Western Australia

Children and Community Services Bill 2003

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Defined Terms

Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

Children and Community Services Bill 2003

A Bill for

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, the employment of children, and child care services;**
- **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,**

and to provide for related matters.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Children and Community Services Act 2003*.

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

In this Act, unless the contrary intention appears —

"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;

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

"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;

"Court" means the Children's Court;

"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;

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

(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;

"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;

"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;

"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", in relation to a child, means a person, other than the CEO, who at law has responsibility for —

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

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

"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;

"placed" means placed under a placement arrangement;

"placement" means placement under a placement arrangement;

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

"police officer" has the meaning given to that term in the *Protective Custody Act 2000* section 3;

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

"protection application" means an application to the Court for a protection order;

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

"protection order (enduring parental responsibility)" has the meaning given to that term 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 protection and care" has the meaning given to that term in section 29(1);

"public authority" means —

(a) a department of the Public Service;

(b) a State agency or instrumentality;

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

"relative", in relation to a child, means each of the following people —

(a) the child's —

(i) parent, grandparent or other ancestor;

(ii) step-parent;

(iii) sibling;

(iv) uncle or aunt;

(v) cousin;

(vi) spouse or de facto partner,

whether the relationship is established by, or traced through, consanguinity, marriage, a de facto relationship, a written law or a natural relationship;

(b) in the case of an Aboriginal child, a person regarded under the customary law or tradition of the child's community as the equivalent of a person mentioned in paragraph (a);

(c) in the case of a Torres Strait Islander child, a person regarded under the customary law or tradition of the

Torres Strait Islands as the equivalent of a person mentioned in paragraph (a);

"service provider" means a person or body who or which —

(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 and domestic violence services;

(m) support services;

"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 care, development, health and safety of the child;

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

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 1 — Objects

6. Objects

The objects of this Act are —

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

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

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

(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;

(e) to protect children from exploitation in employment; and

(f) to protect, and promote the best interests of, children who receive child care services.

Division 2 — General principles relating to children

7. Principle that best interests of child paramount

In performing a function or exercising a power under this Act in relation to a child, a person or the Court must regard the best interests of the child as the paramount consideration.

8. Determining the best interests of a child

(1) In determining for the purposes of this Act what is in a child's best interests 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 relatives and with any 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 permanency 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;

(ii) a sibling or other relative of the child;

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

(iv) any other person who is significant in the child's life;

(h) the need for the child to maintain contact with the child's parents, siblings and other relatives and with any 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 or religious identity (including any need to maintain a connection with the lifestyle, culture and traditions of Aboriginal people or Torres Strait Islanders);

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

9. Guiding principles

In the administration of this Act the following principles must be observed —

(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;

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

(g) the principle that if a child is removed from the child's family then, so far as is consistent with the child's best interests, the child should be given encouragement and support in maintaining contact with the child's parents, siblings and other relatives and with any other people who are significant in the child's life;

(h) the principle that decisions about a child should be made promptly having regard to the age, characteristics, circumstances and needs of the child;

(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 any 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 any 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;

(ii) the outcome of any decision about the child, including an explanation of the reasons for the decision; and

(iii) any relevant complaint or review procedures;

(l) the principle set out in section 10(1).

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 should be given —

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

(i) the decision to be made;

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

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

(iv) any relevant complaint or review procedures;

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

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

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

(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 the placement of the child;

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

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

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

(4) In subsection (3)(b) —

"care plan" has the meaning given to that term in section 89(1);

"provisional care plan" has the meaning given to that term in section 39(1).

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.

(2) In making a decision under this Act about the placement of an Aboriginal child or a Torres Strait Islander child, a principle to be observed is that any placement of the child must be considered as far as is practicable in 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 a 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 a Torres Strait Islander;

(d) placement with a person who is not an Aboriginal person or a Torres Strait Islander but who, in the opinion of the CEO, is sensitive to the needs of the child and capable of promoting the child's ongoing affiliation with the child's culture, and where possible, the child's family.

13. Principle of self-determination

In the administration of this Act a principle to be observed is that Aboriginal people and Torres Strait Islanders should be

allowed to participate in the protection and care of their children with as much self-determination as possible.

14. Principle of community participation

In the administration of this Act a principle to be observed is that a kinship group, community or representative organisation of Aboriginal people or Torres Strait Islanders should 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.

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 or body for —

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

(b) the conduct of research and development by that person or body 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.

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 Community Development 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.

Division 2 — The Community Development Ministerial Body

17. Meaning of "Ministerial Body"

In this Division —

"Ministerial Body" means the Community Development Ministerial Body established by section 18(1).

18. The Community Development Ministerial Body

(1) A body called the Community Development Ministerial Body is established.

(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.

19. Purpose and nature of the 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 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.

20. Execution of documents by the 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);

(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;

(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;

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

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

(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;

(ii) Aboriginal people and Torres Strait Islanders;

(iii) people from culturally or linguistically diverse backgrounds;

(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.

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, by taking specified action, assist in the performance of functions under this Act, the CEO may request the assistance of that authority or provider, specifying the action that is sought.

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

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

23. Exchange of information

(1) In this section —

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

"interested person" means a person or body who or which, in the opinion of the CEO, has a direct interest in the wellbeing of a child or a class or group of children;

"relevant information" means information that, in the opinion of the CEO, is, or is likely to be, relevant to —

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

(b) the performance of a function under this Act.

(2) The CEO or an authorised officer may disclose relevant information to a public authority, a corresponding authority, a service provider or an interested person.

(3) The CEO or an authorised officer may request a public authority, a corresponding authority, a service 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) A public authority, a service provider or an interested person may comply with a request under subsection (3) despite any law of this State relating to secrecy or confidentiality.

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

(a) no civil or criminal liability is incurred in respect of the disclosure;

(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 as unprofessional conduct.

(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.

24. Delegation by CEO

(1) The CEO may delegate to an officer or other 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) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

(4) A person exercising or performing a power or duty that has been delegated to the person under this section, is to be taken to do so in accordance with 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.

Division 4 — Authorised officers

25. Appointment of authorised officers

The CEO may appoint officers as authorised officers —

(a) generally for the purposes of this Act; or

(b) for the purposes of provisions of the Act specified in the appointment.

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 produce his or her identity card whenever asked to do so by 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 appointment under section 25.

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;

(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 Minister for Public Sector Management.

Part 4 — Protection and care of children

Division 1 — Introductory matters

28. When child is in need of protection

(1) In this section —

"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 Part a child is **"in need of protection"** if —

(a) the child has been abandoned by his or her parents and, after reasonable inquiries —

(i) the parents cannot be found; and

(ii) no suitable adult relative or other suitable adult can be found who is willing and able to care for the child;

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

(c) the child has suffered, or is likely to suffer, harm as a result of sexual abuse 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;

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

(i) physical abuse;

(ii) emotional abuse;

(iii) psychological abuse;

(iv) 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

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

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

(ii) the child's parents being unable to provide, or arrange the provision of, effective medical, therapeutic or other remedial treatment for the child.

29. Provisional protection and care: meaning and effect

(1) A reference in this Part 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, has the right to make decisions about the day-to-day care, welfare and development of the child, including, without limitation, 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);

(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;

(c) the Court makes an interim order under section 133(2)(c); or

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

30. Child in the CEO's care

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

(a) is in provisional protection and care;

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

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

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

Division 2 — Powers available to safeguard or promote child's wellbeing

Subdivision 1 — General powers of CEO

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. Further action by CEO

(1) If the CEO determines that action should be taken to safeguard or promote a child's wellbeing, the CEO must do any 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 relative of the child;

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

(i) a parent or other relative of the child;

(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;

(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;

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

(c) making a protection application.

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;

(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)

(1) An authorised officer may apply to a 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;

(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 magistrate may issue a warrant (access) if the 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: Section 121 contains provisions about the effect of a warrant (access).

Subdivision 3 — Provisional protection and care

35. Warrant (provisional protection and care)

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

(a) is unable to find the child;

(b) believes that leaving the child at the place where the child is living poses 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 magistrate may issue a warrant (provisional protection and care) if the 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) or (c).

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

36. Action after 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. Provisional protection and care without warrant if child at immediate and substantial risk

(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 (1) 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. Action after 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 CEO decides not to make a protection application or other application under this Part in respect of the child, then, subject to subsection (3), 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;

(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 was in the CEO's care immediately before being 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.

39. Provisional care plan

(1) In this section —

"provisional care plan" means a written plan that —

(a) identifies the needs of the child while the child is in provisional protection and care;

(b) outlines steps or measures to be taken in order to address those needs; and

(c) sets out decisions about the care of the child including —

(i) decisions about placement; and

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

(2) If —

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

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

the CEO must prepare and implement a provisional care plan for the child within 7 working days after the child is taken into provisional protection and care.

(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, the CEO must ensure that a copy of the care plan or modification, as the case requires, is given to —

(a) the child;

(b) a parent of the child;

(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.

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: $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).

41. Power to move child to safe place

(1) In this section —

"officer" means an authorised officer or a police officer;

"responsible person", in relation to a child, means —

(a) a parent of the child;

(b) an adult relative of the child; or

(c) an adult with whom the child usually lives.

(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) 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*) is not a safe place for the purposes of subsection (2).

(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 a responsible 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 a responsible 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 a responsible 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 a responsible person or otherwise dealt with under this Part.

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

Division 3 — Protection orders

Subdivision 1 — Introductory matters

42. Terms used in this Division

In this Division —

"child", in relation to a protection order, means the child in respect of whom the order was made;

"enduring parental carer" means the person or persons given parental responsibility for a child under a protection order (enduring parental responsibility);

"parent", in relation to a child who is the subject of a protection order other than a protection order (supervision), includes any person who would have had parental responsibility for the child if the order had not been made;

"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.

