- EXPLANATORY MEMORANDUM –

CHILDREN AND COMMUNITY SERVICES AMENDMENT BILL 2010

Overview of the Bill

The *Children and Community Services Amendment Bill 2010* (the Bill) amends the *Children and Community Services Act 2004* (the Act) and consequentially amends the *Working with Children (Criminal Record Checking) Act 2004.*

The amendments enable the establishment of a secure care facility in Western Australia to provide short term crisis stabilization for young people at extreme risk; introduce protection orders (special guardianship) as a long term care option for children in the care of the Chief Executive Officer (CEO) who are unable to return to the care of their parents; and address matters that have arisen in the operation of the Act to clarify and strengthen its intention.

In the course of drafting the Bill, Parliamentary Counsel and Department for Child Protection officers identified the need for some further amendments to existing provisions in order to clarify and enhance provisions in the Act without changing their intent or effect.

PART 1 — PRELIMINARY

Part 1 of the Bill contains the short title of the Act, the relevant commencement provisions and the name of the Act which the Bill amends.

Clause 1: Short title

The short title of the proposed Act is the *Children and Community Services Amendment Act 2010*.

Clause 2: Commencement

Clause 2 provides that Part 1 is to come into operation on the day on which the *Children and Community Services Amendment Act 2010* (the Amendment Act) receives the Royal Assent, and the remainder of the Amendment Act is to come into operation on a day or different days fixed by proclamation.

Clause 3: Act amended

This clause provides that the amendments are to the *Children and Community Services Act 2004*, other than Part 2, Division 2, which amends the *Working with Children (Criminal Record Checking) Act 2004.*

PART 2 — SECURE CARE ARRANGEMENTS

Part 2 of the Bill contains amendments for the establishment of a secure care facility in Western Australia, and the making of secure care arrangements for children who satisfy strict admission criteria.

Division 1 – Children and Community Services Act 2004 amended

Clause 4: Section 3 amended

Clause 4 of the Bill amends section 3 of the Act, which contains definitions of terms and expressions used in the Act. The definitions of "placed" and "placement" are deleted, and new definitions inserted for "assessor"; "interim order (secure care)"; "secure care arrangement'; and "secure care facility".

"Residential facility" is also defined and refers to a place that provides accommodation for children in the CEO's care, whether operated by the Department for Child Protection, another public authority or a service provider with an agreement under section 15(1) to provide placement services. A residential facility does not include a secure care facility.

Clause 5: Section 10 amended

Clause 5 of the Bill amends section 10(3) of the Act.

Section 10 of the Act sets-out the principle of child participation, which provides that children should be given the opportunity to participate in decisions that are likely to have a significant impact on their lives.

Subsection (3) identifies some of the decisions that are likely to have a significant impact on a child's life and includes decisions about the placement of a child. The amendment to subsection (3) uses the term "placement arrangement" and includes decisions about secure care arrangements as among those decisions that are likely to have a significant impact on a child's life. This will ensure the principle of child participation also applies to children under a secure care arrangement.

Clause 6: Section 39 amended

Clause 6 of the Bill amends section 39 of the Act.

Section 39 deals with the making of a provisional care plan, which is a written plan to identify and address the needs of children in the provisional protection and care of the CEO and sets out decisions about placements.

Subsection (1) contains a definition of provisional care plan. This definition is amended to ensure that a provisional care plan sets out decisions about placement arrangements and secure care arrangements made in respect of a child.

Subsection (2) provides that a provisional care plan must be prepared within seven working days after a child is taken into provisional protection and care, and the CEO decides or is required to make a protection application in respect of the child. The proposed amendments separate the provisions under subsection (2) into three subsections: amended subsection (2), and new subsections (3A) and (3B).

A new provision is made in subsection (3B) to ensure that the seven working days within which a provisional care plan must usually be prepared does not apply if proposed section 88I(2) applies. Proposed section 88I(2), under clause 9 of the Bill, requires that children placed in a secure care facility under a secure arrangement, for

whom a provisional care plan has not yet been prepared, have a provisional care plan prepared within 2 working days of being placed in the facility. This is necessary to expedite the planning requirements for these children.

Subsection 39(4) requires the CEO to provide a copy of a provisional care plan to certain people as soon as practicable after it is prepared or modified. An amendment is inserted which ensures that the requirement to provide a copy applies whether the plan is made under this section or under proposed section 88I.

Clause 7: Section 41 amended

Clause 7 of the Bill amends section 41 of the Act.

Section 41(2) provides powers to an authorised officer or a police officer to move a child to safe place in certain circumstances. Subsection (3) provides that a lock-up is not considered to be a safe place for the purposes of section 41(2).

The amendments to this section will ensure that an officer cannot move a child to a secure care facility for the purposes of section 41(2).

Clause 8: Section 79 amended

Clause 8 of the Bill amends section 79 of the Act. Section 79 enables the CEO to make an arrangement for the placement of a child in the CEO's care.

A new subsection is inserted into section 79 to prevent the CEO from making an arrangement for the placement of a child in a secure care facility under this section. This amendment clarifies that the CEO's decisions about secure care arrangements are not subject to the provisions of Part 4, Division 5, Subdivision 2 which relate to placement arrangements. Provisions in relation to secure care arrangements are the subject of a new Subdivision proposed under clause 9 of this Bill.

Clause 9: Part 4 Division 5 Subdivision 3A inserted

Clause 9 of the Bill inserts a new Subdivision into Part 4 Division 5 of the Act. Part 4 provides for the protection and care of children and Division 5 relates to children in the CEO's care.

"Subdivision 3A - Secure care arrangements" is inserted after "Subdivision 2 – Placement arrangements" and contains the following proposed sections:

Section 88A Terms Used

This section inserts the following terms, which are defined for the purposes of this subdivision:

> "protected child" refers to a child under a protection order (time-limited) or protection order (until 18); and
>
> "provisionally protected child" refers to a child in provisional protection and care.

Section 88B Secure care facilities

This section enables the Minister to declare a place to be a secure care facility by order published in the Gazette, and also to amend or cancel such an order by order published in the Gazette. Each of these orders can come into operation on the day of publication or on a later day, if specified.

Section 88C Secure care arrangements

This section enables the CEO to make an arrangement for the placement of a provisionally protected child or a protected child in a secure facility – referred to as a "secure care arrangement".

Subsection (2) provides that, before making a secure care arrangement, the CEO must be satisfied that:

(a) there is an immediate and substantial risk of the child causing significant harm to him or herself or another person; *and*

(b) there is no other suitable way to manage that risk and to ensure that the child receives the care he or she needs.

These limitations are intended to ensure that children are placed in the secure care facility as a measure of last resort only, once it has been determined that there are no other suitable ways to manage the situation. It is not the intention of this Bill that the secure care facility be used in lieu of a psychiatric facility or for criminal justice purposes such as remand or as a condition of bail. A secure care arrangement is a therapeutic rather than punitive option.

Subsection (3) states that subsection (2) does not apply in relation to a secure care arrangement if the CEO is required to make the arrangement under an interim order (secure care). An interim order (secure care) is an order made under section 133 and introduced in clause 18 of this Bill. In that provision it is the Court which has to be satisfied as to the threshold.

Subsection (4) enables the CEO to cancel a secure care arrangement at any time, unless it is a secure care arrangement made or continued under an interim order (secure care). The effect of this provision is that, in the case of a protected child, cancellation by the CEO may occur at any time after a secure care arrangement has been made. In the case of a provisionally protected child, cancellation by the CEO may occur before application for a continuation order is made under proposed section 88E(3). It is not anticipated the CEO would cancel a secure care arrangement in respect of a provisionally protected child before application for a continuation order must made under section 88E. However, the subsection provides this capacity to allow for unforeseen circumstances.

Subsection (5) requires that, as soon as practicable after a secure care arrangement is made in respect of a child under section 88C(1), or cancelled under section 88C(4), the CEO is to provide written notice to the child, each parent, any carer or any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child. This provision is important to ensure that decisions made by the CEO in respect of a secure care arrangement are formally communicated to relevant parties for the purposes of natural justice.

