

Western Australia

**Children and Community Services Amendment
(Reporting Sexual Abuse of Children) Act 2008**

As at 19 Jun 2008

No. 26 of 2008

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Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008

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Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008

No. 26 of 2008

An Act to amend the *Children and Community Services Act 2004* and as a consequence to amend the *Evidence Act 1906* and the *Freedom of Information Act 1992*.

[Assented to 19 June 2008]

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008*.

2. Commencement

This Act comes into operation as follows:

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, being a day that is later than 31 December 2008.

3. The Act amended

The amendments in this Act, except those in sections 12 and 13, are to the *Children and Community Services Act 2004*.

4. Section 23 amended

Section 23(5) is amended as follows:

- (a) in paragraph (c) by inserting after “standards” —
“
 or any principles of conduct applicable to the
 person’s employment
 ”;
- (b) by inserting “and” at the end of paragraph (a).

5. Division 9A inserted in Part 4

After section 124 the following Division is inserted —

“

Division 9A — Reporting sexual abuse of children

124A. Terms used in this Division

In this Division —

“**commencement day**” means the day on which the
Children and Community Services Amendment

(Reporting Sexual Abuse of Children) Act 2008
section 5 comes into operation;

“doctor” means a natural person who is registered as a medical practitioner under the *Medical Practitioners Act 2006*;

“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” has the meaning given in the *Nurses and Midwives Act 2006* section 3;

“nurse” has the meaning given in the *Nurses and Midwives Act 2006* section 3;

“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;

“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

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- (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, under the *Western Australian College of Teaching Act 2004*, is registered, provisionally registered or has a limited authority to teach; or
- (b) a person who is appointed under the *School Education Act 1999* section 236(2) as a member of the teaching staff of a community kindergarten; or
- (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.

124B. Matters concerning sexual abuse of children to be reported by certain persons

- (1) A person who —
 - (a) is a doctor, nurse, midwife, police officer or teacher; and
 - (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 doctor, nurse, midwife, police officer or teacher; and
 - (ii) on or after commencement day,

must report the belief as soon as practicable after forming the belief.

Penalty: \$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.

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- (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) A requirement 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 doctor, nurse, midwife, police officer or teacher.

124C. Reports: form and content

- (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: \$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 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
responsible 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
 - (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: \$6 000.

- (5) As soon as practicable after receiving a written report
the CEO must advise the reporter of the receipt.

124D. Reports: who receives copies

- (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.

124E. When a prosecution can be commenced

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.

124F. Confidentiality of reporter's identity

(1) In this section —

“the 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: \$24 000 and imprisonment for 2 years.

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.

124H. Orders, leave of courts etc.

- (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.

”.

6. Section 129 amended

- (1) Section 129(1) is amended as follows:

- (a) after paragraph (d) by deleting the full stop and inserting instead —

“

; 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*.

”;

- (b) by inserting “or” at the end of paragraphs (a) and (b).

- (2) Section 129(2) is amended as follows:

- (a) by inserting after “information” —

“ or making the report or notification ”;

- (b) in paragraph (c) by inserting after “standards” —

“

or any principles of conduct applicable to the person’s employment

”;

- (c) by inserting “and” at the end of paragraph (a).

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(3) After section 129(2) the following subsection is inserted —

“

(3) The protection given by subsection (1) 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), (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), (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.

”.

7. Section 142 amended

Section 142 is amended as follows:

(a) in paragraph (c) by inserting after “standards” —

“

or any principles of conduct applicable to the person’s employment

”;

(b) by inserting “and” at the end of paragraph (a).

8. Section 238 amended

After section 238(8) the following subsection is inserted —

“

(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).

”.

9. Section 240 amended

(1) Section 240(1) is amended by deleting the definition of “notifier” and inserting instead —

“

“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
- (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

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paragraph (b) or causing the CEO to be so notified,

but does not include a reporter as defined in section 124A;

“the 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.

”.

(2) Section 240(2)(a) is amended as follows:

- (a) in subparagraph (i) by deleting “Act;” and inserting instead —

“

Act or the Child Care Services Act 2007; or

”;

- (b) by deleting subparagraph (iii) and inserting instead —

“

(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

- (iv) for the purpose of, or in connection with, the prosecution of an offence under —
 - (I) section 240(2) 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

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- (x) in legal proceedings with the leave of the court or tribunal concerned;

”.

- (3) Section 240(3) is amended by deleting “leave of the court or tribunal concerned has first been obtained.” and inserting instead —

“

—

- (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.

”.

10. Section 241 amended

Section 241(3) is amended as follows:

- (a) by deleting “section 240” and inserting instead —
“ section 124A or 240 ”;
- (b) by deleting “that section.” and inserting instead —
“ section 124F or 240. ”.

11. Section 249 amended

- (1) After section 249(1) the following subsection is inserted —

“

- (1a) The Minister must carry out a review of the operation and effectiveness of the amendments made to this Act by the *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008* as soon as is practicable after the expiry of 3 years from the day on which section 5 of that Act comes into operation.

”.

- (2) Section 249(2) is amended by inserting after “subsection (1)” —
“ or (1a) ”.

12. Evidence Act 1906 amended

- (1) The amendment in this section is to the *Evidence Act 1906*.
(2) Section 19L(5) is amended by inserting after “section” —
“ 124F or ”.

13. Freedom of Information Act 1992 amended

- (1) The amendments in this section are to the *Freedom of Information Act 1992*.
(2) Schedule 1 clause 14(5) is amended after paragraph (b) by deleting the full stop and inserting —
“
; or
(c) a person who has made, or a person who is mentioned in, a report under the *Children and Community Services Act 2004* section 124B(1); or
(d) a person who is a notifier as defined in the *Children and Community Services Act 2004* section 240(1), or a person about whom the information mentioned in that definition is given; or
(e) a person who has given, or a person who is mentioned in, a notification under the Commonwealth *Family Law Act 1975* section 67ZA(2) or (3) or the *Family Court Act 1997* section 160(2) or (3).
”.