43. Protection order

A reference in this Part 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 (enduring parental responsibility).

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

44. Application for protection order

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

(2) A protection application must —

(a) be lodged with the Court;

(b) specify the type of protection order sought;

(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 (enduring parental responsibility) is sought a protection application must nominate the person or persons to whom parental responsibility for the child is proposed to be given.

(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;

(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.

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;

(b) a parent of the child; or

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

(3) A protection order (supervision) must not include a condition about —

(a) the person or persons with whom the child is to live, unless the condition relates to the child living with a parent of the child specified in the order; or

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

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. Authorised officer entitled to have access to child

(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 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 magistrate may issue a warrant (access) if the magistrate is satisfied as to a matter referred to in subsection (2)(a) or (b).

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

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 (enduring parental responsibility)

60. Protection order (enduring parental responsibility)

(1) A protection order (enduring parental responsibility) is an order giving a natural person, or 2 natural persons jointly, parental responsibility for a child until the child reaches 18 years of age.

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

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

61. Restriction on making protection order (enduring parental responsibility)

(1) In this section —

"proposed carer" means —

(a) if the protection order (enduring parental responsibility) is sought by the CEO, a person nominated under section 44(3) or 68(3); or

(b) in any other case, a person to whom parental responsibility for the child is proposed to be given under the protection order (enduring parental responsibility).

(2) The Court must not make a protection order (enduring parental responsibility) 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, having regard to the report mentioned in subsection (3), the proposed carer or each proposed carer is —

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

(ii) willing and able to provide such care.

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

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

(b) outlines the proposed arrangements for the wellbeing of the child.

(4) If the child is an Aboriginal child or a Torres Strait Islander child, the Court must, in assessing the suitability of a proposed carer for the purposes of subsection (2)(b), have regard to the Aboriginal and Torres Strait Islander child placement principle set out in section 12.

(5) If the child is from a culturally or linguistically diverse background, the Court must, in assessing the suitability of a proposed carer for the purposes of subsection (2)(b), have regard to any guidelines established under section 80.

62. Duration of protection order (enduring parental responsibility)

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

63. Conditions of protection order (enduring parental responsibility)

(1) A protection order (enduring parental responsibility) may include conditions about contact between the child and another person.

(2) A protection order (enduring parental responsibility) must not include any other conditions.

64. Variation of conditions of protection order (enduring parental responsibility)

(1) In this section —

"condition" means a condition referred to in section 63(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.

65. Court may order payments to enduring parental carer

(1) On the making of a protection order (enduring parental responsibility), 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 enduring parental carer 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).

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

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

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

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

66. Provision of social services

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

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;

(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

(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 the child.

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

(3) If a protection order (enduring parental responsibility) is sought an application under subsection (1) must nominate the person or persons to whom parental responsibility for the child is proposed to be given.

(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) confirm the order; or

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

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 (enduring parental responsibility), the enduring parental carer.

(2) On the making of a protection order (time-limited), protection order (until 18) or protection order (enduring parental responsibility) 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.

Division 4 — Negotiated placement

74. Meaning of "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;

(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;

(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. CEO to prepare 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. Power of CEO to 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;

(ii) with a person or body who or which 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

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

(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).

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

81. Matters relevant to placement of Aboriginal or Torres Strait Islander children

(1) The CEO must ensure that an officer who is an Aboriginal person or a Torres Strait Islander is involved at all relevant times in the making of a placement arrangement in respect of an Aboriginal child or a Torres Strait Islander child.

(2) The CEO must consult with an Aboriginal or Torres Strait Islander agency, approved by the CEO for the purposes of this section, regarding the prospective placement of an Aboriginal child or a Torres Strait Islander child.

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 request carer to hand over child

An authorised officer may at any time request a carer of a child to hand over the child to the officer.

85. Warrant (apprehension) where child not handed over

(1) If a carer does not comply with a request made by an authorised officer under section 84 the officer may apply to a 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 magistrate may issue a warrant (apprehension) if the magistrate is satisfied that the carer has not complied with the request.

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

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 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 magistrate may issue a warrant (apprehension) if the magistrate is satisfied that there are reasonable grounds for the suspicion mentioned in that subsection.

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

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.

(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.

Subdivision 3 — Care plans

88. Meaning of "parent"

In this Subdivision —

"parent" has the meaning given to that term in section 42.

89. Care plan

(1) In this section —

"care plan" means a written plan that —

(a) identifies the needs of the child;

(b) outlines steps or measures to be taken in order to address those needs; and

(c) sets out decisions about the care of the child including —

(i) decisions about placement; and

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

(2) As soon as practicable after a child first comes into the CEO's care, the CEO must prepare and implement 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: Section 39 requires the CEO to prepare and implement a provisional care plan for a child taken into provisional protection and care.

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

(5) Without limiting subsection (4), the CEO must, in the case of a child who is about to leave the CEO's care, modify the care plan for the child so that it —

(a) identifies the needs of the child in preparing to leave the CEO's care and in his or her transition to other living arrangements after leaving the CEO's care; and

(b) outlines steps or measures designed to assist the child to meet those needs.

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

(a) the child;

(b) each parent of the child;

(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.

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;

(b) a parent of the child; and

(c) any carer 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 case planning decisions

91. Terms used in this Subdivision

In this Subdivision, unless the contrary intention appears —

"applicant" means a person who makes an application under section 93(1);

"care plan" has the meaning given to that term in section 89(1);

"case planning decision", in relation to a child, means a decision set out in a care plan for the child;

"case review panel" means the case review panel established under section 92;

"parent" has the meaning given to that term in section 82.

92. Case review panel

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

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

(3) The members of the case 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.

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

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

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

(7) The CEO may —

(a) direct that the members of the case 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 Minister for Public Sector Management.

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

93. Initial review

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

(a) the child;

(b) a parent of the child; or

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

(2) The application —

(a) must be in writing; and

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

(3) The application 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 case planning decision; or

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

(4) The CEO must refer the application, together with such other material as the CEO considers relevant, to the case review panel.

(5) On a referral under subsection (4) the case 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 case review panel and any other information available to the CEO, must —

(a) confirm, vary or reverse the case planning decision;

(b) substitute another decision for the case planning decision; or

(c) refer the matter back to the case 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.

94. Review of CEO's decision

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.

95. Procedure

(1) The CEO may give directions in writing to the case review panel as to its procedure, but otherwise, subject to subsection (2), the case review panel may determine its own procedure.

(2) The case review panel must give each applicant a reasonable opportunity to make submissions in respect of the application.

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;

(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);

(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. Entitlement to personal material

(1) In this section —

"personal material", in relation to a child, means —

(a) the child's birth certificate;

(b) the child's passport;

(c) any school report or other report relating to the child's education;

(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 or body who or which has provided care for the child under a placement arrangement.

98. Social services

(1) The CEO must ensure that a child who leaves the CEO's care is provided with any social services that the CEO considers appropriate having regard to the needs of the child as identified in the care plan for the child under section 89.

(2) Subsection (1) does not apply to a child who ceases to be in provisional protection and care.

99. Information and advisory services

Without limiting section 98, the CEO must ensure that a person who qualifies for 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.

100. 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;

(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.

Division 7 — Offences

Subdivision 1 — Children generally

101. Failing to protect child from significant 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 significant harm as a result of any one or more of the following —

(i) physical abuse;

(ii) emotional abuse;

(iii) psychological abuse; or

(iv) 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.

(2) 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 sexual abuse; 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.

(3) In this section —

"engage in conduct" means —

(a) to do an act; or

(b) to omit to do an act.

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 Act 1974*) 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: $36 000 and imprisonment for 3 years.

103. Tattooing or branding

A person must not in any manner tattoo or brand any part of the body of a child 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: $12 000 and imprisonment for one year.

104. Providing long-term care for young children

(1) In this section —

"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;

"residence order" means a residence order made under the *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1997*;

"specific issues order" means a specific issues order made under the *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1997* which confers responsibility for the day-to-day care, welfare and development of a 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;

(b) an adult relative of the child;

(c) a carer of the child;

(d) a person who has made an application for a residence order or specific issues order in relation to the child, at any time before the application is finally determined;

(e) a person in whose favour a residence order or specific issues order has been made in relation to the child, while the order is in force; or

(f) a person who is providing care for the child in accordance with an approval under subsection (3).

Penalty: $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;

(b) has effect for such period not exceeding 12 months as is specified in the approval;

(c) may be subject to such conditions as the CEO considers appropriate;

(d) may be revoked at any time; and

(e) cannot be renewed.

Subdivision 2 — Children under placement arrangements

105. Terms used in this Subdivision

(1) In this Subdivision —

"child" means a child who is the subject of a placement arrangement;

"place of residence", in relation to a child, means the place where the child lives under a placement 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;

(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.

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: $24 000 and imprisonment for 2 years.

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: $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: $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.

108. Harbouring child

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: $12 000 and imprisonment for one year.

109. Preventing child's return

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: $12 000 and imprisonment for one year.

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: $6 000.

111. Evidentiary provision

In proceedings for an offence under this Subdivision, an averment in the complaint 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.

Division 8 — Powers of restraint, search and seizure

112. Terms used in this Division

In this Division —

"disposable article" means —

(a) a disposable hypodermic needle or syringe;

(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" has the meaning given to that term in the *Firearms Act 1973* section 4;

"intoxicant" means —

(a) alcohol; or

(b) a drug or other substance capable of intoxicating a person;

"officer" means an authorised officer or a police officer;

"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 or a prohibited weapon as those terms are defined in the *Weapons Act 1999* section 3.

113. Prerequisites for exercise of power

(1) The powers 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) The powers 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; 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.