Section 88D Period in secure care facility

This section deals with the period of time for which a child may be kept in a secure care facility under a secure care arrangement.

Subsection (1) requires that the period of time a provisionally protected child is kept in secure care under a secure care arrangement must not exceed:

a) the time specified in an interim order (secure care); or

b) otherwise 21 days.

Proposed section 88E of this Bill requires the CEO to apply for a continuation order in respect of a provisionally protected child who is placed in secure care under a secure care arrangement and is not already the subject of an interim order (secure care) made under section 133 as amended. Subsection (1)(b) provides a safeguard against unforeseen circumstances, for example if an application for a continuation order is not determined expeditiously by the Court.

Subsection (2) states that the period of time for which a protected child is kept in a secure care facility under a secure care arrangement must not exceed the secure care period decided by the CEO under:

- clause 88F(1), which deals with the initial secure care arrangement made; or
- clause 88F(3), which refers to an extension of the secure care period if the CEO is satisfied there are exceptional reasons for an extension.

These limitations are intended to ensure children are protected from prolonged periods of time kept under a secure care arrangement. The secure care period should be based on the shortest period necessary to manage the child's safety and to identify and plan for their needs to be met.

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

Subsection (1) defines a "continuation order" as an order made under section 133(2)(ca)(ii).

Subsection (2) provides that this section applies in relation to a provisionally protected child who is placed in a secure care facility under a secure care arrangement, but who is not the subject of an interim order (secure care) at the time of being placed.

Under subsection (3), if the child is not already the subject of protection proceedings but the CEO decides, or is required, under Division 2 Subdivision 3 of the Act to make a protection application in respect of the child, the CEO must apply for a continuation order at the same time as making the protection application, unless before then the secure care arrangement is cancelled.

Subsection (4) provides that if the child is already the subject of protection proceedings, the CEO must make an application for a continuation order in respect of the child as soon as practicable after the child is placed in the secure care facility but, in any event, not more than two working days after.

Subsection (5) requires the CEO to cancel the secure care arrangement and remove the child from the facility as soon as practicable if the Court refuses to make a continuation order applied for under this section.

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

Subsection (1) requires the CEO to decide the period of time for which a protected child is to be kept in a secure care facility as soon as practicable after making a secure care arrangement in respect of the child.

Subsection (2) states the secure care period must not exceed 21 days, unless it is extended under subsection (3).

Subsection (3) enables the CEO to extend the secure care period by up to 21 days if satisfied there are exceptional reasons for doing so. Under subsection (4), a secure care period cannot be extended more than once.

Subsection (5) requires the CEO to provide written notice to the child, each parent of the child, any carer of the child, and any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child, as soon as practicable after making a decision about the secure care period under subsections (1) or (3). This requirement ensures that decisions about a secure care period are formally communicated to relevant parties for natural justice purposes, including possible application for reconsideration of the decision under section 88G, or application for a review of the CEO's decision by the State Administrative Tribunal under section 88H.

Section 88G Reconsideration of secure care decision

This section provides for the reconsideration of a secure care decision regarding a protected child to be made upon application to the CEO by –

- the child to whom the decision relates;
- a parent of the child;
- the child's carer; or
- any person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

Under subsection (1) **"**secure care decision" means:

(a) a decision under section 88C(1) to make a secure care arrangement in respect of a protected child; or

(b) a decision under section 88F(1) as to a secure care period; or

(c) a decision under section 88F(3) to extend a secure care period.

Proposed subsection (2) requires the application to be in writing and to set out the grounds on which reconsideration of the decision is being sought. Under subsection (3), the CEO must reconsider the secure care decision as soon as practicable after receiving an application and confirm, vary or reverse the decision, or substitute another decision for it. Subsection (4) requires that the applicant be given written notice of the CEO's decision under subsection (3), and written reasons for the decision.

Children under a secure care arrangement will be assisted to comply with the requirement for an application for reconsideration of the secure care decision to be made in writing, as required. The requirement for written applications and written decisions of the CEO is necessary for the purposes of section 88H reviews by the State Administrative Tribunal.

Section 88H Review of CEO's decision

This section enables a person who is aggrieved by a decision made by the CEO under section 88G(3) to apply to the State Administrative Tribunal (the SAT) for a review of that decision. Applications to the SAT should be given priority and hearings expedited in view of the nature of the applications and the time frames involved.

Section 88I Requirements for care plan or provisional care plan

This section deals with planning requirements for children who are placed in a secure care facility under a secure care arrangement.

Subsection (1) contains the following definitions:

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

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

Subsection (2) requires that, if a provisionally protected child is placed in secure care under a secure care arrangement and a provisional care plan has not been prepared by the time of the placement, a provisional care plan must be prepared as soon as practicable after being placed in the facility, but in any event not more than two working days after the placement is made. The plan must meet certain requirements set out in subsection (5).

Subsection (3) requires that, if a provisionally protected child placed in a secure care facility under a secure care arrangement has a provisional care plan, the plan must be modified as soon as practicable, but in any event not more than two working days after the secure care arrangement is made. The modified plan must also meet the requirements of subsection (5).

Subsection (4) applies to a protected child placed in a secure care facility under a secure care arrangement, and requires that the child's care plan be modified as soon as possible but in any event not more than two working days following the child's placement in the facility.

Subsection (5) sets out the requirements for a care plan or provisional care plan made under this section. The requirements are that the plan:

- identifies the needs of the child to transition to other living arrangements after leaving the secure care facility; and
- outlines the steps or measures designed to address those needs and reduce the likelihood of the child being placed in a secure care facility again.

Section 88J Apprehension without warrant – child absent from secure care facility

This section allows an authorised officer or a police officer, who suspects on reasonable grounds that a child is unlawfully absent from a secure care facility, to apprehend the child without warrant and return the child to the secure care facility or such other place as the CEO directs.

Subsection (1) defines an "officer" as an authorised officer or a police officer.

Subsection (5) allows an officer to use reasonable force and assistance when exercising a power under this section.

Subsection (6) allows an authorised officer to be accompanied by a police officer when exercising a power under this section. This provision is similar to the powers provided under section 87(6).

Clause 10: Section 89 amended

Clause 10 of the Bill amends section 89 of the Act.

Section 89 provides for the making of a care plan for a child as soon as practicable after a child first comes into the CEO's care. Subsection (1) defines "care plan" as a written plan that identifies the needs of the child; outline steps or measures to be taken in order to address those needs; and sets out decisions about the care of the child including decisions about placement arrangements, and decisions about contact between the child, the child's parent, family or significant others.

This Bill amends the definition of care plan in subsection (1) to include secure care decisions made under proposed Subdivision 3A. This amendment will ensure that children under a secure care arrangement are the subject of proper planning to identify and address their needs as required under proposed section 88I(5).

Clause 11: Part 4 Division 5 Subdivision 4 heading amended

This clause changes the heading of Part 4 Division 5 Subdivision 4 from "*Review of case planning decision"* to "*Review of care planning decision"*.

Clause12: Section 91 amended

This clause amends Section 91 of the Act. Section 91 sets out the terms used in Subdivision 4 including the term "case planning decision", which means a decision set out in a care plan for a child.

The amendment changes the term "case planning decision" to "care planning decision". This is a change in nomenclature only, to help avoid confusion between the meaning of "case planning", which is a common term in daily use by officers of the Department for Child Protection to refer to general plans for families with whom the Department works, and a decision made in a "care plan", which is reviewable by the Case Review Panel established under section 92 of the Act.

An additional amendment provides that a care planning decision does not include a secure care decision. The effect of this is that a secure care decision is not

reviewable by the Case Review Board. Special secure care review provisions have been made under proposed section 88G in clause 9 of the Bill in view of the need for an expedited response to applications for reconsideration relating to children in secure care.

Clause 13: Section 93 amended

Clause 13 amends section 93 of the Act. Section 93 provides for the review of a case planning decision set-out in a care plan, upon application by specified persons.

Consistent with the nomenclature amendment to "case planning decision" in section 91, this clause changes the term "case planning decision" to "care planning decision" throughout the section.

