion that the wellbeing of a particular child is likely to be jeopardised by the fact that the child is employed, or the nature or extent of the work that the child is

employed to carry out, the CEO may, by written notice given to a parent of the child —

(a) prohibit the employment of the child; or

(b) impose limitations on the employment of the child.

(3) A notice may be expressed to apply to employment generally, to specified employment, or to employment of a specified kind.

(4) The CEO must give a copy of a notice to —

(a) the child; and

(b) the employer of the child.

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

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

(6) A parent of a child must not permit the child to be employed in contravention of a notice.

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

(7) It is a defence to a charge under subsection (5) or (6) 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 or a copy of the notice in respect of the child; and

(b) was otherwise unaware of the contents of that notice.

[Section 193 amended: No. 49 of 2010 s. 85; No. 18 of 2021 s. 76.]

194A. CEO may 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

(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 for this subsection: a fine of $6 000.

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

Penalty for this subsection: 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.

[Section 194A inserted: No. 49 of 2010 s. 76; No. 18 of 2021 s. 76.]

194. False information to employers etc.

A child or a parent of a child must not give false or misleading information to an employer or prospective employer of the child about —

(a) the age of the child;

(b) the matter of whether or not there is a notice in respect of the child under section 193(2);

(c) the matter of whether or not there is an exemption in respect of the child under the *School Education Act 1999* section 11(1).

Penalty: a fine of $6 000.

[Section 194 amended: No. 49 of 2010 s. 85.]

*[**195.** Deleted: No. 18 of 2021 s. 70.]*

196. Role of industrial inspectors and industrial magistrate's courts

(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).

(2) An industrial magistrate's court established under the *Industrial Relations Act 1979* Part III has jurisdiction to hear and determine prosecutions commenced by industrial inspectors under subsection (1).

[Section 196 amended: No. 84 of 2004 s. 80; No. 49 of 2010 s. 78.]

[Part 8 (s. 197-232) deleted: No. 19 of 2007 s. 65.]

Part 9 — Provision of financial or other assistance

233. CEO may provide financial or other assistance

(1) The CEO may provide a person with financial or other assistance if the CEO is satisfied that the person is in need of such assistance.

(2) Assistance may be provided under subsection (1) in such form, and on such terms and conditions, as the CEO considers appropriate.

(3) Without limiting subsection (2), in the case of financial assistance, the terms and conditions may include provisions as to repayment and the recovery of outstanding amounts.

234. CEO may assist with funeral expenses

(1) Without limiting section 233(1), the CEO may pay, or assist in the payment of, funeral expenses if the CEO is satisfied that in the circumstances of a particular case it is appropriate to do so.

(2) Payment may be made, or assistance provided, under subsection (1) on such terms and conditions as the CEO considers appropriate.

(3) Without limiting subsection (2), the terms and conditions may include provisions as to repayment and the recovery of outstanding amounts.

235. Application for assistance

(1) In this section and section 236 —

application for assistance means —

(a) an application for assistance under section 233; or

(b) an application for payment, or assistance in payment, of funeral expenses under section 234.

(2) An application for assistance must be made in the form, and in accordance with the procedure, approved by the CEO.

(3) The CEO may require the applicant to provide any information that the CEO considers necessary for the purposes of determining an application for assistance.

236. Recovery of overpayments in certain circumstances

Where as a consequence of —

(a) a false or misleading statement in an application for assistance referred to in section 235; or

(b) the provision of false or misleading information,

money is paid to a person under this Part that would not have been paid but for the false or misleading statement or information, the CEO may recover from that person the amount paid in a court of competent jurisdiction as a debt due to the State.

Part 10 — Confidentiality provisions

237. Restriction on publication of certain information or material

(1) In this section —

old order means an order under the repealed *Child Welfare Act 1947* committing a child to the care of the Department or placing a child under the control of the Department;

publish means to bring to the notice of the public or a section of the public by means of newspaper, television, radio, the Internet or any other form of communication.

(2) A person must not, except in accordance with a written authorisation given under this section, publish information or material that identifies, or is likely to lead to the identification of, another person (the ***identified person***) as —

(a) a person who is or was a child the subject of an investigation referred to in section 32(1)(d); or

(b) a person who is or was a child the subject of a protection application or an application for an old order; or

(c) a person who is or was a child the subject of a protection order or an old order; or

(d) a person who is or was a responsible person under a responsible parenting agreement; or

(e) a person who is or was a child the subject of a responsible parenting agreement.

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

(3) If the identified person is under 18 years of age, written authorisation for the publication of information or material to which subsection (2) applies may be given by —

(a) in the case of an identified person referred to in subsection (2)(a), (b) or (c) — the CEO; or

(b) in the case of an identified person referred to in subsection (2)(d) or (e) — each authorised CEO (as defined in section 131A) who entered into the responsible parenting agreement.

(4) If the identified person has reached 18 years of age, written authorisation for the publication of information or material to which subsection (2) applies may be given —

(a) by the identified person; or

(b) if the identified person is dead or cannot be found after reasonable inquiries, by —

(i) in the case of an identified person referred to in subsection (2)(a), (b) or (c) — the CEO; or

(ii) in the case of an identified person referred to in subsection (2)(d) or (e) — each authorised CEO (as defined in section 131A) who entered into the responsible parenting agreement.

(5) Subsection (2) does not apply to information or material contained in a report of proceedings to which the *Children's Court of Western Australia Act 1988* section 35(1) applies.

[Section 237 amended: No. 49 of 2010 s. 85; No. 23 of 2015 s. 8; No. 18 of 2021 s. 76.]

238. Production of departmental records in legal proceedings

(1) In this section —

departmental record means a document in the records of the Department that relates to a child, a child's parent or a child's carer.

(2) This section applies if a party to any legal proceedings lawfully requires —

(a) the CEO or another officer to produce to the party, or the court or tribunal concerned, a departmental record; or

(b) an officer or employee of a public authority to produce to the party, or the court or tribunal concerned, a departmental record to which that public authority has been given access.

(3) The party requiring production of the departmental record must describe the record —

(a) by reference to the person or people to whom it relates; and

(b) by reference to the period to which it relates; and

(c) by general reference to the circumstances to which it relates.

(4) The party requiring production of the departmental record must show that the circumstances to which the departmental record relates are relevant to the proceedings.