114. Child may be restrained

An officer may restrain a child but only for the period, and to the extent, necessary, in the opinion of the officer, to prevent the child —

(a) endangering the health or safety of the child or another person; or

(b) causing serious damage to property.

115. Child may be searched

(1) An officer 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 officer, or a person designated under subsection (3), who is of the same sex as the child; and

(b) in the presence of at least one other adult.

(3) If it is reasonably necessary in order to do the search, an officer may designate another person to do the search or to assist in doing the search.

(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 officer.

(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.

116. Certain articles may be seized

An officer may seize from a child any thing or substance the seizure of which is necessary, in the opinion of the officer —

(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.

117. How seized articles to be dealt with

(1) In this section —

"seized" means seized under section 116.

(2) If a firearm, weapon or prohibited article is seized from a child by an authorised officer, the authorised officer 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 officer 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 officer 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 officer must deal with the thing or substance in accordance with the regulations.

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 officer must ensure that those procedures are complied with when exercising those powers.

Division 9 — Warrants

120. Applying for warrant

(1) In this section —

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

(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 magistrate unless —

(a) the warrant is needed urgently; and

(b) the applicant reasonably believes that a magistrate is not known to be available within a reasonable distance of the applicant,

in which case it may be made to a magistrate by remote communication.

(5) If the application is made to a magistrate by remote communication —

(a) the applicant must prepare a written application and if practicable send it to the magistrate;

(b) if it is not practicable to send the written application to the magistrate, the applicant may make the application orally;

(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 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 magistrate must complete a written application.

(7) If information in support of the application is given orally, the magistrate must make a record of it.

(8) If —

(a) the applicant gives the magistrate unsworn information under subsection (5)(c); and

(b) the magistrate issues a warrant,

the applicant must send the 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 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 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 magistrate must immediately give the applicant by remote communication any information that is required to be set out in the warrant;

(ii) the applicant must complete a form of the warrant with the information given by the magistrate;

(iii) the applicant must give the magistrate a copy of the completed form as soon as practicable after the warrant is issued; and

(iv) the magistrate must attach the copy of the completed form to the original warrant issued by the 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 magistrate.

121. Authority conferred by warrant (access)

(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;

(b) to search the place for the purpose of finding the child;

(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. Authority conferred by warrant (apprehension)

(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;

(b) to search the place for the purpose of finding the child;

(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. Authority conferred by warrant (provisional protection and care)

(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;

(b) to search the place for the purpose of finding the child;

(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 10 — General

125. Access to child

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;

(b) who is the subject of a protection order (supervision);

(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. Power of CEO to give consent

In any case where the consent of a parent of a child is required or customarily sought, the CEO may, in writing signed by the CEO, give that consent in relation to —

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

(b) a child who is the subject of a negotiated placement agreement if the agreement authorises the CEO to do so.

128. Records

(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;

(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);

(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).

(2) In giving the information the person —

(a) does not incur any civil or criminal liability;

(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 to have engaged in unprofessional conduct.

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 5 — Protection proceedings

Division 1 — Terms used in this Part

131. Terms used in this Part

In this Part, unless the contrary intention appears —

"child", in relation to protection proceedings, means the child who is the subject of those proceedings;

"parent", in relation to a child who is the subject of a protection order other than a protection order (supervision), includes any person who would have had parental responsibility for the child if the order had not been made.

Division 2 — Adjournment and interim orders

132. Adjournment of proceedings

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.

133. Interim orders

(1) The Court may at any time in the course of protection proceedings make an interim order —

(a) on its own initiative; or

(b) on the application of a party.

(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;

(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 or other relative of the child or any 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: Section 123 contains provisions about the effect of a warrant (provisional protection and care).

134. Variation or revocation of interim order

(1) A party may apply to the Court for the variation or revocation of an interim order.

(2) On an application under subsection (1) the Court may —

(a) confirm the interim order;

(b) vary the interim order;

(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.

135. Authorised officer entitled to have access to the child

(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 magistrate for a warrant (access) if the officer —

(a) is denied access to a child;

(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 magistrate may issue a warrant (access) if the 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: Section 121 contains provisions about the effect of a warrant (access).

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 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 magistrate who ordered the conference under subsection (1).

(6) The regulations may —

(a) provide for the appointment of convenors;

(b) provide for the remuneration and allowances payable to convenors;

(c) prescribe the classes of people who may attend a pre-hearing conference;

(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.

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: $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.

Division 4 — Reports about child

138. Meaning of "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;

(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, unless it makes an order 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 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 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: $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.

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;

(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 to have engaged in unprofessional conduct.

Division 5 — Proposals about arrangements for child

143. CEO to provide Court with proposal for child

(1) In this section —

"proposal" means a document that outlines the proposed arrangements for —

(a) the supervision of the wellbeing of the child if a protection order (supervision) is made or extended in respect of the child; or

(b) the wellbeing of the child if a protection order (time-limited) or protection order (until 18) is made or extended in respect of the child.

(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);

(b) an application under section 56 for the extension of a protection order (time-limited); or

(c) an application under section 68 for the replacement of a protection order by another protection order (other than a protection order (enduring parental responsibility)),

the CEO must provide the Court with a proposal for the child when the application is made.

(4) For the purposes of subsection (3)(b) the proposal is to include plans for securing long-term stability, security and safety in the child's relationships and living arrangements.

(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 (enduring parental responsibility)) 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.

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 143(4) the Court must have regard to the likelihood of those plans being achieved.

Division 6 — Procedural matters

145. General conduct of protection proceedings

(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 in order to minimise the effect of the proceedings on the child and the child's family.

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 the 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 (enduring parental responsibility) —

(i) the person or persons to whom parental responsibility for the child is proposed to be given under the order; or

(ii) the person or persons given parental responsibility for the child under the order,

as the case may be;

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

148. Legal representation of child

(1) In this section —

"lawyer" means a person who is admitted and entitled to practise as a barrister and solicitor of the Supreme Court.

(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 lawyer.

(3) The Court may make an order under subsection (2) —

(a) on its own initiative; or

(b) on the application of —

(i) the child;

(ii) an organisation concerned with the wellbeing of children; or

(iii) any other person.

(4) A lawyer 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.

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) has difficulty understanding or communicating in English; or

(b) has a disability,

that 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).

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;

(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 in this Part

(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;

(b) a government department or statutory authority;

(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;

(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;

"parent" has the meaning given to that term in section 42;

"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;

(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).

Division 2 — Transfer of child protection orders

Subdivision 1 — Administrative transfers

158. When CEO may transfer 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;

(b) the home order is not subject to an appeal and the time for instituting an appeal has expired;

(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

(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;

(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;

(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;

(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 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. Limited period in which to apply for judicial review of 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 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;

(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

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. Type of order

(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 must consider report from the 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

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;

(b) the place where any of the matters giving rise to the proceeding in the Court arose;

(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;

(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;

(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;

(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 of interstate orders in the 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. Registration of 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;

(b) the child concerned;

(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;

(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 child

(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: $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.

Part 7 — Employment of children

188. Terms used in this Part

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 parent or other relative of the child.

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: Section 29 of the *School Education Act 1999* relates to the employment of children during school hours.

190. Prohibition on employment of child under 15

(1) A person must not employ a child under 15 years of age in a business, trade or occupation carried on for profit.

Penalty: $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: $24 000.

191. Exceptions to section 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;

(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. Prohibition on employment of child to perform in indecent manner

(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;

(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, her 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;

(ii) is only for the person employing the child or for some other particular person or a class of people;

(iii) is communicated in any way to an audience of one or more people;

(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.

193. Power of CEO to 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: $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: $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.

194. False information

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: $6 000.

195. Powers of authorised officers

(1) In this section —

"authorised officer" includes an industrial inspector appointed under the *Industrial Relations Act 1979*.

(2) An authorised officer may, at any reasonable time, enter a place in which a child is employed, or in which the authorised officer believes on reasonable grounds a child is employed, for the purpose of inspecting the place and making such inquiries in relation to the employment of a child in the place as the authorised officer considers appropriate.

(3) Without limiting subsection (2), an authorised officer may require any person in the place to answer any question put to that person in relation to the employment of a child in the place.

(4) If under subsection (3) an authorised officer requires a person to answer a question, the officer must inform that person that the person is required under this Act to answer the question.

(5) A person must not —

(a) refuse or fail to answer a question when required to do so under subsection (3); or

(b) in purporting to comply with a requirement under subsection (3), give an answer that the person knows is false or misleading.

Penalty: $6 000.

(6) A person is not excused from answering a question, when required to do so under subsection (3), on the ground that the answer might incriminate the person or render the person liable to a penalty, but that answer is not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for an offence under subsection (5)(b).

196. Proceedings against employers may be taken by industrial inspectors

(1) The powers of an industrial inspector appointed under the *Industrial Relations Act 1979* extend to the prosecution of a complaint against a person for an offence under section 190(1), 193(5) or 195(5).

(2) An industrial magistrate's court established under the *Industrial Relations Act 1979* Part III has jurisdiction to hear and determine complaints prosecuted by industrial inspectors under subsection (1).