Clause 14: Section 97 amended

Clause 14 amends section 97. Section 97 provides that a child leaving the CEO's care has a right to the return of personal material held by the Department or any persons providing care to the child under a placement arrangement. The amendment will extend this right to children under a secure care arrangement.

Clause 15: Part 4 Division 7 Subdivision 2 heading amended

This clause amends the heading of Part 4, Division 7, Subdivision 2 of the Act to include children under secure care arrangements as well as those under placement arrangements.

Clause 16: Section 105 amended

This clause amends section 105 of the Act. Section 105 contains definitions of terms used in Part 4, Division 7, Subdivision 2. Subdivision 2 creates a number of prohibitions in respect of children who are the subject of a placement arrangement, which is an arrangement under section 79(2) of the Act.

The clause amends section 105 to insert "secure care arrangement" into the definitions of "child" and "place of residence". This has the effect of ensuring that the prohibitions under Subdivision 2 apply to children under a secure care arrangement as well as to those who are under a placement arrangement.

Clause 17: Section 125A and 125B inserted

Clause 17 inserts proposed sections 125A and 125B into the beginning of Part 4, Division 10 of the Act. Part 4, Division 10 contains general provisions regarding the protection and care of children.

Section 125A - Assessors

This section provides for the CEO to designate a person to be an assessor with certain powers in respect of a residential facility or a secure care facility, as defined under proposed amendments to section 3 of the Act and contained in clause 4 of the Bill.

Subsection (2) requires the CEO to be satisfied that the person to be appointed has the experience, skills, attributes or qualifications the CEO considers appropriate to exercise the powers provided under subsection (3).

Subsection (3A) provides that an officer (of the Department for Child Protection) is not eligible to be appointed as an assessor.

Subsection (3B) provides for an assessor to be paid such remuneration and allowances as the CEO, on the recommendation of the Minister for Public Sector Management, determines.

Under section 125A(3), an assessor may at any time visit a residential or secure care facility and do one or more of the following:

a) enter and inspect the facility;

b) inquire into the operation and management of the facility;

c) inquire into the wellbeing of any child in the facility;

d) see and talk with any child in the facility;

e) inspect any document relating to the facility or to any child in the facility.

Subsection (4A) provides for a child, a parent or other relative of the child to request a visit from an assessor to see and talk with the child.

Subsection (4) requires that an assessor provide a written report to the CEO about each visit made under section 125A(3).

Section 125B – Identity cards for assessors

This section requires the CEO to ensure that each assessor is issued with an identity card in a form approved by the CEO, and that an assessor display the identity card when visiting a facility under section 125A(3).

Clause 18: Section 133 amended

Clause 18 of the Bill amends section 133 of the Act. Section 133 provides that, in the course of protection proceedings, a Court may make an interim order on its own initiative or on the application of a party, as to any one or more of a number of matters set out in subsection (2), including that the child is to be taken into, or remain in, provisional protection and care.

This amendment replaces subsection (1) with three subsections to provide, under subsections (2A) and (2B), that an interim order (secure care) may be made only on application by the CEO. A new subsection (2)(ca) provides that the Court may make an interim order that, if the child is in provisional protection and care: i) the CEO is to make a secure care arrangement in respect of the child; or ii) a secure care arrangement made in respect of the child is to continue.

Clause 19: Section 134A inserted

Clause 19 of the Bill inserts section 134A into the Act.

Section 134A Provisions about interim orders (secure care)

Subsection (1) provides that the Court must not make an interim order (secure care) in respect of a child unless satisfied that:

a) there is an immediate and substantial risk of the child causing significant harm to him or herself or another person; and

b) there is no other suitable way to manage that risk and to ensure that the child receives the care he or she needs.

Under subsection (2), an interim order (secure care) must specify the period for which the child is to be kept in a secure care facility under the secure care arrangement made.

Under subsection (3), if the order is made under section 133(2)(ca)(i) the secure care period must not exceed 21 days unless it is extended under subsection (6).

Subsection (4) provides that in the case of an interim order (secure care) made under 133(2)(ca)(ii), regarding the continuation of a secure care arrangement, the secure care period must not exceed a total of 21 days, *including* the period for which the child has already been kept in a secure care facility, unless it is extended under subsection (6).

Under subsection (5) the CEO may apply to the Court for a variation of an interim order (secure care) to extend the secure care period.

Subsection (6) allows the Court to extend the secure care period by not more than 21 days if satisfied that there are exceptional reasons for doing so.

Subsection (7) states that the secure care period cannot be extended more than once.

Subsection (8) requires the CEO to cancel a secure care arrangement and remove a child from the secure care facility as soon as practicable after the Court revokes an interim order (secure care), on application by a party to do so under section 134(1).

Clause 20: Section 134 amended

Clause 20 amends section 134 of the Act. Section 134 allows a party to apply to the Court for the variation or revocation of an interim order.

The amendment under clause 20 inserts subsection 2A into section 134. Subsection (2A) states that a variation of an interim order does not include a variation referred to in section 134A(5), which is an order to extend the secure care period. This is because only the CEO can make such an application.

Clause 21: Section 243 amended

Clause 21 amends section 243 of the Act. Section 243 prohibits a person from falsely representing, by works or conduct, that a person is an authorised officer. The amendment extends the prohibition to include the impersonation of an assessor appointed under proposed section 125A in clause 17 of this Bill.

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

Clause 22: Act amended

Clause 22 specifies that the amendments in this Division are made to the *Working with Children (Criminal Record Checking) Act 2004* (the WWC Act).

Clause 23: Section 6 amended

Clause 23 amends the definition of "child-related work" by inserting into section 6(1)(a)(vi) of the WWC Act the words "or secure care arrangement".

This amendment will require relevant persons, whose usual duties involve or are likely to involve contact with a child in connection with a secure care arrangement, to have a Working with Children Check in accordance with the WWC Act.

PART 3 — PROTECTION ORDERS (SPECIAL GUARDIANSHIP)

Clause 24: Section 3 amended

Clause 24 amends section 3 of the Act by deleting the definition of "protection order (enduring parental responsibility)" and inserting a definition of "protection order (special guardianship)".

Clause 25: Section 42 amended

Clause 25 amends section 42 of the Act, which defines the terms used under Part 3, Division 3.

Subclause (2) amends the definition of "child" to include a child to whom a protection application or other application under the Division relates, as well as a child to whom a protection order relates.

The definition of "enduring parental carer" is replaced with a definition of "special guardian". A special guardian is the individual who is given, or the two individuals who are jointly given, parental responsibility for a child under a protection order (special guardianship).

Clause 26: Section 44 amended

Clause 26 amends section 44(3) of the Act. Section 44 provides that only the CEO may apply for a protection order, and sets outs the requirements of an application. Subsection (3) is amended to reflect the new nomenclature of protection order (special guardianship) in place of protection order (enduring parental responsibility).

Clause 27: Section 60 amended

Clause 27 amends section 60 of the Act. Section 60 provides that a protection order (enduring parental responsibility) gives a natural person or two persons parental responsibility for a child until the child reaches 18 years, to the exclusion of any other

person. Neither the CEO nor a parent of the child may be given parental responsibility under this type of order.

The amendments change the nomenclature of "(enduring parental responsibility)" in this section to "(special guardianship)".

Clause 28: Section 61 amended

Clause 28 amends section 61, which defines the terms "proposed carer" and places restrictions on the making of a protection order (enduring parental responsibility). Subsection (1) is amended by deleting the definition of proposed carer and replacing it with the term "proposed special guardian", which means the individual/s to whom parental responsibility for the child is proposed to be given under the order.

The remainder of the amendments under this clause are consistent with the change of nomenclature from "protection order (enduring parental responsibility)" to "protection order (special guardianship)".

Clause 29: Section 64 amended

Clause 29 amends section 64 of the Act. Section 64 enables a variation, addition or substitution of a condition of a protection order (enduring parental responsibility) on application by any party to the initial proceedings. A minor amendment is made to the definition of "condition" to reflect the new name of the order.