(5) A person must not, directly or indirectly, record, disclose or make use of information in a departmental record produced in response to a requirement referred to in subsection (2) other than for a purpose connected with the proceedings.

Penalty for this subsection: a fine of $12 000.

(6) If a departmental record is produced to a court or tribunal in response to a requirement referred to in subsection (2), the court or tribunal must take reasonable steps to ensure that access to the record is limited to one or more of the following people —

(a) a party to the proceedings;

(b) a legal representative of a party to the proceedings;

(c) an expert witness in the proceedings;

(d) if the proceedings are in the Family Court —

(i) a family consultant, as defined in the *Family Court Act 1997*; or

(ii) any other person required or directed to prepare a report on matters relevant to the proceedings,

under that Act or the *Family Law Act 1975* of the Commonwealth;

(e) a person who can show that the CEO has authorised his or her access to the record;

(f) a person considered by the court or tribunal to have a direct interest in the proceedings.

(7) A person referred to in subsection (6) who has been given access to a departmental record by a court or tribunal must not, without the approval of the court or tribunal, make a copy of, or otherwise reproduce, the record.

Penalty for this subsection: a fine of $6 000.

(8) For the purposes of subsection (7), the court or tribunal may give approval on such conditions, including conditions about the return or destruction of copies or reproductions made, as the court or tribunal thinks fit.

(9) This section does not apply to the production of a report under section 124B(1) in proceedings other than for the prosecution of an offence mentioned in section 124F(2)(d) but if a court or tribunal grants leave for the purposes of section 124G(2)(b) in relation to a report, subsections (5) to (8) apply as if the report had been produced in response to a requirement mentioned in subsection (2).

[Section 238 amended: No. 35 of 2006 s. 203; No. 26 of 2008 s. 8; No. 49 of 2010 s. 85; No. 18 of 2021 s. 76.]

239. Objection to disclosure of certain information during legal proceedings

(1) A person may, in any legal proceedings, object to disclosing information obtained by, or made available to, the person in the performance of functions under this Act, or in the provision of

social services under an agreement referred to in section 15(1), on the grounds that —

(a) its disclosure endangers, or is likely to endanger, a person's safety or psychological health; or

(b) it is a record of confidential counselling with a child or a member of a child's family; or

(c) it is information personal to a child, a member of a child's family or a child's carer and the person reasonably believes that it is not materially relevant to the proceedings.

(2) If an objection is made under subsection (1), the court or tribunal concerned must consider the objection and may order the disclosure of the information if satisfied that —

(a) it is materially relevant to the proceedings; and

(b) there is compelling reason in the public interest for its disclosure.

(3) For the purpose of enabling the court or tribunal to decide whether to make an order under subsection (2), the court or tribunal may direct the person to disclose the information to the court or tribunal in private and may give directions as to who may be present when the information is disclosed.

(4) The court or tribunal must deal with information disclosed under this section in a way that prevents, as far as practicable, its further disclosure.

[Section 239 amended: No. 18 of 2021 s. 71.]

240. Restrictions on disclosing notifier's identity

(1) In this section —

child means the child about whom information is given by the notifier, being the child —

(a) in respect of whose wellbeing concerns are raised; or

(b) believed to be the victim in respect of an allegation;

identifying information, in relation to a notifier, means information —

(a) that identifies the notifier; or

(b) that is likely to lead to the identification of the notifier; or

(c) from which the identity of the notifier could be deduced;

notifier means a person who —

(a) in good faith gives information, or causes information to be given, to the CEO or another officer that raises concerns about the wellbeing of a child; or

(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

(b) notifies the CEO of an allegation in accordance with a requirement to do so under regulations made under the *Child Care Services Act 2007*; or

(c) in good faith provides information on the basis of which the CEO is notified as mentioned in paragraph (b); or

(d) in good faith is otherwise concerned in notifying the CEO as mentioned in paragraph (b) or causing the CEO to be so notified,

but does not include a reporter as defined in section 124A.

(2) A person who, in the course of duty, becomes aware of the identity of a notifier, must not disclose identifying information to another person unless —

(a) the disclosure is made —

(i) for the purpose of, or in connection with, performing functions under this Act or the *Child Care Services Act 2007*; or

(ii) with the written consent of the notifier; or

(iii) to or by a police officer for the purpose of, or in connection with —

(I) an investigation of a suspected offence under a written law in relation to the child; or

(II) the conduct of a prosecution of an offence under a written law in relation to the child;

or

(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

(iv) for the purpose of, or in connection with, the prosecution of an offence under —

(I) this subsection in relation to the notifier; or

(II) section 244 in relation to the notification; or

(III) the *Child Care Services Act 2007* that is prescribed for the purposes of this subparagraph and that is in relation to the child or the notifier;

or

(v) by an officer for the purposes of protection proceedings in relation to the child; or

(vi) by an officer for the purposes of an application under section 94 for the review of a decision relating to the child; or

(vii) by an officer for the purposes of a matter or proceedings relating to the child arising under the *Family Law Act 1975* of the Commonwealth Part VII or the *Family Court Act 1997* Part 5; or

(viii) by an officer for the purposes of an application to, or appeal from a decision of, the Family Court under the *Adoption Act 1994* that relates to the child; or

(ix) by an officer for the purposes of any other legal proceedings of a kind prescribed for the purposes of this paragraph and relating to the child; or

(x) in legal proceedings with the leave of the court or tribunal concerned;

or

(b) the identifying information has already been disclosed in legal proceedings and the court or tribunal concerned has not made an order prohibiting further disclosure.

Penalty for this subsection: a fine of $24 000 and imprisonment for 2 years.

(3) In any legal proceedings a person must not disclose, or be asked to disclose, identifying information in respect of a notifier unless —

(a) the proceedings are for the prosecution of an offence mentioned in subsection (2)(a)(iv); or

(b) the person is an officer and the proceedings are of a kind mentioned in subsection (2)(a)(v) to (ix) inclusive; or

(c) leave of the court or tribunal concerned has first been obtained.

(4) The court or tribunal must not grant leave unless —

(a) it is satisfied that —

(i) the identifying information is of critical importance in the proceedings; and

(ii) there is compelling reason in the public interest for disclosure of the identifying information;

or

(b) the notifier consents to the disclosure of the identifying information.

(5) An application for leave to disclose, or to ask a person to disclose, identifying information —

(a) must not, except as authorised by the court or tribunal, be heard in public; and

(b) must be dealt with in a way that protects, as far as practicable, the identity of the notifier pending a decision on the application.