Part 8 — Child care services

Division 1 — Introductory matters

197. Terms used in this Part

In this Part, unless the contrary intention appears —

"applicant" means —

(a) if a licence is applied for on behalf of a public authority, the public authority; or

(b) otherwise, a person who applies for a licence;

"application" means an application for a licence;

"child care service" has the meaning given to that term in section 198;

"corporate applicant" means an applicant that is a body corporate other than a public authority;

"criminal record check" means a document issued by the Australian Federal Police or another body or agency approved by the CEO that sets out the criminal convictions of an individual for offences under the law of Western Australia, the Commonwealth, another State or a Territory;

"equivalent authority" means —

(a) a licence or permit issued under the *Community Services Act 1972* section 17B before its repeal by this Act; or

(b) a licence, permit or other authority (however described) relating to the provision of a child care service or similar service in another State or a Territory;

"family day care service" means a child care service provided at a place where —

(a) the person providing the service lives; and

(b) none of the children to whom the service is provided live;

"individual applicant" means an applicant who is an individual;

"licence" means a licence under this Part;

"licensee" means a person who holds a licence;

"managerial officer", in relation to a corporate applicant, means —

(a) a director or secretary of the body;

(b) if the applicant is an incorporated association as defined in the *Associations Incorporation Act 1987* section 3, a member of the committee of the association;

(c) a person who holds 50% or more of the issued shares of the body; and

(d) any other person who, in the opinion of the CEO, exercises or exerts control or influence over the body, or is in a position to do so;

"nominated supervising officer" means the person nominated in an application made by a corporate applicant or a public authority as the person who will be responsible for the day-to-day supervision and control of the child care service to which the application relates;

"prescribed offence" means an offence prescribed, or of a class prescribed, in the regulations;

"supervising officer" for a child care service means —

(a) if a licence in respect of the service is granted to an individual —

(i) the licensee; or

(ii) a person appointed under the regulations to act in place of the licensee;

(b) if a licence in respect of the service is granted to a corporate applicant or a public authority —

(i) the person specified in the licence document relating to the service as the person responsible for the day-to-day supervision and control of the service; or

(ii) a person appointed under the regulations to act in place of the person referred to in subparagraph (i);

"suspension notice" means a notice under section 220(1);

"usual occupant", in relation to an application that relates to a family day care service, means —

(a) a person other than the applicant who usually lives at the place where the service will be provided; or

(b) any other person who is likely to be present at that place at the times when the service will be provided.

198. Meaning of "child care service"

(1) A **"child care service"** is a service for the casual, part-time or day-to-day care of a child or children under 13 years of age, or such other age as may be prescribed for the purposes of this subsection, that is provided —

(a) for payment or reward, whether directly or indirectly through payment or reward for some other service;

(b) as a benefit of employment; or

(c) as an ancillary service to a commercial or recreational activity.

(2) The term **"child care service"** does not include —

(a) care provided to a child by a parent or other relative of the child or a carer of the child;

(b) care provided to a child by a person having contact with the child in accordance with a contact order under the *Family Court Act 1997*;

(c) care provided to a child in accordance with an approval under section 104(3);

(d) care provided to a child —

(i) at the place where the child lives; or

(ii) substantially at that place;

(e) care provided to a child enrolled at a school if —

(i) the child has reached 3 years of age; and

(ii) the care is provided in the course of the child's participation in an educational programme under the *School Education Act 1999*;

(f) care provided to a child at a hospital or similar place while the child is a patient at that hospital or place; or

(g) care of a kind that is excluded by the regulations from the application of subsection (1).

199. Guiding principles

(1) In the administration of this Part and regulations referred to in section 232 the following principles must be observed —

(a) the principle that a child care service should be provided to a child in a way that —

(i) protects the child from harm;

(ii) respects the child's dignity and privacy;

(iii) safeguards and promotes the child's wellbeing;

(iv) provides positive experiences for the child; and

(v) stimulates and develops the child's creative, emotional, intellectual, physical, recreational and social potential;

(b) the principle that child care services should be provided in a way that —

(i) involves parents of the children to whom the services are provided and other members of the community; and

(ii) reflects the diverse nature of the community.

(2) The principles set out in subsection (1) are in addition to, and do not derogate from, the principles set out in Part 2 Divisions 2 and 3.

200. Crown bound

This Part binds the Crown in right of the State and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Division 2 — Licensing requirement

201. Requirement for licence

A person must not provide a child care service at a place except under and in accordance with a licence authorising the provision of the service at that place.

Penalty:

(a) for a first offence, $12 000 and imprisonment for one year, and a daily penalty of $600;

(b) for a subsequent offence, $24 000 and imprisonment for 2 years, and a daily penalty of $1 200.

Division 3 — Application for and grant of licence

202. Who may apply for licence

An application for a licence may be made to the CEO by —

(a) an individual;

(b) a body corporate; or

(c) in the case of a public authority that is not a body corporate, the chief executive officer (however described) of the public authority on behalf of the authority.

203. Application for licence

An application must be —

(a) in writing in a form approved by the CEO;

(b) accompanied by any document or information that is prescribed; and

(c) accompanied by the prescribed fee (if any).

204. Further information relevant to application

(1) The CEO may ask an applicant for any additional document or information that the CEO considers is or could be relevant to making a decision on the application.

(2) Without limiting subsection (1), for the purpose of deciding whether or not an individual applicant or a nominated supervising officer is a fit and proper person to provide or be involved in the provision of a child care service, the CEO may ask the applicant or nominated supervising officer to do any or all of the following —

(a) undergo an oral or written assessment as to his or her knowledge and understanding of —

(i) the operation of this Part and the regulations; and

(ii) the field of child development;

(b) undergo a medical, psychiatric or psychological test or examination specified by the CEO;

(c) provide a reference or report specified by the CEO.

(3) If the CEO makes a request under subsection (1) or (2), the CEO does not have to consider the application, or consider it further, until the request is complied with.

(4) Any costs incurred in complying with a request under subsection (1) or (2) are to be paid by the applicant unless the CEO determines otherwise.

205. Grant of licence

(1) The CEO may grant a licence to a person authorising the person to provide a specified type of child care service at a specified place.

(2) In subsection (1) —

"specified" means specified in the licence document.

(3) A licence cannot be granted in respect of more than one child care service.

(4) A licence cannot be granted to 2 or more persons.

(5) A person may be granted 2 or more licences whether for the same type of child care service or for different types of child care service.

206. General restrictions on grant of licence

(1) The CEO must not grant a licence if there are reasonable grounds for believing that the provision of the child care service to which the application relates would constitute an unacceptable risk to the wellbeing of children for whom the service would be provided.

(2) The CEO must not grant a licence unless the CEO is satisfied that —

(a) the applicant is capable of providing a child care service in accordance with the regulations and the terms and conditions of the licence;

(b) the place at which the child care service is, or child care services are, to be provided is suitable for that purpose;

(c) a licence or equivalent authority granted or issued to the applicant has not been cancelled in the period of 5 years before the application is made;

(d) the applicant is of sound financial reputation and stable financial background; and

(e) if the application relates to the provision of a family day care service, each usual occupant is a fit and proper person to associate with children.

207. Restrictions on grant of licence: individual applicant

(1) The CEO must not grant a licence to an individual applicant if the applicant has been found guilty of a prescribed offence unless the CEO is satisfied that there are exceptional reasons for doing so.

(2) The CEO must not grant a licence to an individual applicant unless the CEO is satisfied that the applicant —

(a) has the ability to supervise and control on a day-to-day basis the provision of the child care service to which the application relates; and

(b) is otherwise a fit and proper person to provide a child care service.

208. Restrictions on grant of licence: corporate applicant

(1) The CEO must not grant a licence to a corporate applicant if the nominated supervising officer or a managerial officer has been found guilty of a prescribed offence unless the CEO is satisfied that there are exceptional reasons for doing so.

(2) The CEO must not grant a licence to a corporate applicant unless the CEO is satisfied that —

(a) a licence or equivalent authority granted or issued to the nominated supervising officer or a managerial officer has not been cancelled in the period of 5 years before the application is made;

(b) the nominated supervising officer is not the supervising officer for another child care service that is or will be provided at a time when the child care service to which the application relates will be provided;

(c) the nominated supervising officer has the ability to supervise and control on a day-to-day basis the

provision of the child care service to which the application relates; and

(d) the nominated supervising officer and each managerial officer are otherwise fit and proper people to be involved in the provision of a child care service.

209. Restrictions on grant of licence: public authority

(1) The CEO must not grant a licence to a public authority if the nominated supervising officer has been found guilty of a prescribed offence unless the CEO is satisfied that there are exceptional reasons for doing so.

(2) The CEO must not grant a licence to a public authority unless the CEO is satisfied that —

(a) a licence or equivalent authority granted or issued to the nominated supervising officer has not been cancelled in the period of 5 years before the application is made;

(b) the nominated supervising officer is not the supervising officer for another child care service that is or will be provided at a time when the child care service to which the application relates will be provided;

(c) the nominated supervising officer has the ability to supervise and control on a day-to-day basis the provision of the child care service to which the application relates; and

(d) the nominated supervising officer is otherwise a fit and proper person to be involved in the provision of a child care service.

210. Licence document

If the CEO grants a licence to a person the CEO must issue to the person a licence document that contains the prescribed details.

211. Licence not transferable

A licence is not transferable.

Division 4 — Licence conditions and amendment

212. Condition as to supervision and control

It is a condition of every licence that the supervising officer for the child care service is present at the place where the service is provided at the times when the service is provided except to the extent (if any) that the regulations otherwise provide.

213. Other conditions

(1) The CEO may grant a licence subject to any conditions that the CEO considers appropriate.

(2) The regulations may prescribe conditions that are taken to be attached to —

(a) all licences; or

(b) all licences relating to a particular type of child care service,

unless otherwise specified in the licence.

214. Contravention of conditions

A licensee who contravenes a condition of the licence commits an offence.

Penalty: $12 000.

215. Amendment of licence

(1) The CEO may, by written notice given to the licensee, amend a licence.

(2) An amendment may be made on application made by the licensee or on the CEO's own initiative.

(3) For the purposes of this section —

"amend" includes —

(a) impose any new condition; and

(b) change or remove any existing condition (other than the condition referred to in section 212).