Clause 30: Section 65 amended

Clause 30 amends section 65, which enables the Court to make an order requiring the CEO to pay an enduring parental responsibility carer amounts in accordance with the regulations. The amendment changes the nomenclature of the order to "special guardianship" and the "enduring parental carer" to the "special guardian".

Clause 31: Section 66 amended

Clause 31 amends section 66. Section 66 enables the CEO to provide a child and his or her enduring parental responsibility carer with any appropriate social services at any time whilst the order is in force. The amendment changes the nomenclature of the protection order to "special guardianship" and the "enduring parental carer" to the "special guardian".

Clause 32: Section 68 amended

Clause 32 amends section 68, which provides for the CEO to apply for the revocation of a protection order and the making of another protection order.

Subsection (3) requires that if a protection order (enduring parental responsibility) is sought, the application must nominate the person or persons to whom parental responsibility is proposed to be given. Subject to the best interests of the child, subsection (4) enables the Court to confirm the order; or to revoke the order and make the protection order sought or another protection order.

The amendments to this section change the nomenclature of "enduring parental responsibility" to "special guardianship".

Clause 33: Section 69A inserted

Clause 33 inserts section 69A into Part 4 Division 3 Subdivision 7 of the Act.

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

Subsection (1) enables a carer to apply for special guardianship under subsection (2) if the person has been the child's carer and the child has been under a protection order (time-limited) or (until 18) for at least two years immediately proceeding the day on which an application is made.

Subsection (2) provides that an eligible carer may apply to the Court for the revocation of a protection (time-limited) or protection order (until 18) and the making of a protection order (special guardianship) in respect of a child.

Under subsections (3) and (4), the application must nominate the individual or individuals seeking parental responsibility of the child under the protection order (special guardianship), and the applicant must be one the persons nominated.

Subsection (5) requires that a protection order (until 18) or protection order (time-limited) remain in force until an application under this section for revocation of the order and its replacement with a protection order (special guardianship) is determined, even if the application is not determined by the time the order is due to expire.

Subsection (6) enables the Court, on application under subsection (2), to revoke the order and make a protection order (special guardianship), or another protection order in respect of the child, if satisfied that it is in the best interests of the child to do so.

Clause 34: Section 73 amended

Clause 34 amends section 73 of the Act. Section 73 enables the Court to order a parent whose child is the subject of a protection order (enduring parental responsibility) to pay for or contribute towards the maintenance of the child. The proposed amendments reflect the new nomenclature of "special guardian" and "protection order (special guardianship)".

Clause 35: Various references to "enduring parental responsibility" amended

This clause amends the nomenclature of the remaining references to "enduring parental responsibility" in sections that have otherwise not been amended by this Part, as listed in the Table.

PART 4 — DETERMINATION OF PARENTAGE

Clause 36: Part 5 Division 3A inserted

This clause inserts a new Division into Part 5 of the Act and contains provisions equivalent to those contained in the *Family Court Act 1997.* The need for these provisions has been identified as a result of instances in which the parentage of a child has been an issue.

Division 3A - Orders for determination of parentage

Section 136A Terms used

This section contains the following definitions used in Division 3A:

> "*parentage testing order*" means an order under section 136C(1); and
>
> "*parentage testing procedure*" means a medical procedure prescribed, or included in a class of medical procedures prescribed, for the purposes of this definition.

Section 136B Orders requiring person to give evidence

Subsection (1) allows the Court to make an order that requires any person to give material evidence if the parentage of a child is at question in protection proceedings.

Subsection (2) enables a Court to make an order under subsection (1) either on its own initiative or on the application of a party to the proceedings.

Section 136C Parentage testing orders

Subsection (1) enables the Court to make an order requiring that a parentage testing procedure be conducted in relation to a person mentioned in subsection (3) for the purpose of obtaining information to assist in the determining the parentage of a child.

Subsection (2) allows the Court to make a parentage testing order on its own initiative or on the application of a party.

Subsection (3) provides that a parentage testing order may be made in relation to –

(a) the child; or

(b) a person known to be the mother of the child; or

(c) any other person, if the Court is of the opinion that, if the parentage testing procedure were conducted in relation to the person, the information that could be obtained might assist in determining the parentage of the child.

Subsection (4) allows a parentage testing order to be made subject to terms and conditions.

Subsection (5) provides that this section does not limit the operation of section 136B.

Section 136D Orders associated with parentage testing orders

Subsection (1) allows a Court that makes a parentage testing order to also make orders under subsections (2) or (4).

Subsection (2) provides a Court may make any orders it consider necessary or desirable to enable the parentage testing procedure to be conducted or to be more effective or reliable.

Subsection (3) contains examples of types of orders the Court may make under subsection (2).

Subsection (4) enables the Court to make orders it considers just in relation to costs incurred in the conducting the parentage testing procedure or other orders in relation to the procedure, or the preparation of reports.

Section 136E Orders directed to adults

This section provides that an adult who contravenes a parentage testing order or an order under proposed section 136D is not liable to any penalty. However, it enables the Court to draw such inferences from the contravention as appear just in the circumstances.

Section 136F Orders directed to children

Subsection (1) provides that this section applies if a parentage testing order or order under section 136D requires a medical procedure or other act to be carried out in relation to a child who is not in provisional protection and care or the subject of a protection order (time limited) or protection order (until 18).

Subsection (2) requires that the consent of a parent of the child must be obtained in order to carry out the procedure or act.

Subsection (3) allows a Court to draw such inferences as appear just in the circumstances if a parent fails or refuses to provide consent.

Section 136G No liability if parent consents

Subsection (1) provides protection from civil or criminal liability for a person who conducts or assists in the proper conducting a medical procedure or other act if it is done with the consent of a parent of the child, or the CEO if the child is in provisional protection and care or the subject of a protection order (time-limited) or protection order (until 18).

Subsection (2) provides that subsection (1) does not affect the liability of a person in relation to negligently conducting the medical procedure or act.

Section 136H Regulations about parentage testing procedures

This section enables regulations to provide for the conduct of parentage testing procedures under parentage testing orders and for the preparation of related reports.

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

Subsection (1) allows a report made in accordance with the regulations under section 136H(b) to be received in evidence in protection proceedings.

Subsection (2) allows the Court to order a person to who makes a report referred to in subsection (1) to give evidence in Court in relation to the report.

Subsection (3) enables the Court to make such an order on its own initiative or on the application of a party.

PART 5 — OTHER AMENDMENTS

Clause 37: Section 3 amended

Clause 37 amends two definitions under section 3 of the Act.

The first is the definition of "authorised officer" which is amended to mean an officer *designated* under section 25 for the purposes of the Act, rather than an officer *appointed* under that section. This amendment is made to distinguish the appointment of officers under the *Public Sector Management Act 1994* from the instrument by which such officers become authorised officers under the Act.

Secondly, the definition of "service provider" is amended by removing reference to a "body", in line with other amendments that remove "body" from wherever it is referred to in conjunction with "person or body" throughout the Act. "Service provider" will mean a *person* who –

(a) provides or promotes social services; or

(b) conducts research and development;

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

This amendment is proposed because under section 5 of the *Interpretation Act 1984,* "person" already includes a public body, company, or association or body of persons, corporate or unincorporate. Specific inclusion of the word "body" may lead to unintended interpretation of the word "person" in certain other provisions.

Clause 38: Section 7 amended

This clause amends section 7 of the Act. Section 7 sets out the overriding principle of the Act that the best interests of the child are to be regarded as the paramount consideration by a person or the Court in performing a function or exercising a power under the Act. The proposed amendment confirms that the SAT is also bound by this paramount consideration when performing functions or exercising powers under the Act.

Clause 39: Section 9 amended

Clause 39 amends section 9 of the Act. Section 9 lists guiding principles that must be observed in the administration of the Act, in addition to the paramount consideration of the best interests of the child.

The Bill inserts a new guiding principle in section 9(ha) about the need for planning for a child's care to occur as soon as possible, if the child is removed from family, in order to ensure long-term stability for the child.

This principle emphasises the need for permanency planning in the best interests of the child whether that be through reunification with the child's family or permanent placement elsewhere.