[Section 240 amended: No. 26 of 2008 s. 9; No. 49 of 2010 s. 79 and 85; No. 18 of 2021 s. 76.]

241. Restrictions on disclosing information obtained under this Act

(1) This section applies to a person who is or has been engaged in —

(a) the performance of functions under this Act; or

(b) the provision of social services under an agreement referred to in section 15(1).

(2) A person to whom this section applies must not, directly or indirectly, record, disclose or make use of information obtained in the course of duty, except —

(a) for the purpose of, or in connection with, performing functions under this Act; or

(b) for the purpose of, or in connection with, providing social services under an agreement referred to in section 15(1); or

(c) for the purpose of the investigation of any suspected offence under this Act or the conduct of proceedings against any person for an offence under this Act; or

(d) for the purpose of protection proceedings; or

(e) as required or allowed under this Act or another written law; or

(f) with the written consent of the Minister or person to whom the information relates; or

(g) in prescribed circumstances.

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

(3) Subsection (2) is not to be taken to permit the disclosure of identifying information as defined in section 124A or 240 if its disclosure is prohibited under section 124F or 240.

(4) Subsection (2) is not to be taken to prevent the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

(5) If information is lawfully disclosed under this section, this section does not prevent the further disclosure of the information, or the recording or use of the information, for the purpose for which the disclosure was made.

[Section 241 amended: No. 26 of 2008 s. 10; No. 49 of 2010 s. 85; No. 18 of 2021 s. 76.]

Part 10A — Enforcement

[Heading inserted: No. 18 of 2021 s. 72.]

Division 1 — Preliminary

[Heading inserted: No. 18 of 2021 s. 72.]

241A. Terms used

In this Part —

authorised purpose means —

(a) for an authorised officer — investigating a suspected offence under this Act; or

(b) for an industrial inspector or an authorised officer designated under section 25 as an authorised officer for Part 7 — investigating a suspected offence under that Part or monitoring compliance with that Part;

entry warrant has the meaning given in section 241L;

magistrate means a magistrate of the Court or a magistrate of the Magistrates Court;

record means a record of information, irrespective of how the information is recorded or stored or able to be recovered and includes —

(a) any thing from which images, sounds or writings can be reproduced, with or without the aid of anything else; and

(b) any thing on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means;

relevant record means a record or document that —

(a) is required to be kept under this Act; or

(b) contains information that is or may be relevant to an offence under this Act.

[Section 241A inserted: No. 18 of 2021 s. 72.]

241B. Application of Part

(1) The powers conferred by this Part on an industrial inspector are in addition to, and do not limit, the powers conferred by the *Industrial Relations Act 1979*.

(2) The powers conferred by this Part may be exercised in relation to a suspected offence under this Act, or other conduct, whether occurring before or after the commencement of the *Children and Community Services Amendment Act 2021* section 72.

[Section 241B inserted: No. 18 of 2021 s. 72.]

Division 2 — General powers

[Heading inserted: No. 18 of 2021 s. 72.]

241C. Entry to places

(1) An authorised officer or industrial inspector may, for an authorised purpose, enter a place if —

(a) its occupier gives informed consent to the entry; or

(b) the entry is authorised by an entry warrant.

(2) An occupier gives informed consent to entry to a place if the occupier gives consent after being informed by an authorised officer or industrial inspector —

(a) of the powers the officer or inspector wants to exercise in respect of the place; and

(b) of the reasons why the officer or inspector wants to exercise those powers; and

(c) that the occupier can refuse to consent to the officer or inspector entering the place.

(3) To investigate a suspected offence under Part 7 or monitor compliance with that Part, an authorised officer or industrial inspector may, at any reasonable time, enter a place in which —

(a) a child is employed; or

(b) the officer or inspector believes on reasonable grounds a child is, or may in the future be, employed.

(4) Entry to a place under subsection (3) may be without informed consent of its occupier or an entry warrant.

[Section 241C inserted: No. 18 of 2021 s. 72.]

241D. Powers after entering place

An authorised officer or industrial inspector who enters a place under section 241C may, for an authorised purpose, do any of the following —

(a) inspect the place and any thing at the place;

(b) search the place and any thing at the place;

(c) measure, test, photograph or film any part of the place or any thing at the place;

(d) take any thing, or a sample of or from any thing, at the place for analysis or testing;

(e) operate equipment or facilities at the place or direct a person at the place to do so;

(f) make a copy of, or take an extract from, any record or document at the place;

(g) seize any thing that is or may afford evidence of an offence under this Act;

(h) direct (orally or in writing) the occupier of the place, or a person at the place, to give the officer or inspector such assistance as the officer or inspector reasonably requires.

[Section 241D inserted: No. 18 of 2021 s. 72.]

241E. Directions to provide information or documents

(1) An authorised officer or industrial inspector may, for an authorised purpose, do any of the following —

(a) direct a person —

(i) to give information; or

(ii) to answer a question put to the person;

(b) direct a person to produce a record or document that is in the person's possession or under the person's control;

(c) make a copy of a record or document produced in response to a direction under paragraph (b).

(2) A direction under subsection (1)(a) —

(a) must specify the time at or within which the information or answer is to be given; and

(b) may require that the information or answer —

(i) be given orally or in writing; and

(ii) be given at, or sent or delivered to, a place specified in the direction; and

(iii) in the case of written information or a written answer, be sent or delivered by a means specified in the direction; and

(iv) be verified by statutory declaration.

(3) A direction under subsection (1)(b) —

(a) must specify the time at or within which the record or document is to be produced; and

(b) may require that the record or document be produced —

(i) at a place specified in the direction; and

(ii) by a means specified in the direction.

(4) A person is not excused from complying with a direction under this section to give information, answer a question or produce a record or document on the ground that complying with the

direction might tend to incriminate the person or render the person liable to a penalty.

(5) However, any information or answer given by an individual in compliance with such a direction is not admissible in evidence against the individual in criminal or civil proceedings other than proceedings for perjury or for an offence under section 244.

(6) In giving a direction to a person under this section, an authorised officer or industrial inspector must explain to the person that it is an offence to contravene the direction and the effect of subsections (4) and (5).

(7) A direction under this section may be given orally or in writing.

[Section 241E inserted: No. 18 of 2021 s. 72.]