Division 5 — Duration and renewal

216. Duration of licence

(1) A licence has effect for the period specified in the licence document unless —

(a) section 217(3) applies;

(b) it is suspended under section 220;

(c) it is cancelled under section 224; or

(d) it is surrendered in accordance with the regulations.

(2) The period specified in the licence document must not exceed 3 years from the day on which the licence is granted or renewed.

217. Application for renewal of licence

(1) A licensee may apply to the CEO for the renewal of a licence.

(2) An application for renewal must be —

(a) in writing in a form approved by the CEO;

(b) lodged with the CEO within the prescribed time or any further time that the CEO in a particular case allows;

(c) accompanied by any document or information that is prescribed; and

(d) accompanied by the prescribed fee (if any).

(3) If an application for renewal is made in accordance with this section the licence continues to have effect until the application is determined unless the licence is suspended under section 220 or cancelled under section 224.

(4) Section 204 applies as if the application for renewal were an application for a licence.

218. Restrictions on renewal of licence

The CEO must not renew a licence if —

(a) the CEO is no longer satisfied as to any matter referred to in section 206(2), 207, 208 or 209 that was relevant to the decision to grant the licence;

(b) the CEO is satisfied that the licensee has persistently or frequently contravened the regulations or a term or condition of the licence; or

(c) there are reasonable grounds for believing that the continued provision of the child care service to which the application relates would constitute an unacceptable risk to the wellbeing of children for whom the service is provided.

219. Renewal of licence

If the CEO renews a licence the CEO may —

(a) renew it subject to any existing condition;

(b) impose any new condition; or

(c) change or remove any existing condition (other than the condition referred to in section 212).

Division 6 — Suspension and cancellation

220. Suspension of licence

(1) The CEO may, subject to section 221, by written notice given to the licensee, suspend a licence if there are reasonable grounds for believing that —

(a) the licensee has contravened a term or condition of the licence;

(b) the licensee has contravened a provision of the regulations; or

(c) the continued provision of the child care service constitutes or would constitute an unacceptable risk to the wellbeing of the children for whom the service is provided.

(2) The suspension notice must —

(a) state the day, or the day and time, on or at which the suspension takes effect;

(b) state the reasons for the CEO's decision to suspend the licence;

(c) where appropriate, indicate what steps need to be taken to ensure that there is compliance with the relevant provision, term or condition or that there is no longer a risk as described in subsection (1)(c); and

(d) inform the licensee that the licensee has a right to apply under section 225 for a review of the CEO's decision to suspend the licence.

221. Notice of proposed suspension

(1) If the CEO proposes to suspend a licence for a reason other than the reason mentioned in section 220(1)(c), the CEO must give written notice to the licensee of the proposed suspension.

(2) The notice must —

(a) state that the CEO proposes to suspend the licence;

(b) state the reasons for the proposed suspension; and

(c) inform the licensee that the licensee is entitled to make representations to the CEO in respect of the proposed suspension within 21 days after the day on which the licensee is given the notice.

(3) In considering whether to suspend the licence the CEO must have regard to any representations made by the licensee within the period referred to in subsection (2)(c).

222. Revocation of suspension

(1) The CEO must, by written notice given to the licensee, revoke the suspension of a licence if the CEO is satisfied that the steps specified in the suspension notice have been taken.

(2) The CEO may, by written notice given to the licensee, revoke the suspension of a licence if it is appropriate to do so in the circumstances of the particular case.

223. Duration of suspension

The suspension of a licence has effect on and from the day, or the day and time, specified in the suspension notice until one of the following happens —

(a) the suspension is revoked under section 222;

(b) the licence is cancelled under section 224 or expires; or

(c) the licence is surrendered in accordance with the regulations.

224. Cancellation of licence

(1) Grounds for the cancellation of a licence exist if —

(a) the licence was obtained improperly;

(b) the CEO can no longer be satisfied as to a matter referred to in section 206(2), 207, 208 or 209 that was relevant to the decision to grant the licence;

(c) the licensee has persistently or frequently contravened a term or condition of the licence or a provision of the regulations, whether or not the licence is or has been suspended on the grounds of that contravention; or

(d) there are reasonable grounds for believing that the continued provision of the child care service constitutes or would constitute an unacceptable risk to the wellbeing of the children for whom the service is provided, whether or not the licence has been suspended on the grounds of that risk.

(2) If the CEO considers that grounds for the cancellation of a licence exist the CEO may refer the matter to the State Administrative Tribunal.

(3) The CEO must give written notice of a referral under subsection (2) to the licensee as soon as practicable after the referral is made.

(4) In proceedings commenced by a referral under subsection (2) the State Administrative Tribunal may, if it is satisfied that grounds for the cancellation of the licence exist, cancel the licence.

Division 7 — Review

225. Review by State Administrative Tribunal

(1) A person who is aggrieved by a reviewable decision may apply to the State Administrative Tribunal for a review of the decision.

(2) In subsection (1) —

"person aggrieved" means —

(a) a person upon whose application a reviewable decision is made; or

(b) the holder of the licence to which a reviewable decision relates;

"reviewable decision" means a decision of the CEO —

(a) to refuse to grant or renew a licence;

(b) as to the period for which a licence is granted or renewed;

(c) to grant or renew a licence subject to a particular condition;

(d) to amend a licence under section 215; or

(e) to suspend a licence under section 220.

Division 8 — General

226. Advertising

A person must not advertise, or otherwise hold out in any way, that the person provides a child care service unless the person holds a licence authorising the provision of the service.

Penalty: $6 000.

227. Production of licence document for amendment

If the CEO amends or renews a licence, the licensee must, if required by the CEO, produce the licence document to the CEO for amendment within the period specified by the CEO.

Penalty: $6 000.

228. Return of licence document if licence no longer in effect

If a licence —

(a) has expired and has not been renewed;

(b) has been suspended or cancelled; or

(c) has been surrendered in accordance with the regulations,

the person who was the licensee must, as soon as practicable after the expiry, suspension, cancellation or surrender, return the licence document to the CEO.

Penalty: $6 000.

229. Power to exempt

(1) The Minister may, by order published in the *Gazette*, exempt a specified child care service or a child care service of a specified type from the application of —

(a) section 201;

(b) the regulations; or

(c) a specified provision of the regulations.

(2) In subsection (1) —

"specified" means specified in the order.

(3) The Minister may, by order published in the *Gazette*, amend or revoke an order made under subsection (1).

(4) In the exercise of the powers conferred by subsections (1) and (2), the Minister must have regard to —

(a) the best interests of the children for whom the child care service is proposed to be provided and any special needs or interests of those children;

(b) the views of parents of children for whom the service is intended;

(c) the needs of the locality in which a child care service is proposed or the children for whom the child care service is proposed and the extent to which those needs are being met; and

(d) the desirability of or need for short-term, special, innovative, experimental, culturally appropriate and culturally specific child care services.

230. Evidentiary certificate

(1) In proceedings for an offence under this Part production of a certificate containing a statement described in subsection (2) and purporting to be signed by the CEO is, without proof of any appointment or signature, evidence of the facts stated in the certificate.

(2) The certificate may state any of the following —

(a) that a person has or had, or does not or did not have, a licence in relation to a particular child care service;

(b) that a licence did or did not specify a particular place;

(c) the conditions to which a licence is or was subject;

(d) the day, days or period on or during which anything referred to in any of paragraphs (a) to (c) applied.

231. Powers of entry and inspection

(1) In this section —

"licensing officer" means an officer appointed under section 25 for the purposes of this Part.

(2) A licensing officer may —

(a) enter at any reasonable time any place specified in a licence as a place at which a child care service may be provided and inspect that place and any equipment or other thing at that place;

(b) require any person who is at a place entered in accordance with this section to provide any information that is necessary for the purpose of investigating compliance with the licence or the regulations; and

(c) inspect and for that purpose require the production of, any register, record or other document that any person is required by the regulations to keep and copy or take extracts from any such register, record or other document.

(3) A person must not, without lawful excuse, fail to comply with a requirement under subsection (2)(b) or (c).

Penalty: $6 000.

(4) If a magistrate is satisfied by evidence on oath that there are reasonable grounds to suspect that a child care service is being provided at a place other than a place at which such a service may be provided under a licence, the magistrate may issue a warrant to a licensing officer or a police officer authorising the officer to enter and inspect that place.

232. Regulations

Without limiting section 248(1), the regulations may —

(a) prescribe types of child care service and make different provisions for or in respect of each of those types;

(b) regulate applications for licences, objections to the grant of licences, the amendment of licences, and the surrender of licences;

(c) confer power on the CEO to conduct any check (including a criminal record check) that the CEO considers appropriate as to the character and background of a person for the purpose of determining whether the person is a fit and proper person to provide or be involved in the provision of a child care service or to associate with children, as the case requires;

(d) prescribe matters to which the CEO must have regard in determining whether a particular person is a fit and proper person to provide or be involved in the provision of a child care service or to associate with children, as the case requires;

(e) without limiting section 203(b), prescribe the documents (including a criminal record check) and information to be provided by an applicant or licensee in connection with an application or the provision of a child care service, as the case requires;

(f) require a licensee to notify the CEO of changes in circumstances relating to or affecting the provision of a child care service including, without limitation, a change of supervising officer or managerial officer;

(g) provide for and in relation to the appointment of supervising officers and persons to act in their place;

(h) provide for the powers and duties of licensing officers;

(i) regulate the staffing requirements for the provision of child care services;

(j) confer power on the CEO to conduct a criminal record check of any member of the staff of a child care service;

(k) prescribe requirements as to the health and safety of children during the provision of child care services;

(l) require a licensee or a member of the staff of a child care service from time to time to undergo medical examinations or to provide any documents (including a criminal record check) or information relevant to the health and safety of children during the provision of the child care service;

(m) regulate the building and other physical environment requirements for the provision of child care services;

(n) regulate programmes of activities and equipment to be provided for child care services;

(o) regulate the administration of child care services, the records to be maintained and the returns to be made;

(p) provide for the continued operation of a child care service in an emergency situation or in circumstances where the licence relating to the service is suspended or cancelled;

(q) confer power on the CEO in special circumstances in particular cases to grant exemptions from provisions of the regulations for periods specified in the exemptions and to impose conditions subject to which an exemption applies;

(r) confer power on, or require, the CEO to notify the parents of children for whom a child care service is provided of any prescribed matter relating to or affecting the provision of the service;

(s) prescribe fees payable —

(i) in respect of applications for the grant or renewal of licences, including fees by way of penalty for late lodgment of applications; and

(ii) for the grant or renewal of licences;

(t) require any document or information provided by an applicant or a licensee to be verified by statutory declaration;

(u) provide for transitional matters; and

(v) establish a mechanism for the review of the regulations.