Clause 40: Section 12 amended

Clause 40 amends section 12 of the Act. Section 12 contains a principle about the order of priority in which decision-making about the placement of an Aboriginal or Torres Strait Islander child must be made. The purpose of this principle is to maintain a connection with family and culture for Aboriginal or Torres Strait Islander children in placement arrangements.

Subsection (2) is amended by inserting "under a placement arrangement" after the word "placement". This amendment clarifies that the Aboriginal or Torres Strait Islander child placement principle applies to decision-making regarding the placement of children under a placement arrangement, which is an arrangement made under section 79(2) of the Act**.**

A further amendment is made to subsection (2) to reinforce the paramountcy of the principle of the best interests of the child. The effect of the amendment will be to ensure that Aboriginal or Torres Strait Islander children are placed in the best possible placement arrangement having regard to the order of priority to be considered in placing the child and the need to maintain the child's cultural identity and connections.

Clause 41: Section 15 amended

Clause 41 amends section 15 of the Act. Section 15 of the Act empowers the Minister on behalf of the State to enter into agreements with a "person or body" to facilitate the provision or promotion of social services and to undertake social research. This amendment removes reference to "body" throughout the section, which is redundant because section 5 of the *Interpretation Act 1984* provides that "person" includes a public body, company, or association or body of persons, corporate or unincorporate.

Clause 42: Section 16 amended

Clause 42 amends section 16 of the Act, which provides that the Minister may delegate his or her powers or duties to the CEO. The powers or duties that may be delegated include powers or duties in the course of governing in the affairs of the Community Development Ministerial Body established under section 18(4).

The amendment under clause 42 is consistent with the amendment proposed under clause 45 of this Bill to change the title of the Ministerial Body.

Clause 43: Part 3 Division 2 heading amended

Clause 43 of the Bill amends the heading of Part 3 Division 2 – The Community Development Ministerial Body - to reflect the proposed amendment to the title of the Ministerial Body.

Clause 44: Section 17 amended

Clause 44 amends section 17 of the Act. Section 17 contains the meaning of "Ministerial Body". The amendment changes the meaning of the Ministerial Body to be the body referred to in section 18(1) as amended.

Clause 45: Section 18 amended

Clause 45 amends section 18 of the Act. Section 18 establishes the Community Development Ministerial Body.

This Bill replaces subsection (1) with a new provision which states that the body previously established by subsection (1) as the Community Development Ministerial Body is renamed the Children and Community Services Ministerial Body.

This amendment has no substantive effect on the operation of the Ministerial Body but brings the title of the Body in line with the title of the Act rather than the name of the Department, which may change from time to time.

Clause 46: Section 19 amended

Clause 43 amends section 19 of the Act. Section 19 sets out the purpose and nature of the Ministerial Body.

Subclause (1) provides that the purpose of the Ministerial Body is to provide a corporate body through which the Minister can perform functions under the Act that are more conveniently done by a body corporate than an individual. The amendment inserts "or for the purposes of" after "under".

The intent of the amendment is to ensure that the provision is interpreted as intended and allows, for example, the Ministerial body to carry out property transactions as its predecessor under the *Community Services Act 1972* was able to.

Clause 47: Section 21 amended

Clause 47 amends section 21 of the Act, which identifies the functions of the CEO. The amendment inserts subsection (ca) after subsection (1)(b), giving the CEO power to control and manage the property of children who are the subject of a protection order (time-limited) or protection order (until 18).

This had previously been expressly provided for in the *Child Welfare Act 1947.* It was intended that the introduction of "parental responsibility" in the *Children and Community Services Act 2004* would enable the CEO to carry out this function as part of the CEO's responsibility. The amendment is proposed in order to remove doubt about the CEO's powers in this regard.

Clause 48: Section 22 amended

Clause 48 amends section 22 of the Act. Section 22 requires that the CEO endeavour to work in cooperation with public authorities, non-government agencies and service providers.

Under subsection (3), if the CEO considers a public authority or service provider can, by taking specified action, assist in the performance of functions under the Act, the CEO may request the assistance of the public authority or service provider, specifying the action that is sought.

Subsection (4) requires a public authority or service provide to endeavour to comply with such a request, provided the compliance is consistent with its duties and does not unduly prejudice the performance of its functions.

This Bill makes minor amendments to subsection (3) and inserts a new subsection (4A). Subsection (3) is amended to remove references to a public authority or service provider "taking specified action" and the CEO specifying the "action" that is sought. Instead, the CEO is to specify the "assistance" that is sought. Subsection (4A) defines "assistance" to include the provision of advice, facilities and services.

Subclause (4) is amended by inserting a requirement that the public authority or service provider endeavour to comply with a request under subsection (3) promptly.

These amendments are made in response to a recommendation of the Ford Report[1] (2007). They strengthen section 22 by identifying the type of assistance the CEO may request, and expressly requiring that an agency endeavour to comply with the CEO's request promptly to ensure that a child's needs are met in a timely manner.

Clause 49: Section 23 amended

Clause 49 of the Bill amends section 23 of the Act. Section 23 enables the exchange of certain information in particular circumstances, provided it is relevant to the wellbeing of a child or class or group of children, or the performance of a function under the Act.

Subsection (1) defines the terms used in the section. The Bill amends subsection (1) by including a definition of "Commonwealth agency". Minor amendments are also made to the definitions of "corresponding authority" and "interested person", which have no substantive effect on the operation of the Act.

Subsection (2) authorises the CEO or an authorised officer of the Department to disclose relevant information to a public authority, a corresponding authority, a service provider or an interested person.

Subsection (3) enables the CEO or an authorised officer of the Department to request a public authority, corresponding authority, a service provider or an interested person to disclose relevant information.

[1] *Review of the Department for Community Development* by Prudence Ford (2007)

This Bill amends subsections (2) and (3) by including "a Commonwealth agency" in the provisions. The inclusion of a Commonwealth agency in Section 23 will confirm in State law the ability to exchange of information with Commonwealth bodies such as Centrelink, pursuant to Commonwealth/State schemes such as the income management scheme currently being implemented by the Department.

Subsection (4) allows a public authority, a service provider or an interested person to comply with a request under subsection (3) despite any law of the State relating to secrecy or confidentiality. The Bill amends subsection (4) by providing that the CEO may also disclose relevant information under subsection (2) despite any law of the State relating to secrecy or confidentiality. This amendment corrects an oversight in the *Children and Community Services Bill 2003.*

The Bill inserts subsection (6A) into the Act, which clarifies that the protection from civil or criminal liability provided to persons disclosing or requesting under subsections (2) or (3) does not apply to the disclosure of information by a Commonwealth agency or a corresponding authority in compliance with a request under subsection (3). This amendment recognises the parameters of the State's legislative capacities in respect of other States and the Commonwealth.

Clause 50: Section 24A inserted

Clause 50 inserts section 24A after section 23 of the Act. This section provides for the exchange of information relevant to the wellbeing of a child or a class or group of children between public authorities to be prescribed in regulations. The need for State authorities to be able to exchange such information has been highlighted in a number of reports including the Gordon Report (2002)[2] and the Ford Report (2007).

The intention of the amendment is to facilitate effective cooperation on child protection matters between prescribed State agencies. The provisions under proposed section 24A are similar to those provided for the exchange of information between the Department and other persons under section 23, including protections for information disclosed in good faith. Proposed section 24A contains the following subsections.

Section 24A – Exchange of information involving other public authorities

Subsection (1) defines "CEO of a prescribed authority" and "prescribed authority".

Subsection (2) enables the CEO of a prescribed authority to disclose information to the CEO of another prescribed authority if, in the opinion of the disclosing CEO, the information is or is likely to be relevant to the wellbeing of a child or a class or group of children.

Subsection (3) allows the CEO of a prescribed authority to request the CEO of another prescribed authority to disclose information if, in the opinion of the requesting CEO, the information is or is likely to be relevant to the wellbeing of a child or a class or group of children.

[2] *Putting the Picture Together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities* by Sue Gordon (2002)

Subsection (4) provides that information may be disclosed under subsection (2), or in compliance with a request under subsection (3), despite any written law relating to secrecy or confidentiality. Under the *Interpretation Act 1984,* "written law" refers to all current Western Australian Acts and subsidiary legislation.