241F. Additional powers for relevant records

An authorised officer or industrial inspector may, for an authorised purpose, do any of the following —

(a) operate a computer or other thing on which the officer or inspector suspects on reasonable grounds a relevant record is or may be stored or direct a person who has the custody or control of the computer or thing to do so;

(b) direct (orally or in writing) a person who is or appears to be in control of a record or document that the officer or inspector suspects on reasonable grounds is a relevant record to give the officer or inspector a translation, code, password or other information necessary to gain access to or interpret and understand the record or document;

(c) make a copy of or take an extract from, or download or print out, or photograph or film, a record or document that the officer or inspector suspects on reasonable grounds is a relevant record;

(d) seize a record or document that the officer or inspector suspects on reasonable grounds is a relevant record and

retain it for as long as is necessary for the purposes of this Act;

(e) seize a computer or other thing on which the officer or inspector suspects on reasonable grounds a relevant record is or may be stored and retain it for as long as is necessary for the purposes of this Act;

(f) take reasonable measures to secure or protect a relevant record, or computer or other thing on which a relevant record is or may be stored, against damage or unauthorised removal or interference.

[Section 241F inserted: No. 18 of 2021 s. 72.]

241G. Contravention of directions

A person who, without reasonable excuse, fails to comply with a direction given to the person under this Division commits an offence.

Penalty: a fine of $12 000.

[Section 241G inserted: No. 18 of 2021 s. 72.]

241H. Exercise of power may be recorded

An authorised officer or industrial inspector may record the exercise of a power under this Division, including by making an audiovisual recording.

[Section 241H inserted: No. 18 of 2021 s. 72.]

241I. Assistance and use of force to exercise power

(1) An authorised officer or industrial inspector exercising a power under this Division may authorise as many other people to assist in exercising the power as are reasonably necessary in the circumstances.

(2) In exercising the power, an authorised officer or industrial inspector, and a person authorised under subsection (1) to assist

the officer or inspector, may use force that is reasonably necessary in the circumstances.

[Section 241I inserted: No. 18 of 2021 s. 72.]

241J. Procedure on seizing things

(1) If an authorised officer or industrial inspector seizes any thing under this Division, the officer or inspector must give the person who was in possession of it a receipt for it in the approved form.

(2) If an authorised officer or industrial inspector seizes any thing under this Division, the officer or inspector must, if practicable, allow a person who is otherwise entitled to possession of it to have reasonable access to it.

(3) An authorised officer or industrial inspector who seizes any thing under this Division may take reasonable measures to prevent the thing being concealed, lost, damaged or destroyed.

(4) If it is not practicable to move any thing that has been seized, an authorised officer or industrial inspector may do whatever is reasonably necessary to secure it where it is situated and to notify people that it is under seizure.

(5) A person must not, without the approval of an authorised officer or industrial inspector, interfere or deal with any thing that the person knows, or ought reasonably to know, has been seized by an authorised officer or industrial inspector.

Penalty for this subsection: a fine of $12 000.

[Section 241J inserted: No. 18 of 2021 s. 72.]

241K. Application of *Criminal and Found Property Disposal Act 2006*

(1) The *Criminal and Found Property Disposal Act 2006* applies to any thing that is seized under this Division.

(2) For the purposes of the *Criminal and Found Property Disposal Act 2006*, the Department is a prescribed agency.

[Section 241K inserted: No. 18 of 2021 s. 72.]

Division 3 — Entry warrants

[Heading inserted: No. 18 of 2021 s. 72.]

241L. Application for entry warrant

(1) An authorised officer or industrial inspector may apply to a magistrate for a warrant (an ***entry warrant***) authorising the entry of a place for an authorised purpose.

(2) Subject to this section —

(a) an application for an entry warrant must be in writing and include the information prescribed by the regulations; and

(b) the grounds of the application must be verified by affidavit; and

(c) the applicant must appear in person before the magistrate to provide information in support of the application on oath.

(3) If the warrant is needed urgently and the applicant reasonably suspects that a magistrate is not available within a reasonable distance of the applicant, an application for an entry warrant may be made by remote communication.

(4) A magistrate must reject an application for an entry warrant made by remote communication unless satisfied that —

(a) the warrant is needed urgently; and

(b) a magistrate is not available within a reasonable distance of the applicant.

(5) If an application for an entry warrant is made by remote communication and it is not practicable to send the magistrate written material —

(a) the application may be made orally; and

(b) the magistrate must make a written record of the application and information given in support of it; and

(c) if the warrant is issued — the applicant must, as soon as practicable, send the magistrate an affidavit verifying the application and information given in support of it.

[Section 241L inserted: No. 18 of 2021 s. 72.]

241M. Issue and content of entry warrant

(1) On an application for an entry warrant, a magistrate may issue the warrant if satisfied that it is necessary for an authorised officer or industrial inspector to enter a place for an authorised purpose.

(2) An entry warrant must contain the following information —

(a) a reasonably particular description of the place to which it relates;

(b) a reasonably particular description of the authorised purpose for which entry to the place is required;

(c) if the authorised purpose is investigating a suspected offence under this Act — the provision of the Act suspected of being contravened;

(d) the period, not exceeding 14 days, during which it may be executed;

(e) the name of the magistrate who issued it;

(f) the date and time when it was issued.

(3) An entry warrant must be in the form prescribed by the regulations.

(4) If a magistrate issues an entry warrant on an application made by remote communication —

(a) if it is practicable to send a copy of the original warrant to the applicant by remote communication, the magistrate must do so; or

(b) if that is not practicable —

(i) the magistrate must provide the applicant by remote communication with the information that must be set out in the warrant; and

(ii) the applicant must complete a form of warrant with the information received and give the magistrate a copy of the form as soon as practicable after doing so; and

(iii) the magistrate must attach the copy of the form to the original warrant and any affidavit received from the applicant and make them available for collection by the applicant.

(5) The copy of the original warrant sent, or the form of the warrant completed, under subsection (4) has the same force and effect as the original warrant.

[Section 241M inserted: No. 18 of 2021 s. 72.]

241N. Refusal of entry warrant

If a magistrate refuses to issue an entry warrant, the magistrate must record on the application, or the written record of the application, the fact of, the date and time of, and the reasons for, the refusal.

[Section 241N inserted: No. 18 of 2021 s. 72.]

241O. Effect of entry warrant

(1) An entry warrant comes into force when it is issued by a magistrate.