Part 9 — Provision of financial or other assistance

233. Power to 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. Power to 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);

(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.

Penalty: $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 the CEO.

(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 the CEO.

(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.

238. Production of departmental records

(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;

(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: $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 and child counsellor as defined in the *Family Court Act 1997*;

(ii) a welfare officer as defined in that Act; or

(iii) any other person required or directed under that Act to prepare a report on matters relevant to the proceedings;

(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: $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.

239. Objection to disclosure of certain information during 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;

(b) it is a record of confidential counselling with a child or a child's relative; or

(c) it is information personal to a child, a child's relative 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.

240. Confidentiality of notifier's identity

(1) In this section —

"identifying information", in relation to a notifier, means information —

(a) that identifies the notifier;

(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 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.

(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;

(ii) with the written consent of the notifier; or

(iii) 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: $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 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.

241. Confidentiality of information

(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;

(b) for the purpose of, or in connection with, providing social services under an agreement referred to in section 15(1);

(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;

(d) for the purpose of protection proceedings;

(e) as required or allowed under this Act or another written law;

(f) with the written consent of the Minister or person to whom the information relates; or

(g) in prescribed circumstances.

Penalty: $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 240 if its disclosure is prohibited under that section.

(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.

Part 11 — Other matters

242. Obstruction

A person must not obstruct or hinder a person who is performing or attempting to perform a function under this Act.

Penalty: $12 000 and imprisonment for one year.

243. Impersonating an officer

A person must not falsely represent, by words or conduct, that a person is an authorised officer.

Penalty: $12 000 and imprisonment for one year.

244. False information

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: $6 000.

245. Legal proceedings

(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 taken 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 complaint 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 make a complaint or conduct the prosecution of an offence if the person has authority at law to do so.

246. Protection from liability for wrongdoing

(1) An action in tort 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 or an authorised officer, assists the officer 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.

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: 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 carry out a review of the operation and effectiveness of this Act as soon as is practicable after —

(a) the fifth anniversary of its commencement; and

(b) the expiry of each 5 yearly interval after that anniversary.

(2) The Minister must prepare a report based on each review under subsection (1) and, as soon as is practicable after the report is prepared (and in any event not more than 12 months after the relevant anniversary or expiry), must cause it to be laid before each House of Parliament.

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 has effect in relation to the repeals effected by subsection (1).

251. Other Acts amended

Other Acts are amended as set out in Schedule 2.

Schedule 1 — Transitional and savings provisions

[s. 250(3)]

Division 1 — Introductory matters

1. Meaning of terms used in this Schedule

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

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. Existing applications

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

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.

Schedule 2 — Amendments to other Acts

[s. 251]

1. ***Aboriginal Affairs Planning Authority Act 1972*** **amended**

(1) The amendments in this clause are to the *Aboriginal Affairs Planning Authority Act 1972**.

[* *Reprinted as at 5 February 1999.*].

(2) Section 19(1)(c) is amended by deleting "for Community Services" and inserting instead —

"

as defined in section 3 of the *Children and Community Services Act 2003*

".

(3) Section 35(4) is repealed.

(4) Section 35(5) is amended by deleting ", the Director-General of the department established under section 4 of the *Community Services Act 1972*".

(5) Section 48 is amended by deleting "officer of the department established under section 4 of the *Community Services Act 1972*, or any".

2. ***Adoption Act 1994*** **amended**

(1) The amendments in this clause are to the *Adoption Act 1994**.

[* *Reprinted as at 2 January 2001.*
For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 6 and Act No. 8 of 2003.]

(2) Section 4 is amended as follows:

(a) by deleting the definitions of "Department" and "Director-General";

(b) by inserting in the appropriate alphabetical positions the following definitions —

"

"CEO" means the chief executive officer of the Department;

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

".

(3) Section 27(6) is amended as follows:

(a) by deleting paragraph (a) and "or" after it and inserting instead —

"

(a) the child is the subject of a protection order (time-limited) or protection order (until 18) under the *Children and Community Services Act 2003*; or

";

(b) in paragraph (b) by deleting "the *Child Welfare Act 1947* in relation to wardship," and inserting instead —

"

Part 4 of the *Children and Community Services Act 2003*,

";

(c) by deleting "by reason of the child's wardship status".

(4) Section 28 is repealed and the following section is inserted instead —

"

28. Guardianship of children awaiting adoption where not all consents finalised

(1) This section applies to a child if the child —

(a) has been relinquished for adoption but where not all the consents to the child's adoption required by section 17(1) have been —

(i) delivered under section 18(1)(e); or

(ii) dispensed with under section 24(2);

or

(b) is in the care and control of a birth parent who has consented to the child's adoption and then revoked the consent for such number of times as to jeopardise, or be likely to jeopardise, the child's welfare.

(2) The CEO may make a protection application under the *Children and Community Services Act 2003* for a protection order (time-limited) or protection order (until 18) in respect of a child to whom this section applies.

(3) For the purposes of Part 4 of the *Children and Community Services Act 2003*, but without limiting section 28(2) of that Act, a child is in need of protection if the child is a child to whom this section applies.

".

(5) Section 36(2)(c) is deleted and the following paragraph is inserted instead —

"

(c) if the Court finds that the child is in need of protection as defined in section 28(2) of the *Children and Community Services Act 2003*, make a protection order (time-limited) or protection order (until 18) under that Act in respect of the child;

".

(6) After section 36(2) the following subsection is inserted —

"

(3) If the Court makes an order referred to in subsection (2)(c), the Court has, in relation to that order, the powers conferred on the Children's Court by the *Children and Community Services Act 2003.*

".

(7) The heading to Part 5 Division 1 is amended by deleting "Director-General" and inserting instead —

" **CEO** ".

(8) Each provision listed in the Table to this subclause is amended by deleting "Director-General" in each place where it occurs and inserting instead —

" CEO ".

Table

s. 4 (definition of "adoption certificate")	s. 46(3)(a)	s. 108(1)
s. 6(1)	s. 47(1)	s. 108(2)
s. 6(2)	s. 47(2)	s. 108(3)
s. 8(2)(a)	s. 48(1)	s. 109(1)
s. 10(1)	s. 49	s. 109(2)
s. 12	s. 50(1)	s. 110(1)
s. 13(1)(a)	s. 51	s. 111(1)
s. 14(2)	s. 52(1)	s. 111(2)
s. 16(1)	s. 53	s. 112(1)
s. 16(2)	s. 54	s. 112(2)
s. 16A(1)	s. 55(1)(c)	s. 113(1)
s. 16A(2)	s. 56	s. 113(2)
s. 18(1)	s. 58(1)	s. 113(4)
s. 18(3)	s. 58(2)	s. 114(1)
s. 18(7)(b)	s. 61(1)	s. 116
s. 21(1)	s. 63(2)	s. 122(2)
s. 21(2b)	s. 69(2)	s. 122(4)
s. 21(3)	s. 69(3)	s. 123(2)
s. 23(1)	s. 76(2)	s. 124(2)(a)
s. 23(2)	s. 77(1)	s. 127(2)(ba)
s. 23(3)	s. 79(1)	s. 128(1)(a)(ii)
s. 24(1)	s. 79(2)	s. 129(1)

s. 25(1)
s. 26C(1)(c)
s. 27(5)
s. 29(1)(c)
s. 30
s. 31
s. 33(1)
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s. 44(1)
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s. 44(3)
s. 44(4)
s. 44(5)
s. 45(a)
s. 45(b)
s. 46(1)(c)
s. 79(3)
s. 80(1)
s. 80(2)
s. 80(3)
s. 82(1)
s. 82(2)
s. 82(3)
s. 83(1)
s. 83(3)
s. 88
s. 90(1)
s. 90(4)
s. 91
s. 92(1)
s. 92(2)
s. 93(1)
s. 93(2)
s. 94(2)
s. 94(3)
s. 94(4)
s. 99
s. 100(3)(b)
s. 102(1)
s. 102(2)
s. 102(3)
s. 103
s. 104(3)
s. 105(1)
s. 106
s. 107
s. 129(2)
s. 130
s. 130A
s. 131(1)(b)
s. 134(1)
s. 134(1a)
s. 134(1b)
s. 134(2)
s. 134(4)
s. 138(1)(b)(ii)
s. 138(4)
s. 138(6)
s. 138D
s. 139(1)
s. 140(1)
s. 140(2)
s. 141(1)
s. 141(2)
s. 141(3)
Sch. 1 cl. 1(1)
Sch. 1 cl. 1(2)
Sch. 1 cl. 2(3)(b)
Sch. 1 cl. 3
Sch. 3 cl. 7
Sch. 3 cl. 13(1)
Sch. 3 cl. 13(2)

(9) Each provision listed in the Table to this subclause is amended by deleting "Director-General's" in each place where it occurs and inserting instead —

" CEO's ".