Subsection (5) provides protection from liability if information is disclosed in good faith under subsection (2) or in compliance with a request under subsection (3).

Subsection (6) allows the CEO of a prescribed authority to delegate the powers under subsections (2) and (3) to an officer or employee of the authority.

Clause 51: Section 24 amended

Clause 51 amends section 24 of the Act. Section 24 allows the CEO to delegate to an officer or other person, in writing, any of the CEO's powers or duties under the Act.

This Bill amends section 24 by allowing the CEO to delegate to "an officer, a service provider or another person" instead of to an "officer or other person". This amendment clarifies the delegation powers of the CEO under subsection (1) in order to enable the planned delegation of case management functions in certain circumstances to a service provider.

Subsection (3) prohibits a person delegated with powers or duties under this section from further delegating that power or duty. The Bill amends this subsection by allowing a delegation to expressly authorise the further delegation of the power or duty. This will support streamlined case management by service providers with delegated functions in respect of a particular child. The CEO may, through the instrument of delegation, specify conditions to be met in the exercise of the delegated powers or duties by a service provider.

Subsection (4) specifies that when a person carries out a delegated function under this clause it is to be assumed that he or she is carrying out the function as delegated unless the contrary is shown. The Bill replaces this subsection with a similar provision that also applies to persons authorised to perform a power or duty that has been delegated.

Clause 52: Section 25 replaced

Clause 52 replaces section 25 of the Act. Section 25 provides for the CEO to appoint authorised officers, generally for the purposes of the Act or of provisions in the Act specified in the appointment.

The Bill amends the section 25 to provide for the "designation" of authorised officers rather than "appointment". This change in terminology is made to distinguish the appointment of officers under the *Public Sector Management Act 1994* from the instrument by which such officers become authorised officers under the Act, because there can be no further appointment by the CEO as such.

Clause 53: Section 26 amended

Clause 53 amends section 26 of the Act. Section 26 requires authorised officers to display an identity card issued to each officer by the CEO when exercising a power

under the Act. Production of the identity card is conclusive evidence of an officer's appointment under section 25.

The Bill replaces the term "appointment" with the term "designation" in line with amendments under clause 52 regarding the designation of authorised officers.

Clause 54: Section 29 amended

Clause 54 amends section 29(2) of the Act and inserts subsection (3A).

Subsection (2) provides that, where 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 decisions about medical or dental examination, treatment or procedures.

The Bill replaces subsection (2) to provide that, if a child is in provisional protection and care, the CEO, subject to any interim order in respect of the child, has responsibility for the day-to-day care, welfare and development of the child *to the exclusion of any other person.*

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

These amendments are intended to ensure clarity and avoid confusion regarding the extent of the CEO's powers, in respect of children in provisional protection and care. It is important, for example, that medical and education authorities know who makes decisions in respect of a child in provisional protection and care.

Clause 55: Part 4 Division 2 heading amended

Clause 55 changes the heading of Part 4 Division 2 from "Power available to safeguard or promote child's wellbeing" to "Measures available to safeguard or promote child's wellbeing". This amendment more accurately reflects the mix of powers and duties of the CEO under Division 2.

Clause 56: Part 4 Division 2 Subdivision 1 heading amended

Clause 56 changes the heading of Part 4 Division 2 Subdivision 1 from "General powers of CEO" to "General powers and duties of CEO". The provisions under Subdivision 1 place obligations on the CEO as well as providing general powers.

Clause 57: Section 32 amended

Clause 57 amends section 32(1) of the Act.

Section 32(1) provides that the CEO must do any one or more of a range of actions, having determined that action is required to safeguard or promote a child's wellbeing. An amendment is made to remove "any" from subclause (1). The use of "any" in this subsection is redundant and the amendment is a drafting refinement only.

Clause 58: Section 33A and 33B inserted

Clause 58 inserts sections 33A and 33B into Part 4 Division 2 Subdivision 1 of the Act. The proposed provisions are similar to those provided under sections 31 and 32 in respect of actions to be taken by the CEO if the CEO becomes aware of concerns about the wellbeing of a child.

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

This section provides that if, before a child is born, the CEO receives information that raises concerns about the wellbeing of the child, the CEO may cause inquiries to be made for the purpose of determining whether action should be taken to safeguard and promote the child's wellbeing after the child is born.

Section 33B – Further action by CEO before child is born

This section requires the CEO to do one or more of a number of actions if the CEO determines, under proposed section 33A, that action should be taken in order to safeguard or promote a child's wellbeing after the child is born. The actions available to the CEO are to –

- provide/arrange for social services to the pregnant woman;
- arrange a meeting with relevant people to plan for addressing the needs of the child after the child is born;
- conduct an investigation into whether the child is likely to be in need of protection after being born.

These provisions are intended to clarify the CEO's powers in circumstances where there are concerns about the future safety of a child once born. Clause 73 makes corresponding amendments to section 129 which support the exchange of information, by expressly providing protection from liability for people who provide information to the Department which raises concerns of this nature in good faith. The provisions do not give the CEO the power to direct the woman as to the pregnancy or any aspect of it.

Clause 59: Section 38 amended

Clause 59 amends section 38 of the Act, which details the process to be observed in relation to a child who is taken into provisional protection and care without a warrant under section 37 of the Act by an authorised officer or a police officer. These provisions deal with children who are not already the subject of an existing protection application or protection order.

Subclause (2) inserts two new subsections which detail the process to be observed in relation to a child who is already the subject of protection proceedings, or already in the CEO's care, when taken into provisional protection and care under section 37.

Unless subsection (4A) applies, proposed subsection (3) requires the CEO to apply for an interim order under section 133(2)(b) that the child is to remain in protection and care, or must ensure that the child is returned to or placed in the care of:

- a parent;
- a person who was providing day-to-day care at the time of being taken into provisional protection and care; or
- with the consent of a parent, any other person.

Proposed subsection (4A) applies to a child already in the CEO's care when taken into provisional protection and care, and allows the CEO to make appropriate arrangements for the care of the child.

These amendments address an oversight in the current provisions that impacts on a small number of cases.

Clause 60: Section 68 amended

Clause 60 amends section 68 of the Act. Section 68 provides that the CEO may apply to the Court for the revocation of a protection order and its replacement by another protection order in respect of the child.

The amendment under this clause provides that, if an application for replacement of a protection order (supervision) or protection order (time-limited) is made but not decided by the Court before the day on which the order would otherwise expire, the order remains in force until the application for replacement is determined.

This amendment corrects an omission in the Act, and mirrors a similar provision (section 56(3)) in respect of applications for the extension of a protection order (time-limited).

Clause 61: Section 79 amended

Clause 61 amends section 79 of the Act.

Section 79 enables the CEO to make placement arrangements for a child in the CEO's care. Subsection (2) contains a list of the placement options available for the making of placement arrangement which includes, under subsection (2)(a)(ii), "a person or body who or which has entered into agreement under section 15(1) for the provision of placement services".

This amendment removes reference to a "body" under subsection (2)(a)(ii) and is consistent with amendments proposed under clauses 37(2), 41 and 49(2) which remove "body" from "person or body". The reference to "body" is redundant because section 5 of the *Interpretation Act 1984* provides that "person" includes a public body, company, or association or body of persons, corporate or unincorporate.

Clause 62: Section 81 replaced

Clause 62 amends section 81 by replacing it with a new provision. Section 81 contains consultation requirements in respect of the making of placement arrangements for Aboriginal or Torres Strait Islander children.

Subsection (1) requires the involvement of an Aboriginal or Torres Strait Islander officer of the Department at all relevant times in the making of a placement arrangement under this section.

Subsection (2) requires that the CEO 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 or Torres Strait Islander child.

This Bill combines and amends subsections (1) and (2) to require that the CEO consult with at least one of the following:

(a) an officer who is an Aboriginal person or a Torres Strait Islander;

(b) an Aboriginal person or a Torres Strait Islander who, in the opinion of the CEO, has relevant knowledge of the child, the child's family or the child's community;

(c) an Aboriginal or a Torres Strait Islander agency that, in the opinion of the CEO, has relevant knowledge of the child, the child's family or the child's community.