(2) An entry warrant may be executed according to its terms by an authorised officer or industrial inspector entitled to enter the place for the authorised purpose specified in the warrant.

(3) However, if an applicant for an entry warrant contravenes section 241L(5)(c) or 241M(4)(b)(ii), evidence obtained under the entry warrant is not admissible in proceedings in a court or tribunal.

[Section 241O inserted: No. 18 of 2021 s. 72.]

Part 11 — Other matters

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.

[Section 242A inserted: No. 10 of 2009 s. 11.]

242. Obstruction

A person must not obstruct or hinder a person who is performing or attempting to perform a function under this Act.

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

[Section 242 amended: No. 49 of 2010 s. 85.]

243. Impersonating assessor, authorised officer or industrial inspector

A person must not falsely represent, by words or conduct, that the person or another person is an assessor, authorised officer or industrial inspector.

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

[Section 243 amended: No. 49 of 2010 s. 21 and 85; No. 18 of 2021 s. 73.]

244. False information in applications etc.

A person must not give information orally or in writing in, or in relation to, an application, report or other document prepared for the purposes of this Act that the person knows to be false or misleading in a material respect.

Penalty: a fine of $6 000.

[Section 244 amended: No. 49 of 2010 s. 85.]

245. Legal proceedings, commencement of

(1) Proceedings under this Act for an offence (other than an offence under section 101(1), 102 or 192(1) or (2)) or in respect of any other matter may be commenced in the name of the CEO by the CEO or a person authorised to do so by the CEO.

(2) In any proceedings no proof is required of —

(a) the appointment of the CEO; or

(b) the authorisation of a person under subsection (1),

but an averment in a prosecution notice that the person is so appointed or authorised is to be taken to be proved unless the contrary is proved.

(3) Subsection (1) does not limit the ability of a person to commence or conduct the prosecution of an offence if the person has authority at law to do so.

[Section 245 amended: No. 84 of 2004 s. 80.]

246. Protection from liability for wrongdoing

(1) A civil action does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.

(2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.

(3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.

(4) A person who, at the request of a police officer, authorised officer or industrial inspector, assists the officer or inspector in the exercise of a power under this Act is to be taken, for the purposes of this section, to be performing a function under this Act.

(5) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

[Section 246 amended: No. 49 of 2010 s. 80; No. 18 of 2021 s. 74.]

247. Effect of provision requiring document to be given to particular person or child

(1) A person is not required to comply with a provision of this Act that requires the person to give a document to another person, or to ensure that a document is given to another person, if, after reasonable inquiries, the other person cannot be found.

(2) Subsection (1) does not apply if the document is to be given to a party to protection proceedings.

Note for this subsection:

Section 154 gives the Children's Court power to dispense with service in protection proceedings.

(3) Without limiting subsection (1), a person is not required to comply with a provision of this Act that requires the person to give a document to a child, or to ensure that a document is given to a child, if the person considers that the child does not have sufficient maturity to understand the document or the matter to which the document relates.

248. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) Without limiting subsection (1) the regulations may create offences and provide, in respect of an offence so created, for the imposition of a penalty not exceeding $6 000.

249. Review of Act

(1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review —

(a) as soon as practicable after the 5th anniversary of the day on which the *Children and Community Services Amendment Act 2021* section 75 comes into operation; and

(b) after that, at intervals of not more than 5 years.

(2) Without limiting subsection (1), the first review under that subsection must address —

(a) recommendations 4 and 11 set out in Report 44 of the Standing Committee on Legislation of the Legislative Council; and

(b) the need for the continuation of section 241E(4) and (5).

(3) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5th anniversary or the expiry of the period of 5 years, as the case may be.

[Section 249 inserted: No. 18 of 2021 s. 75.]

250. Repeal, transitional and savings provisions

(1) The following Acts are repealed —

(a) the *Child Welfare Act 1947*;

(b) the *Community Services Act 1972*;

(c) the *Welfare and Assistance Act 1961*.

(2) The following regulations are repealed —

(a) the *Child Welfare Regulations 1977*;

(b) the *Community Services (Child Care) Regulations 1988*;

(c) the *Community Services (Outside School Hours Care) Regulations 2002*;

(d) the *Community Welfare Organizations Regulations 1980*;

(e) the *Welfare and Assistance Act Regulations 1962*.

(3) Schedule 1 sets out transitional and savings provisions.

[Section 250 amended: No. 49 of 2010 s. 82.]

*[**251.** Omitted under the Reprints Act 1984 s. 7(4)(e).]*

Schedule 1 — Transitional and savings provisions

[s. 250(3)]

Division 1 — Introductory matters

1. Terms used

In this Schedule, unless the contrary intention appears —

authorisation means —

(a) an approval under the *Child Welfare Act 1947* section 111; or

(b) a licence under the *Child Welfare Act 1947* section 112;

commencement day means the day on which section 250 comes into operation;

existing appeal means an appeal under the *Children's Court of Western Australia Act 1988* section 42(1) or 43(4) that has not been finally determined before commencement day;

existing order means an order made under the *Child Welfare Act 1947* section 30 that is in force immediately before commencement day;

existing proceedings means proceedings under the *Child Welfare Act 1947* section 30 that have not been finally determined before commencement day;

extended order means an existing order that applies to a child after the child reaches 18 years of age because of an extension under the *Child Welfare Act 1947* section 49(1);

repealed Act means an Act repealed by section 250.

2. *Interpretation Act 1984* not affected

The provisions of this Schedule do not affect the application of the *Interpretation Act 1984* to and in relation to the repeals effected by section 250.

Division 2 — Provisions related to repeal of *Child Welfare Act 1947*

3. Existing orders

(1) On and after commencement day an existing order that applies to a child until the child reaches 18 years of age has effect as if it were a protection order (until 18).

(2) On and after commencement day an existing order, other than an existing order referred to in subclause (1) or an extended order, has effect as if it were a protection order (time-limited).

(3) An order to which subclause (2) applies has effect —

(a) if the period until the order is due to expire is less than 2 years, for that period; or

(b) in any other case, for a period of 2 years from commencement day.

4. Extended orders

On and after commencement day the *Child Welfare Act 1947* continues to apply to and in respect of an extended order as if that Act had not been repealed.

5. Existing proceedings

(1) Existing proceedings are to be dealt with and determined under the *Child Welfare Act 1947* as if that Act had not been repealed.