Table

s. 18(3)	s. 130
s. 79(1)(j)	s. 134(1)
s. 82(3)	s. 134(1a)
s. 82(4)	s. 134(1b)
s. 107(d)	

3. *Bail Act 1982* amended

(1) The amendments in this clause are to the *Bail Act 1982**.

[* *Reprinted as at 27 August 1999. For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 28 and Act No. 50 of 2003.*]

(2) Section 3(1) is amended in the definition of "authorized community services officer" in paragraph (d) by deleting "or departmental facility under the *Child Welfare Act 1947*".

(3) Schedule 1 Part C is amended in clause 2(3) as follows:

(a) after paragraph (a) by inserting "and";

(b) by deleting paragraph (b) and "and" after it.

4. *Children's Court of Western Australia Act 1988* amended

(1) The amendments in this clause are to the *Children's Court of Western Australia Act 1988**.

[* *Reprinted as at 27 August 2000. For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 54.*]

(2) Section 3 is amended by deleting the definition of "CEO (Justice)" and inserting in the appropriate alphabetical positions the following definitions —

"

"CEO" means the chief executive officer of the Department;

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

".

(3) Section 7(1) is amended by deleting "*Community Services Act 1972*" and inserting instead —

" *Children and Community Services Act 2003* ".

(4) Section 20(a) is amended by deleting "*Child Welfare Act 1947*" and inserting instead —

" *Children and Community Services Act 2003* ".

(5) Section 28(1) is amended by deleting "*Child Welfare Act 1947*" and inserting instead —

" *Children and Community Services Act 2003* ".

(6) Section 28(2)(a) is deleted and the following paragraph is inserted instead —

"

(a) the CEO or the CEO as defined in section 3 of the *Children and Community Services Act 2003*;

".

(7) Section 33 is repealed and the following section is inserted instead —

"

33. CEOs or officers may take part in proceedings

(1) In this section —

"prescribed officer" means —

(a) the CEO or an officer of the Department who is authorised by that CEO; or

(b) the CEO as defined in section 3 of the *Children and Community Services Act 2003* or an officer as defined in that section who is authorised by that CEO.

(2) A prescribed officer may be present at the hearing in the Court of any complaint against, or application or other proceeding concerning, a child and, if present, is entitled to examine and cross-examine witnesses and to be heard concerning the remand, punishment or disposal of the child.

".

(8) Section 36(1) is amended as follows:

(a) by deleting "; or" after paragraph (b) and inserting a comma instead;

(b) by deleting paragraph (c).

(9) Section 37(2) is amended by inserting after "this Act" —

" and the *Children and Community Services Act 2003* ".

(10) Section 40(2)(b) is amended by deleting "CEO (Justice)" and inserting instead —

" CEO ".

(11) Section 42(1) is amended as follows:

(a) by deleting "decision — " and paragraphs (a), (b) and (c) and inserting instead —

"

decision on the hearing of an application under Part 4 or 5 of the *Children and Community Services Act 2003*

";

(b) by deleting paragraph (aa) and inserting the following paragraph instead —

"

(a) the CEO as defined in section 3 of the *Children and Community Services Act 2003*;

";

(c) by redesignating paragraphs (bb), (cc) and (dd) as paragraphs (b), (c) and (d) respectively.

(12) Section 42(2) is amended by deleting the passage beginning "notice to" and ending "the applicant)" and inserting instead —

"

notice to the CEO as defined in section 3 of the *Children and Community Services Act 2003* (if that CEO is not the applicant)

".

(13) Section 43(4) is amended as follows:

(a) by deleting "decision — " and paragraphs (a), (b) and (c) and inserting instead —

"

decision on the hearing of an application under Part 4 or 5 of the *Children and Community Services Act 2003*

";

(b) by deleting paragraph (aa) and inserting the following paragraph instead —

"

(a) the CEO as defined in section 3 of the *Children and Community Services Act 2003*;

";

(c) by redesignating paragraphs (bb), (cc) and (dd) as paragraphs (b), (c) and (d) respectively.

5. *Constitution Acts Amendment Act 1899* amended

(1) The amendments in this clause are to the *Constitution Acts Amendment Act 1899**.

[* *Reprint 12 as at 3 October 2003*.]

(2) Schedule V Part 3 is amended as follows:

(a) by deleting "Any board, committee or council constituted under section 22 of the *Community Services Act 1972*.";

(b) after the item relating to the Advisory Committee appointed under section 435 of the *Local Government (Miscellaneous Provisions) Act 1960* by inserting the following item —

"

Any advisory body established or continued under the *Children and Community Services Act 2003*.

".

6. *Coroners Act 1996* amended

(1) The amendments in this clause are to the *Coroners Act 1996**.

[* *Reprinted as at 3 August 2001*.
For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 81 and Acts Nos. 15 and 28 of 2003.]

(2) Section 3 is amended in the definition of "person held in care" by deleting paragraph (a)(i) and inserting the following subparagraph instead —

"

(i) the CEO as defined in section 3 of the *Children and Community Services Act 2003*;

".

7. *Disability Services Act 1993* amended

(1) The amendments in this clause are to the *Disability Services Act 1993**.

[* *Reprinted as at 26 May 2000.*
For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 105.]

(2) Section 52(1)(bc) and (bd) are deleted and the following paragraphs are inserted instead —

"

(bc) for the purpose of enabling or facilitating the investigation by the CEO as defined in

section 3 of the *Children and Community Services Act 2003*, or an officer as defined in that section, of whether or not a child is in need of protection under that Act;

(bd) for the purpose of protection proceedings under the *Children and Community Services Act 2003*;

".

(3) Section 52(3) is repealed.

8. *Electoral Act 1907* amended

(1) The amendment in this clause is to the *Electoral Act 1907**.

[* *Reprinted as at15 December 2000. For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 115.*]

(2) Section 18(c) is amended by deleting "or the *Child Welfare Act 1947*".

9. *Evidence Act 1906* amended

(1) The amendments in this clause are to the *Evidence Act 1906**.

[* *Reprint 12 as at 10 October 2003.*]

(2) Section 106A is amended in the definition of "defendant" by deleting paragraph (a)(i) and inserting the following subparagraph instead —

"

(i) means any party to the proceeding, other than the affected child and an applicant who is an officer as defined in section 3 of the *Children and Community Services Act 2003*;

".

(3) The Second Schedule Part 4 is repealed and the following Part is inserted instead —

"

Part 4 — Offences under the *Children and Community Services Act 2003*

Provision	Description of offence
s. 101(1) and (2)	Failing to protect child from significant harm
s. 102	Leaving child unsupervised in vehicle

".

(4) Schedule 7 Part A is amended by deleting clause 2 and inserting the following clause instead —

"

2. A proceeding also comes within the provisions of the Schedule if it is an application under Part 4 or 5 of the *Children and Community Services Act 2003*.

".

10. *Family Court Act 1997* amended

(1) The amendments in this clause are to the *Family Court Act 1997*.

[* *Reprint 1 as at 15 August 2003*.]

(2) Section 5 is amended as follows:

(a) by inserting in the appropriate alphabetical position the following definition —

"

"CEO" means the CEO as defined in section 3 of the *Children and Community Services Act 2003*;

";

(b) in the definition of "child welfare law" by deleting "*Child Welfare Act 1947*" and inserting instead —

" *Children and Community Services Act 2003* ";

(c) by deleting the definitions of "Department" and "Director-General".

(3) Section 36(2) is amended by deleting "*Child Welfare Act 1947*" and inserting instead —

" *Children and Community Services Act 2003* ".

(4) Section 36(6) is amended as follows:

(a) by deleting "care and";

(b) by deleting "*Child Welfare Act 1947*" and inserting instead —

" *Children and Community Services Act 2003* ".

(5) Section 36(7) is repealed.

(6) Section 207(2) is amended as follows:

(a) by deleting "care and";

(b) by deleting "*Child Welfare Act 1947*" and inserting instead —

" *Children and Community Services Act 2003* ".

(7) Each provision listed in the Table to this subclause is amended by deleting "Director-General" in each place where it occurs and inserting instead —

" CEO ".

Table

s. 159(2)	s. 160(6)
s. 159(3)	s. 161(1)
s. 160(2)	s. 207(1)
s. 160(3)	s. 207(2)
s. 160(4)	s. 207(3)
s. 160(5)	s. 209(2)(f)

11. *Guardianship and Administration Act 1990* amended

(1) The amendments in this clause are to the *Guardianship and Administration Act 1990**.

[* *Reprinted as at 22 November 2002.*]

(2) Section 64(3) is amended as follows:

(a) by deleting "; and" after paragraph (b) and inserting a full stop instead;

(b) by deleting paragraph (c).

12. ***Health Act 1911*** **amended**

(1) The amendments in this clause are to the *Health Act 1911**.

[* *Reprinted as at 31 March 2000.*
For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 168 and Act No. 28 of 2003.]

(2) Section 308 is repealed.

(3) Section 309(1) is amended as follows:

(a) by deleting "definitions" and inserting instead —

" definition ";

(b) by deleting the definition of "Industrial School";

(c) in the definition of "Prisoner" by deleting "or subject to detention in an industrial school".

(4) Section 309(2) is amended by deleting "or industrial school".

(5) Section 312 is amended by deleting ", 308".

13. ***Hire-Purchase Act 1959*** **amended**

(1) The amendments in this clause are to the *Hire-Purchase Act 1959**.

[* *Reprinted as at12 May 2000.*
For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 171.]