This amendment is intended to promote effective consultation by ensuring that external consultations with Aboriginal or Torres Strait Islander individuals or agencies, regarding placement arrangements for Aboriginal or Torres Strait children, occur only with those individuals or agencies with relevant knowledge of the child or the child's family or community.

Clause 63: Section 84 replaced

Clause 63 replaces section 84 of the Act. Section 84 currently enables an authorised officer to request the carer of a child in the CEO's care to hand over the child to the officer.

This Bill extends the powers available under this section to enable an authorised officer to require the handover of a child from a carer, a parent or any other person who has the care or control of a child who is the subject of a placement arrangement. The broadening of these powers is necessary to provide for the wide range of circumstances in which authorised officers may require a child in the CEO's care to be handed over.

The amendment creates an offence for non-compliance with such a requirement and carries a penalty of a $12,000 or imprisonment for one year. This penalty is commensurate with the penalty under section 242 for obstructing or hindering a person who is performing or attempting to perform a function under the Act.

Clause 64: Section 85 amended

Clause 64 amends section 85 of the Act, which provides that an authorised officer may apply to a Magistrate for a warrant (apprehension) if a carer fails to handover a child following a request under section 84 to do so.

The amendments to section 85 are consistent with amendments to section 84 changing a "request" into a "requirement" and extending the powers to apply to a parent or other person rather than just a carer.

Clause 65: Section 86 amended

Clause 65 amends section 86 of the Act. Section 86(1) enables an authorised officer or a police officer to apply to a Magistrate for a warrant to apprehend a child in the CEO's care if the officer believes, on reasonable grounds, that the child has without approval either left, or been taken from, the place where he or she has been living under a placement arrangement.

Subsection (3) enables a Magistrate to issue a warrant if satisfied that there are reasonable grounds for the suspicion in subsection (1). To correct a drafting error in this subsection, the Bill replaces "suspicion" with "belief". The amendment has no substantive effect on the provision.

Clause 66: Section 102 amended

Clause 66 amends the penalty provision in section 102 to reflect current drafting standards by inserting "a fine of" before $36 000. Similar amendments are proposed later in the Bill.

Clause 67: Section 104A inserted

Clause 67 inserts section 104A into the Act.

Section 104A – Body piercing

Subsection (1) defines body piercing as piercing a part of the body for the purpose of inserting a bar, pin, ring, stud or similar thing.

Subsections (2) and (3) prohibit the body piercing of a child's genitals, anal area, perineum or nipples and provide that the consent of the child or a parent is not a defence to a charge under subsection (2). A fine of $18 000 and 18 months imprisonment applies.

Subsection (4) prohibits body piercing on other parts of a child's body without first obtaining the written consent of a parent of the child, and a penalty of $12 000 fine and 1 year imprisonment applies. Subsection (5) enables of a child of 16 years or more to have body piercing of the ear without the necessity to obtain written parental consent.

Subsection (6) provides that this section does not apply to body piercing for medical or therapeutic purposes.

Clause 68: Section 112 amended

Clause 68 amends section 112 of the Act. Section 112 defines the terms used in Division 8 of Part 4, which provides for powers of restraint, search and seizure.

The amendment replaces the term "officer" with two definitions:

"approved person" means a person approved under section 113A.

"authorised person" means –

(a) an authorised officer; or

(b) a police officer; or

(c) an approved person.

This amendment is made in conjunction with amendments under clauses 69 and 70 of the Bill to delegate powers of restraint, search and seizure to an approved person in addition to an authorised officer or a police officer.

Clause 69: Section 113A inserted

Clause 69 inserts section 113A into the Act.

Section 113A – Approval for purposes of this Division

Section 113A allows the CEO to approve a person or class of persons for the purposes of Division 8, if satisfied that the person or class of persons has the experience and training the CEO considers necessary to properly exercise the powers of restraint, search and seizure conferred by the Division.

The CEO's approval must be in writing, may be subject to conditions the CEO considers appropriate and may be revoked at any time.

This amendment is made in conjunction with amendments to section 24 to enable the delegation of certain of the CEO's case management functions to a service provider that has provided long term stable care to a child under a placement arrangement. An employee of a service provider to whom functions are delegated may be approved if the CEO considers that person has the necessary experience and training.

Clause 70: Section 113 amended

Clause 70 amends section 113 of the Act. Section 113 permits an authorised officer or a police officer to restrain a child in the CEO's care. The restraint is only to be exercised for a period and to an extent necessary to prevent the child endangering his or her own health and safety or that of another person, or to prevent the child causing serious damage to property.

Subsection (2) allows police to exercise these powers only when moving a child to a safe place under section 41. An amendment enables police to exercise the powers also when moving a child to secure care facility under a secure care arrangement.

The amendment also inserts subsection (3), which places similar limits on the circumstances under which an approved person may exercise the powers under Division 8. The powers may be used only if the child is in the CEO's care; and if the approved person believes on reasonable grounds that, unless the power is exercised, the child concerned is likely to –

(i) endanger the health or safety of the child or another person; or

(ii) cause serious damage to property.

Clause 71: Section 117 amended

Clause 71 amends section 117 of the Act. Section 117 describes how seized articles are to be dealt with by an authorised officer.

The amendments to section 117 ensure that these requirements also apply to "approved persons", being those persons approved by the CEO under proposed section 113A.

Clause 72: Section 124C amended

Clause 72 amends section 124C of the Act.

Section 124C sets out the form and content requirements of a mandatory report of child sexual abuse made under section 124B of the Act. In addition to the content requirements of a report specified in subsection (3)(a) to (d), subsection (3)(e) enables any other information required in a report to be prescribed.

Regulation 9A of the *Children and Community Services Regulations 2006* prescribes such other information for the purposes of section 124C(3)(e), being information in respect of any person alleged to be responsible for the sexual abuse that is the subject of the report. Regulation 9A came into effect on 9 December 2008.

The Bill proposes to amend section 124C by transferring the requirements of regulation 9A into the Act. To this end, proposed new subsection (3)(ea) requires that a report is to contain if, or to the extent, known to the reporter –

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

(ii) the person's contact details; and

(iii) the person's relationship to the child.

This amendment was requested by the Joint Standing Committee on Delegated Legislation and does not substantively change the legislation in respect of current requirements regarding information provided in a mandatory report of child sexual abuse.

Clause 73: Section 127 replaced

Clause 73 replaces section 127 of the Act.

Section 127 provides that, when it is customary for parental consent to be required or sought, the CEO may give written consent in relation to a child under a protection order (time-limited) or protection order (until 18), or a child who is the subject of a negotiated placement agreement, if the agreement authorises the CEO to do so.

The proposed amendment replaces section 127 with three subsections:

- Subsection (1) defines "consent" to include authorisation and permission.
- Subsection (2)(b) and (c) contain the substantively unchanged provisions of section 127, with the addition of a new provision in subsection (2)(a) which clarifies the CEO's authority to give consent in respect of a child in provisional protection and care, provided it is consistent with the CEO's responsibilities for the day-to-day care, welfare and development of the child under section 29.
- Subsection (3) allows a consent given under this section to incorporate a waiver of legal liability.

The effect of the amendment is to clarify the CEO's power to sign consents that may include, for example, a waiver of the liability of a sporting organisation in respect of a children's' sporting activity.

Clause 74: Section 129 amended

Clause 74 amends section 129 of the Act. Section 129(1) lists a number of circumstances in which a person giving information in good faith to the CEO or another officer is protected from liability under the section.

The Bill inserts subsection (1)(ba) which includes a new circumstance under which protection from liability is afforded, namely the giving of information of the kind described in section 33A to the CEO or another officer, under clause 58 of this Bill.

Subsection 129(1)(b) is amended to provide protection for persons who give information to the CEO for the purposes of, or in connection with, an investigation referred to in proposed section 33B(c) under clause 58 of the Bill. Proposed section 33B(c) refers to an investigation conducted by an authorised officer for the purposes of assessing the likelihood that a child will be in need of protection after the child is born.