(2) If, at the conclusion of existing proceedings, an order commits a child to the care of the Department or places the child under the control of the Department, the order has effect —

(a) if the order applies to the child until the child reaches 18 years of age, as if it were a protection order (until 18); or

(b) in any other case, as if it were a protection order (time-limited).

(3) An order to which subclause (2)(b) applies has effect —

(a) if a period of less than 2 years is specified in the order, for that period; or

(b) in any other case, for a period of 2 years from the day on which the order is made.

(4) An order made under the *Child Welfare Act 1947* section 29(3aa) that is in force immediately before commencement day has effect on and after that day as if that Act had not been repealed.

6. Existing appeals

(1) An existing appeal is to be dealt with and determined as if —

(a) the *Children's Court of Western Australia Act 1988* had not been amended by this Act; and

(b) the *Child Welfare Act 1947* had not been repealed.

(2) If, at the conclusion of an existing appeal, an order commits a child to the care of the Department or places a child under the control of the Department, the order has effect —

(a) if the order applies to the child until the child reaches 18 years of age, as if it were a protection order (until 18); or

(b) in any other case, as if it were a protection order (time-limited).

(3) An order to which subclause (2)(b) applies has effect —

(a) if a period of less than 2 years is specified in the order, for that period; or

(b) in any other case, for a period of 2 years from the day on which the order is made.

7. Records under s. 11

On and after commencement day records kept under the *Child Welfare Act 1947* section 11 in respect of wards and children placed under the control of the Department are to be taken to be records kept by the CEO for the purposes of section 128.

8. Operation of orders under s. 13 or 14

An order made under the *Child Welfare Act 1947* section 13 or 14 that is in force immediately before commencement day ceases to have effect on that day.

9. Children detained under s. 29(3a)

(1) A child who immediately before commencement day is detained in a hospital under the *Child Welfare Act 1947* section 29(3a) is to be taken on and after that day to be kept in the hospital under section 40(2).

(2) If subclause (2) applies to a child the period for which the child was detained in the hospital before commencement day is to be taken into account for the purposes of section 40(7).

10. Orders under s. 40A

An order made under the *Child Welfare Act 1947* section 40A that is in force immediately before commencement day has effect on and after that day as if it were an order under section 73.

11. Applications under s. 47

An application made to the Minister or the Court under the *Child Welfare Act 1947* section 47(2) that has not been finally determined immediately before commencement day is to be dealt with and determined under that Act as if it had not been repealed.

12. Notices under s. 107A or 107B

A notice under the *Child Welfare Act 1947* section 107A(4) or 107B(4) that is in force immediately before commencement day has effect on and after that day as if it were a notice under section 193(2).

13. Warrants under s. 67

A warrant issued under the *Child Welfare Act 1947* section 67 that is in force immediately before commencement day has effect on and after that day as if it had been issued under this Act.

14. Authorisations under s. 111 or 112

(1) An authorisation that is in force immediately before commencement day has effect on and after that day as if it were an approval under section 104(3).

(2) Despite section 104(4)(b), an authorisation referred to in subclause (1) has effect, under and subject to this Act, for the remainder of the period for which it would have had effect if the *Child Welfare Act 1947* had not been repealed.

15. Orders and proceedings under Part VIIIA

(1) An application under the *Child Welfare Act 1947* Part VIIIA that has not been finally determined immediately before commencement day is to be dealt with and determined under the corresponding provision of Part 6.

(2) An interim order made under the *Child Welfare Act 1947* section 120P that is in force immediately before commencement day has effect on and after that day as if it were an interim order under the corresponding provision of Part 6.

(3) An appeal under the *Child Welfare Act 1947* section 120L or 120Q that has not been finally determined immediately before commencement day is to be dealt with and determined as if it were an appeal under the corresponding provision of Part 6.

16. Orders under s. 146A

An order made under the *Child Welfare Act 1947* section 146A that is in force immediately before commencement day has effect on and after that day as if that Act had not been repealed.

Division 3 — Provisions related to repeal of *Community Services Act 1972*

17. Status of Ministerial Body

The Community Development Ministerial Body established by section 18 is a continuation of, and the same legal person, as the body corporate established by the *Community Services Act 1972* section 6 as in force before commencement day.

18. Licences and permits under s. 17B

(1) A licence or permit issued under the *Community Services Act 1972* section 17B that is in force immediately before commencement day

has effect on and after that day as if it were a licence issued under Part 8.

(2) A licence or permit referred to in subclause (1) has effect, under and subject to this Act, for the remainder of the period specified in the licence or permit.

19. Applications under s. 17B

An application for a licence or permit under the *Community Services Act 1972* section 17B that has not been finally determined immediately before commencement day is to be dealt with and determined as if it were an application for a licence under Part 8.

20. Appeals under s. 17C

An appeal under the *Community Services Act 1972* section 17C that has not been finally determined immediately before commencement day is to be dealt with and determined as if that Act had not been repealed.

21. Bodies established under s. 22

(1) A board, committee or council established under the *Community Services Act 1972* section 22 that is in existence immediately before commencement day continues on and after that day as an advisory body under section 27.

(2) A person who is a member of a board, committee or council referred to in subclause (1) immediately before commencement day continues in office on and after that day for the remainder of the term of his or her appointment.

(3) An order under the *Community Services Act 1972* section 22(1) that is in force immediately before commencement day has effect on and after that day as if it were an instrument made by the Minister under section 27(5).

Division 4 — Provisions related to repeal of *Welfare and Assistance Act 1961*

22. Advances and grants of assistance

(1) An advance or grant of assistance under the *Welfare and Assistance Act 1961* that is in force immediately before commencement day has effect on and after that day as if it were assistance provided under Part 9.

(2) An advance or grant of assistance referred to in subclause (1) is subject to the same terms and conditions (if any) as applied to it immediately before commencement day.

23. Applications for assistance

An application for assistance under the *Welfare and Assistance Act 1961* that has not been finally determined immediately before commencement day is to be dealt with and determined as if it were an application for assistance under section 233.

Division 5 — General provisions for transition to this Act

[Heading amended: No. 49 of 2010 s. 83(1).]

24. References to repealed Acts

If in a written law or other document or instrument there is a reference to a repealed Act, the reference is to be read, unless the context otherwise requires, as if it had been amended to be a reference to this Act.

25. Powers in relation to transitional matters

(1) If there is no sufficient provision in this Schedule for dealing with a transitional matter the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to that matter.