(2) Section 18(9)(c) is deleted and the following paragraph is inserted instead —

"

(c) if there is no parent or legal guardian of the hirer, a person approved by the CEO as defined

in section 3 of the *Children and Community Services Act 2003*,

".

(3) Section 18(10) is repealed and the following subsection is inserted instead —

"

(10) The CEO as defined in section 3 of the *Children and Community Services Act 2003* (the **"CEO"**) may in writing signed by the CEO delegate the power conferred by subsection (9)(c) to any other officer as defined in section 3 of that Act, and an officer to whom that power is delegated —

(a) may exercise the power in the same manner and with the same effect as if the power were directly conferred on the officer by this Act and not by delegation; and

(b) is presumed to exercise the power in accordance with the terms of the delegation in the absence of proof to the contrary,

but any such delegation may be revoked wholly or partly by the CEO at any time and does not prevent the CEO from exercising the power.

".

14. *Human Reproductive Technology Act 1991* amended

(1) The amendments in this clause are to the *Human Reproductive Technology Act 1991**.

[* *Reprinted as at 12 July 2002.*
For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 177.]

(2) Section 3(1) is amended as follows:

(a) in the definition of "authorised officer" by deleting paragraph (c) and inserting the following paragraph instead —

"

(c) in relation to the powers referred to in section 44(3)(c) or 49(4)(b), includes a reference to the CEO as defined in section 3 of the *Children and Community Services Act 2003* or an officer as defined in that section authorised in writing by that CEO;

";

(b) by deleting the definition of "Director-General".

(3) Section 8(2)(a)(i)(E) is amended by deleting "*Community Services Act 1972*" and inserting instead —

" *Children and Community Services Act 2003* ".

15. *Industrial Relations Act 1979* amended

(1) The amendments in this clause are to the *Industrial Relations Act 1979**.

[* *Reprinted as at 8 November 2002. For subsequent amendments see Acts Nos. 7, 20, 28 and 31 of 2003 and Gazette 15 August 2003 p. 3685-92.*]

(2) Section 81AA(bc) is deleted and the following paragraph is inserted instead —

"

(bc) section 196(2) of the *Children and Community Services Act 2003*;

".

(3) Section 81CA(1) is amended in the definition of "prosecution jurisdiction" by deleting paragraph (d) and "or" after it and inserting instead —

"

(d) section 196(2) of the *Children and Community Services Act 2003*; or

".

16. *Juries Act 1957* amended

(1) The amendments in this clause are to the *Juries Act 1957**.

[* *Reprinted as at 3 July 2000.*
For subsequent amendments see Acts Nos. 25 and 50 of 2003.]

(2) The Second Schedule Part I is amended by inserting after item 1(e) the following paragraph —

"

(ea) Magistrate of the Children's Court;

".

(3) The Second Schedule Part I is amended in item 2 as follows:

(a) by deleting paragraph (c) and inserting the following paragraph instead —

"

(c) Member of the Children's Court;

";

(b) by deleting paragraph (k) and inserting the following paragraph instead —

"

(k) Officer as defined in section 3 of the *Children and Community Services Act 2003*;

".

17. *Legal Aid Commission Act 1976* amended

(1) The amendments in this clause are to the *Legal Aid Commission Act 1976**.

[* *Reprinted as at 5 March 1999.*
For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 211.]

(2) Section 37(3a)(a) is deleted and the following paragraph is inserted instead —

"

(a) where the person is a child for whom the CEO has parental responsibility under the *Children and Community Services Act 2003*, to the resources of the Department that are capable of being applied for the provision of legal aid to the person;

".

(3) Section 37(3b) is repealed and the following subsection is inserted instead —

"

(3b) In subsection (3a)(a) —

"CEO", **"child"** and **"Department"** have the meaning given to those terms in section 3 of the *Children and Community Services Act 2003*.

".

18. *Legal Representation of Infants Act 1977* amended

(1) The amendments in this clause are to the *Legal Representation of Infants Act 1977**.

[* *Reprint 1 as at 16 May 2003.*]

(2) Section 3(1)(d) is amended by deleting "*Child Welfare Act 1947*" and inserting instead —

" *Children and Community Services Act 2003* ".

(3) Section 5(5) is amended by deleting the passage beginning "under the guardianship" and ending "given him" and inserting instead —

"

under the guardianship of the CEO as defined in section 3 of the *Children and Community Services Act 2003*, the court shall not make an appointment under this section unless and until the court has caused notice to be served on the CEO and given the CEO

".

19. ***Parks and Reserves Act 1895*** **amended**

(1) The amendments in this clause are to the *Parks and Reserves Act 1895**.

[* *Reprinted as at 5 March 1999.*
For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 274.]

(2) Section 12A(2) is amended by deleting the definition of "parent" and inserting the following definition instead —

"

"parent" has the meaning given to that term in section 3 of the *Children and Community Services Act 2003*.

".

(3) Section 12A(3) is repealed.

20. ***Prostitution Act 2000*** **amended**

(1) The amendments in this clause are to the *Prostitution Act 2000**.

[* *Act No. 17 of 2000.*
For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 312 and Act No. 33 of 2003.]

(2) Section 57(4)(c) is amended by deleting "*Child Welfare Act 1947*" and inserting instead —

" *Children and Community Services Act 2003* ".

(3) Schedule 1 is amended as follows:

(a) by deleting "*Child Welfare Act 1947*" and inserting instead —

" *Children and Community Services Act 2003* ";

(b) by deleting "s. 108(1)" and inserting instead —

" s. 192(1) or (2) ".

21. *Protective Custody Act 2000* amended

(1) The amendments in this clause are to the *Protective Custody Act 2000**.

[* *Act No. 50 of 2000.*
For subsequent amendments see Act No. 31 of 2003.]

(2) Section 4(1) is amended by deleting "section 138B of the *Child Welfare Act 1947*." and inserting instead —

"

the operation of section 41 of the *Children and Community Services Act 2003.*

".

(3) Section 11(6) is repealed.

22. *Rates and Charges (Rebates and Deferments) Act 1992* amended

(1) The amendments in this clause are to the *Rates and Charges (Rebates and Deferments) Act 1992**.

[* *Reprinted as at19 May 2000 .*
For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 327 and Act No. 28 of 2003.]

(2) Section 3(1) is amended by deleting the definition of "State concession card" and inserting the following definition instead —

"

"State concession card" means a currently valid card which bears that designation and is issued under section 6 by the CEO as defined in section 3 of the *Children and Community Services Act 2003*;

".

(3) Section 6(1) is amended by deleting "Director-General of the department established under section 4 of the *Community Services Act 1972*" and inserting instead —

"

CEO as defined in section 3 of the *Children and Community Services Act 2003*

".

(4) Section 6(2) is amended by deleting "Director-General" in both places where it occurs and inserting instead —

" CEO ".

(5) Section 6(3) is amended by deleting "Director-General" and inserting instead —

" CEO ".

23. *Restraining Orders Act 1997* amended

(1) The amendments in this clause are to the *Restraining Orders Act 1997**.

[* *Reprinted as at 6 October 2000.*]

(2) Section 3 is amended by deleting the definition of "child welfare officer" and inserting instead —

"

"child welfare officer" means —

(a) the CEO as defined in section 3 of the *Children and Community Services Act 2003*; or

(b) a person who is an authorised officer for the purposes of section 37 of that Act;

".

(3) Section 63(3) is amended by deleting "an application under the *Child Welfare Act 1947* to declare a child in need of care and protection" and inserting instead —

"

protection proceedings under the *Children and Community Services Act 2003*

".

24. *School Education Act 1999* amended

(1) The amendments in this clause are to the *School Education Act 1999**.

[* *Act No. 36 of 1999.*
For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 350 and Gazette 15 August 2003 p. 3685-92.]

(2) Section 42(3) is amended by deleting "If a child is a ward for the purposes of the *Child Welfare Act 1947*" and inserting instead —

"

If the CEO as defined in section 3 of the *Children and Community Services Act 2003* has parental responsibility for a child under that Act

".

25. *Spent Convictions Act 1988* amended

(1) The amendments in this clause are to the *Spent Convictions Act 1988**.

[* *Reprinted as at 1 September 2000.*
For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 362 and Act No. 50 of 2003.]

(2) Schedule 3 is amended in the Table to clause 2(1) as follows:

(a) in item 3 by deleting "or permit to provide a child care service under the *Community Services Act 1972*." and inserting instead —

"

to provide a child care service under Part 8 of the *Children and Community Services Act 2003*.

";

(b) in item 5 by deleting "for licensing as a foster parent under the *Child Welfare Act 1947*." and inserting instead —

"

for approval in relation to the placement of a child under the *Children and Community Services Act 2003*.

".

26. *Tobacco Control Act 1990* amended

(1) The amendments in this clause are to the *Tobacco Control Act 1990**.

[* *Reprinted as at 2 November 2001*.]

(2) Section 17(1)(k) is deleted and the following paragraph is inserted instead —

"

(k) one shall be the chief executive officer of the Department as defined in section 3 of the *Children and Community Services Act 2003* or the nominee of that chief executive officer.

".

27. *Young Offenders Act 1994* amended

(1) The amendments in this clause are to the *Young Offenders Act 1994**.

[* *Reprinted as at 8 December 2000.*
For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 442 and Act No. 50 of 2003.]

(2) Section 3 is amended in the definition of "exempt responsible adult" by deleting paragraphs (b) and (c), and "or" after paragraph (c), and inserting instead —

"

(b) the CEO as defined in section 3 of the *Children and Community Services Act 2003* who, under that Act, has parental responsibility for the young person;

(c) an officer as defined in section 3 of the *Children and Community Services Act 2003*; or

".

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[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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