This amendment will remove any doubt as to the protections available under the Act to persons providing information to the CEO or an authorised officer, in good faith, for the purposes of sections 33A and 33B(c).

Clause 75: Section 188 amended

Clause 75 amends section 188 of the Act to provide a definition of "industrial inspector". Section 188 defines the terms used in Part 7 of the Act, which sets out guidelines for the employment of children.

Clause 76: Section 194A inserted

Clause 76 inserts section 194A into the Act.

Section 194A – Power of CEO to prohibit or limit employment of children in particular business or place

This section enables the CEO to prohibit or limit the employment of children in a particular business or place.

Subsection (1) states that "notice" means a notice under subsection (2).

Subsection (2) enables the CEO to issue a written notice to an employer prohibiting or imposing limitations on the employment of children in a particular business or place, if the CEO believes children are or may be employed there, and considers the wellbeing of children is likely to be jeopardised because of that employment.

Subsection (3) requires an employer issued with a notice to give a copy of the notice to each child who is employed in the business or place to which the notice relates. The penalty for failure to do so is a fine of $6 000.

Subsection (4) prohibits a person from employing a child in contravention of a notice. Failure to comply with a notice carries a penalty of $36 000 fine and imprisonment for three years.

Subsection (5) provides a defence to a charge under subsection (4) if a person proves that, at the time the offence is alleged to have been committed, the person –

(a) had not been given the notice; and

(b) was otherwise unaware of the contents of the notice.

This amendment strengthens the powers of the CEO in relation to the employment of children to enable more efficient and effective action to be taken in certain circumstances. The powers available under section 193 to prohibit or limit the employment of a particular child are not sufficient for responding to employers who employ or propose to employ a number of children in businesses or places that are likely to jeopardise the wellbeing of children.

Clause 77: Section 195 amended

Clause 77 amends section 195 of the Act. Section 195 describes the powers of authorised officers in relation to the employment of a child.

Subsection (1) states that "authorised officer" includes an industrial inspector appointed under the *Industrial relations Act 1979.* This Bill amends the definition as follows:

"authorised officer" means –

(a) an officer designated to be an authorised officer under section 25 for the purposes of this Part; or

(b) an industrial inspector.

Subsection (2) provides that an authorised officer may enter, at any reasonable time, any place it is believed on reasonable grounds that a child is employed, for the purpose of inspecting the place and making inquiries in relation to the employment of the child. The amendment enables the powers in section 195 to also apply in circumstances where it is believed children may be employed in the future.

Subsection (3) provides an authorised officer with a discretionary power to require any person at a place of employment to answer any question in relation to the employment of a child in the place. This subsection is amended so the power also applies in relation to the prospective employment of children.

This clause also inserts three new subsections into section 195:

- Subsection (7) allows an authorised officer to use reasonable force and assistance when exercising a power under subsection (2).
- Subsection (8) allows an authorised officer to be accompanied by a police officer or other person when requested to assist.
- Subsection (9) states that when an industrial inspector is acting as an authorised officer under the powers conferred by this section, the powers are in

addition to those conferred on the industrial inspector by section 98(3) of the *Industrial Relations Act 1979*.

Clause 78: Section 196 amended

Clause 78 amends section 196 of the Act. Section 196 deals with prosecutions brought against a person for failure to comply with the requirements set out under Part 7 of the Act. Subsection (1) enables industrial inspectors to bring such a prosecution against a person under certain relevant sections, and subsection (2) provides an industrial magistrate's court with jurisdiction to hear and determine the prosecution.

The Bill replaces subsection (1) to describe the functions of an industrial inspector as including –

(a) the provision of assistance to the CEO and other authorised officers for purposes related to the administration and enforcement of this Part; and

(b) the prosecution of a person for an offence under section 190(1), 193(5), 194A(3) or (4) or 195(5).

The heading of the section is amended to "Role of industrial inspectors and industrial magistrate's courts".

This amendment clarifies the role of an industrial inspector in providing assistance to the CEO in respect of the employment of children provisions in the Act.

Clause 79: Section 240 amended

Clause 79 amends section 240 of the Act. Section 240 protects the identity of "notifiers", as defined in subsection (1), by prohibiting the disclosure of identifying information unless the disclosure is made for certain purposes set out in subsection (2).

Subclause (1) amends the definition of "notifier" to include, under new subsection (ba), a person who, in good faith, gives information of the kind described in section 33A under clause 58 of the Bill.

Subclause (2) amends subsection (2) to include a new exemption regarding the disclosure of identifying information about a notifier. The new provision, subsection 240(2)(a)(iva), allows identifying information to be disclosed to a legal practitioner who is representing the child in protection proceedings as ordered by a Court under section 148(2). In these circumstances it is appropriate that the legal representative be provided with identifying information in the course of acting for the child, provided the information is used only for the purpose of representing the child.

Clause 80: Section 246 amended

Clause 80 amends section 246 of the Act. Section 246 provides for protection from an action in tort for a person who does anything in good faith in the performance or purported performance of a function under the Act. The Bill extends the protection provided under this section to all civil claims, not only actions in tort.

Clause 81: Section 249 amended

Clause 81 amends section 249 of the Act. Section 249 requires the Minister to carry out a review of the Act as soon as practicable after the fifth anniversary of its commencement and the expiry of each five yearly interval after that anniversary. The requirement for a review of the Act is extended by two years to enable implementation of the Amendment Act and to coincide with review of provisions for the mandatory reporting of child sexual abuse.

Clause 82: Section 250 amended

Clause 82 amends section 250 of the Act. Section 250 provides for repeal, transitional and saving provisions.

This Bill amends subsection (3) to provide that Schedule 1 sets out transitional and savings provisions.

Clause 83: Schedule 1 amended

Clause 83 amends Schedule 1 of the Act.

This Bill amends Schedule 1 by inserting Division 6, which deals with transitional provisions for the Amendment Act and contains the following clauses:

Clause 26 – Authorised officers

An authorised officer whose appointment under section 25 of the Act was in effect immediately before the commencement of section 52 of the Amendment Act is, on and after that commencement, taken to be a designation under section 25 as inserted by the amending section.

Clause 27 – Ministerial Body

This clause provides transitional arrangements in relation to the renaming of the Ministerial Body proposed under clause 45 of this Bill.

Subclause (1) contains the following definitions:

> "Ministerial Body" has the meaning given in section 17 as amended by the Amendment Act section 44;
>
> "Section 18(1)" means section 18(1) as inserted by the Amendment Act section 45.

Subclause (2) provides that the renaming of the Ministerial Body does not affect its continuity or legal status.

Subclause (3) provides that a reference to the Community Development Ministerial Body, in a written law or other document, is to be construed as a reference to the Ministerial Body as renamed under section 18(1) unless in the context it would be inappropriate to do so.

Clause 28 – Protection orders (enduring parental responsibility)

This clause makes transitional arrangements in respect of protection orders (enduring parental responsibility) and their replacement with protection orders (special guardianship).

Subclause (1) defines terms used in the Schedule.

Subclause (2) provides that a protection order (enduring parental responsibility) in effect immediately before commencement continues to have effect on and after commencement as if it were a protection order (special guardianship).

Subclause (3) provides that, on or after commencement of the Amendment Act, any protection proceedings or other proceedings concerning a protection order (enduring parental responsibility) are to be dealt with and determined as if they were proceedings concerning a protection order (special guardianship).

Subclause (4) provides that a reference to a protection order (enduring parental responsibility) in any written law or other document is to be construed as a reference to a protection order (special guardianship).

Clause 84: Various references to "officer" amended

Clause 84 replaces "officer" wherever it appears in Part 4 Division 8 of the Act with the term "authorised person". Division 8 deals with powers of restraint, search and seizure. These amendments are consistent with amendments to section 112 of the Act proposed under clause 67 of this Bill.

Clause 85: Various penalties amended

Clause 85 amends various penalties throughout the Act by inserting "a fine of" before the amount of the fine. The sections to be amended are listed in a table. These amendments reflect current drafting practice.