(2) Regulations made under subclause (1) may provide that specific provisions of this Act —

(a) do not apply; or

(b) apply with specific modifications,

to or in relation to any matter.

(3) Regulations made under subclause (1) must be made within 12 months after commencement day.

(4) If regulations made under subclause (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than commencement day, the regulations have effect according to their terms.

(5) In subclause (4) —

specified means specified or described in the regulations.

(6) If regulations contain a provision referred to in subclause (4), the provision does not operate so as —

(a) to affect in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of publication of those regulations; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

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

[Heading inserted: No. 49 of 2010 s. 83(2).]

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.

[Clause 26 inserted: No. 49 of 2010 s. 83(2).]

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.

[Clause 27 inserted: No. 49 of 2010 s. 83(2).]

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.

[Clause 28 inserted: No. 49 of 2010 s. 83(2).]

Division 7 — Provisions for *Children and Community Services Legislation Amendment and Repeal Act 2015*

[Heading inserted: No. 23 of 2015 s. 9.]

29. Terms used

In this Division —

authorised officer (Child Protection) means a person designated under the PSR Act section 35 as an authorised officer by the CEO (Child Protection) (as defined in the PSR Act section 3);

authorised officer (Education) means a person designated under the PSR Act section 35 as an authorised officer by the CEO (Education) (as defined in the PSR Act section 3);

CEO (Education), except in the definition of ***authorised officer (Education)***, has the meaning given in section 131A;

commencement day means the day on which the *Children and Community Services Legislation Amendment and Repeal Act 2015* section 7 comes into operation;

departmental parenting agreement means an agreement —

(a) that is about one or more of the matters referred to in section 131E; and

(b) that is not a PSR Act parenting agreement; and

(c) that was entered into by an officer before commencement day; and

(d) that covers a period that had not expired immediately before commencement day; and

(e) to which either or both of the following descriptions apply —

(i) the agreement relates to a child who has reached 15 years of age but has not reached 18 years of age;

(ii) the agreement was entered into by an adult, other than a parent of the child, with whom the child to whom the agreement relates usually lives and who provides day-to-day care for the child;

PSR Act means the *Parental Support and Responsibility Act 2008* as in force immediately before commencement day;

PSR Act parenting agreement means a responsible parenting agreement that —

(a) was entered into under the *Parental Support and Responsibility Act 2008* before commencement day; and

(b) covers a period that had not expired immediately before commencement day.

[Clause 29 inserted: No. 23 of 2015 s. 9.]

30. PSR Act parenting agreements

(1) On and after commencement day —

(a) a PSR Act parenting agreement entered into by an authorised officer (Child Protection) is to be taken to be a responsible parenting agreement entered into by the CEO under section 131D; and

(b) a reference in a PSR Act parenting agreement referred to in paragraph (a) to the authorised officer (Child Protection) who entered into the agreement is to be taken to be a reference to the CEO.

(2) On and after commencement day —

(a) a PSR Act parenting agreement entered into by an authorised officer (Education) is to be taken to be a responsible parenting agreement entered into by the CEO (Education) under section 131D; and

(b) a reference in a PSR Act parenting agreement referred to in paragraph (a) to the authorised officer (Education) who entered into the agreement is to be taken to be a reference to the CEO (Education).

[Clause 30 inserted: No. 23 of 2015 s. 9.]

31. Departmental parenting agreements

On and after commencement day —

(a) a departmental parenting agreement is to be taken to be a responsible parenting agreement entered into by the CEO under section 131D; and

(b) a reference in a departmental parenting agreement to the officer who entered into the agreement is to be taken to be a reference to the CEO.

[Clause 31 inserted: No. 23 of 2015 s. 9.]

[Schedule 2 omitted under the Reprints Act 1984 s. 7(4)(e).]

Notes

This is a compilation of the *Children and Community Services Act 2004* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Children and Community Services Act 2004	34 of 2004	20 Oct 2004	s. 1 and 2: 20 Oct 2004; s. 3 and 102: 22 Jan 2005 (see s. 2 and *Gazette* 21 Jan 2005 p. 257); Act other than s. 1-3 and 102 and Sch. 2 cl. 9(2) and 25: 1 Mar 2006 (see s. 2 and *Gazette* 14 Feb 2006 p. 695); Sch. 2 cl. 9(2): 11 Mar 2006 (see s. 2 and *Gazette* 10 Mar 2006 p. 987); Sch. 2 cl. 25 deleted by No. 8 of 2009 s. 32(4)
Working with Children (Criminal Record Checking) Act 2004 Pt. 5	65 of 2004	8 Dec 2004	Pt. 5 other than s. 50-52: 1 Jan 2006 (see s. 2 and *Gazette* 30 Dec 2005 p. 6875); s. 50-52: 1 Jan 2007 (see s. 2 and *Gazette* 29 Dec 2006 p. 5867)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80 and 85(4)	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53))
Family Legislation Amendment Act 2006 Pt. 6 Div. 1	35 of 2006	4 Jul 2006	15 Jul 2006 (see s. 2 and *Gazette* 14 Jul 2006 p. 2559)
Child Care Services Act 2007 Pt. 7 Div. 1 [2]	19 of 2007	3 Jul 2007	10 Aug 2007 (see s. 2(b) and *Gazette* 9 Aug 2007 p. 4071)
Reprint 1: The *Children and Community Services Act 2004* as at 4 Apr 2008 (includes amendments listed above)			
Legal Profession Act 2008 s. 642	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and *Gazette* 27 Feb 2009 p. 511)

Short title	Number and year	Assent	Commencement
Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008 s. 4-11	26 of 2008	19 Jun 2008	1 Jan 2009 (see s. 2(b) and *Gazette* 9 Dec 2008 p. 5107)
Surrogacy Act 2008 Pt. 4 Div. 2	47 of 2008	10 Dec 2008	1 Mar 2009 (see s. 2(b) and *Gazette* 27 Feb 2009 p. 512)
Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 32	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
Parliamentary Commissioner Amendment Act 2009 s. 11	10 of 2009	29 Jun 2009	30 Jun 2009 (see s. 2(b))
Reprint 2: The *Children and Community Services Act 2004* as at 27 Nov 2009 (includes amendments listed above)			
Health Practitioner Regulation National Law (WA) Act 2010 Pt. 5 Div. 8	35 of 2010	30 Aug 2010	18 Oct 2010 (see s. 2(b) and *Gazette* 1 Oct 2010 p. 5075-6)
Public Sector Reform Act 2010 s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and *Gazette* 5 Nov 2010 p. 5563)
Children and Community Services Amendment Act 2010 Pt. 2 Div. 1 and Pt. 3-5	49 of 2010	24 Nov 2010	31 Jan 2011 (see s. 2(b) and *Gazette* 28 Jan 2011 p. 241)
Reprint 3: The *Children and Community Services Act 2004* as at 4 Mar 2011 (includes amendments listed above)			
Road Traffic Legislation Amendment Act 2012 Pt. 4 Div. 6	8 of 2012	21 May 2012	27 Apr 2015 (see s. 2(d) and *Gazette* 17 Apr 2015 p. 1371)
Education and Care Services National Law (WA) Act 2012 Pt. 4 Div. 2	11 of 2012	20 Jun 2012	1 Aug 2012 (see s. 2(c) and *Gazette* 25 Jul 2012 p. 3411)
Teacher Registration Act 2012 s. 163	16 of 2012	3 Jul 2012	7 Dec 2012 (see s. 2(b) and *Gazette* 16 Nov 2012 p. 5637)
Statutes (Repeals and Minor Amendments) Act 2014 s. 18	17 of 2014	2 Jul 2014	6 Sep 2014 (see s. 2(b) and *Gazette* 5 Sep 2014 p. 3213)

Short title	Number and year	Assent	Commencement
Declared Places (Mentally Impaired Accused) Act 2015 s. 82	4 of 2015	3 Mar 2015	17 Jun 2015 (see s. 2(b) and *Gazette* 16 Jun 2015 p. 2071)
Reprint 4: The *Children and Community Services Act 2004* as at 10 Jul 2015 (includes amendments listed above)			
Children and Community Services Legislation Amendment and Repeal Act 2015 Pt. 2 Div. 1 and Pt. 3	23 of 2015	17 Sep 2015	1 Jan 2016 (see s. 2(b) and *Gazette* 15 Dec 2015 p. 5027)
Local Government Legislation Amendment Act 2016 Pt. 3 Div. 6	26 of 2016	21 Sep 2016	21 Jan 2017 (see s. 2(b) and *Gazette* 20 Jan 2017 p. 648)
Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016 Pt. 3 Div. 2	49 of 2016	29 Nov 2016	1 Jul 2017 (see s. 2(b) and *Gazette* 7 Feb 2017 p. 1157)
Health Practitioner Regulation National Law (WA) Amendment Act 2018 s. 102	4 of 2018	19 Apr 2018	1 Dec 2018 (see s. 2(d) and *Gazette* 13 Nov 2018 p. 4427-8)
Reprint 5: The *Children and Community Services Act 2004* as at 22 Mar 2019 (includes amendments listed above)			
High Risk Serious Offenders Act 2020 s. 121	29 of 2020	9 Jul 2020	26 Aug 2020 (see s. 2(1)(c) and SL 2020/131 cl. 2)

Children and Community Services Amendment Act 2021 (other than s. 15, 32, 39 and 40)	18 of 2021	19 Oct 2021	s. 1 and 2: 19 Oct 2021 (see s. 2(a));
			Act other than s. 1, 2, 15, 32, 39, 40 and 52-54: 1 May 2022 (see s. 2(b) and (c) and SL 2022/50 cl. 2);
			s. 52(3), (8), (9) and (17)-(19), 53(1), (5), (10) and (11) and 54: 1 Nov 2022 (see s. 2(c) and SL 2022/167 cl. 2);
			s. 52(1), (4), (10), (11) and (13) and 53(2), (3) and (6): 1 Nov 2023 (see s. 2(c) and SL 2023/153 cl. 2);
			s. 52(5), (6), (14) and (15) and

Short title	Number and year	Assent	Commencement
			53(7) and (8): 1 May 2024 (see s. 2(c) and SL 2024/45 cl. 2); s. 52(2) and (12) and 53(4): 1 Nov 2024 (see s. 2(c) and SL 2024/223 cl. 2); s. 52(7), (16) and (20) and 53(9): 1 May 2025 (see s. 2(c) and SL 2025/58 cl. 2)
Legal Profession Uniform Law Application Act 2022 Pt. 17 Div. 2	9 of 2022	14 Apr 2022	1 Jul 2022 (see s. 2(c) and SL 2022/113 cl. 2)
Firearms Amendment Act 2022 s. 82	13 of 2022	18 May 2022	19 Nov 2022 (see s. 2(c) and SL 2022/186 cl. 2)
Firearms Act 2024 Pt. 17 Div. 3 Subdiv. 1	23 of 2024	27 Jun 2024	31 Mar 2025 (see s. 2(d) and SL 2024/289 cl. 2)
Police Legislation Amendment Act 2024 Pt. 5 Div. 1	33 of 2024	26 Sep 2024	20 Dec 2024 (see s. 2(1)(b) and SL 2024/277 cl. 2)
Births, Deaths and Marriages Registration Amendment (Sex or Gender Changes) Act 2024 Pt. 4 Div. 1	31 of 2024	26 Sep 2024	30 May 2025 (see s. 2(b) and SL 2025/80 cl. 2)
Education and Care Services National Law Application Act 2026 Pt. 6 Div. 7	2 of 2026	31 Mar 2026	1 May 2026 (see s. 2(1)(d) and SL 2026/50 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA legislation website.

Short title	Number and year	Assent	Commencement
Children and Community Services Amendment Act 2021 s. 15, 32, 39 and 40	18 of 2021	19 Oct 2021	To be proclaimed (see s. 2(c))

Short title	Number and year	Assent	Commencement
Evidence Act 2025 Pt. 12 Div. 7	15 of 2025	25 Sep 2025	18 Sep 2027 (see s. 2(e) and SL 2026/190 cl. 2)
Assisted Reproductive Technology and Surrogacy Act 2025 Pt. 17 Div. 3	19 of 2025	18 Dec 2025	To be proclaimed (see s. 2(c))

Other notes

1 The provision in this Act amending these Acts has been omitted under the *Reprints Act 1984* s. 7(4)(e).

2 The *Child Care Services Act 2007* Pt. 6 contains transitional provisions relating to the repealed Pt. 8 of this Act.

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

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Aboriginal child	3
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authorised officer (Education)	Sch. 1 cl. 29
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