

Children and Community Services Amendment Bill 2021

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

**Children and Community Services Amendment
Bill 2021**

A Bill for

An Act to amend the *Children and Community Services Act 2004* —

- **to implement recommendations of the 2017 statutory review of the Act; and**
- **to introduce mandatory reporting of child sexual abuse for certain persons; and**
- **for other purposes.**

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Children and Community Services Amendment*
3 *Act 2021*.

4 **2. Commencement**

5 This Act comes into operation as follows —

- 6 (a) sections 1 and 2 — on the day on which this Act
7 receives the Royal Assent;
- 8 (b) section 75 — on the day on which section 3 comes into
9 operation;
- 10 (c) the rest of the Act — on a day fixed by proclamation,
11 and different days may be fixed for different provisions.

12 **3. Act amended**

13 This Act amends the *Children and Community Services*
14 *Act 2004*.

15 **4. Section 3 amended**

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

17 *parent*
18 *relative*

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

20
21 *Aboriginal or Torres Strait Islander representative*
22 *organisation* means an Aboriginal or Torres Strait
23 Islander representative organisation approved under
24 section 22A(1);

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

26 *community* means —

- 27 (a) in relation to an Aboriginal child — the child’s
28 Aboriginal community; or

- 1 (b) in relation to a Torres Strait Islander child —
2 the child’s Torres Strait Islander community;
- 3 ***cultural support plan*** has the meaning given in
4 section 89A;
- 5 ***family***, of a child, means —
- 6 (a) for a child who is not an Aboriginal child or
7 Torres Strait Islander child — each of the
8 following relatives of the child (whether the
9 relationship is established by, or traced through,
10 consanguinity, marriage, a de facto
11 relationship, a written law or a natural
12 relationship) —
- 13 (i) parent, grandparent or other ancestor;
- 14 (ii) step-parent;
- 15 (iii) sibling;
- 16 (iv) uncle or aunt;
- 17 (v) cousin;
- 18 (vi) spouse or de facto partner;
- 19 or
- 20 (b) for an Aboriginal child or Torres Strait Islander
21 child — each person regarded under the
22 customary law or tradition of the child’s
23 community as the equivalent of a person
24 mentioned in paragraph (a);
- 25 ***industrial inspector*** has the meaning given in the
26 *Industrial Relations Act 1979* section 7(1);
- 27 ***leaving care plan*** has the meaning given in
28 section 89B;

s. 4

- 1 *parent*, of a child —
- 2 (a) means a person, other than the CEO, who at
- 3 law has responsibility for —
- 4 (i) the long-term care, welfare and
- 5 development of the child; or
- 6 (ii) the day-to-day care, welfare and
- 7 development of the child;
- 8 and
- 9 (b) if a protection order (other than a protection
- 10 order (supervision)) has been made for the
- 11 child — includes a person who would have
- 12 been a parent of the child if the order had not
- 13 been made;
- 14 *provisional care plan* has the meaning given in
- 15 section 39(2);
- 16 *remote communication* means any way of
- 17 communicating at a distance including by telephone,
- 18 fax, email and radio;
- 19 *secure care decision* has the meaning given in
- 20 section 88G(1);
- 21 *special guardian* means the individual who is given, or
- 22 the 2 individuals who are jointly given, parental
- 23 responsibility for a child under a protection order
- 24 (special guardianship);
- 25
- 26 (3) In section 3 in the definition of *protection application* delete
- 27 “order;” and insert:
- 28
- 29 order (other than an application under section 69A);
- 30

1 **5. Part 2 Division 1A inserted**

2 At the beginning of Part 2 insert:

3

4 **Division 1A — Preliminary**

5 **5A. Application of objects and principles**

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

9

10 **6. Section 6 amended**

11 In section 6(da) delete “in exercising appropriate control over”
12 and insert:

13

14 to appropriately and safely manage

15

16 **7. Section 7 replaced**

17 Delete section 7 and insert:

18

19 **7. Paramount consideration is best interests of child**

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

23

s. 8

1 **8. Section 8 amended**

2 In section 8(1):

3 (a) delete “for the purposes of this Act what is in a child’s
4 best interests” and insert:

5

6 what is in the best interests of a child,

7

8 (b) in paragraph (d) delete “relatives and with any” and
9 insert:

10

11 members of the child’s family and with

12

13 (c) in paragraph (g)(ii) delete “relative of the child; or” and
14 insert:

15

16 member of the child’s family; or

17

18 (d) in paragraph (g)(iii) delete “any”;

19 (e) delete paragraph (g)(iv) and insert:

20

21 (iv) other people who are significant in the
22 child’s life;

23

24 (f) delete paragraph (h) and insert:

25

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

31

1 (g) delete paragraph (j) and insert:

2

3 (j) the child’s cultural, ethnic and religious identity
4 (including the need for cultural support to
5 develop and maintain a connection with the
6 culture and traditions of the child’s family or
7 community);
8

9 **9. Section 9 amended**

10 In section 9:

11 (a) delete “In the administration of this Act the following
12 principles must be observed —” and insert:

13

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

16

17 (b) after paragraph (e) insert:

18

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

22

23 (c) delete paragraphs (g) and (ha) and insert:

24

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

s. 9

- 1 (ga) the principle that objectives of planning for the
2 care of a child who is in the CEO's care include
3 the following —
- 4 (i) to achieve continuity and stability in the
5 child's living arrangements;
- 6 (ii) to preserve and enhance the child's
7 relationships with the child's family and
8 with other people who are significant in
9 the child's life (subject to protecting the
10 child from harm and meeting the child's
11 needs);
- 12 (iii) for an Aboriginal child, Torres Strait
13 Islander child or child of a culturally or
14 linguistically diverse background — to
15 preserve and enhance the child's
16 connection with the culture and
17 traditions of the child's family or
18 community;
- 19 (gb) the principle that objectives of planning for a
20 placement arrangement for a child include,
21 subject to protecting the child from harm and
22 meeting the child's needs, the following —
- 23 (i) to place the child with a member of the
24 child's family;
- 25 (ii) to place the child with the child's
26 siblings (subject also to protecting the
27 siblings from harm);
- 28 (iii) to place the child with a person who is
29 willing and able to encourage and
30 support the child to develop and
31 maintain contact with the child's
32 parents, siblings and other members of
33 the child's family and with other people
34 who are significant in the child's life,

- 1 subject to decisions under this Act about
2 that contact;
3
- 4 (d) in paragraph (h) delete “child;” and insert:
5
6 child and to minimising the risk of detrimental effects
7 arising from delay in decision-making;
8
- 9 (e) in paragraph (j) delete “any”;
10 (f) in paragraph (k) delete “any” (1st occurrence);
11 (g) delete paragraph (k)(ii) and insert:
12
- 13 (ii) the outcome of decisions under this Act
14 that are likely to have a significant
15 impact on the child’s life (as described
16 in section 10(3)), including an
17 explanation of the reasons for the
18 decisions; and
19
- 20 (h) delete paragraph (l) and insert:
21
- 22 (l) the principle that, as far as practicable, services
23 of an interpreter or other appropriate person are
24 to be made available to assist —
25 (i) a person who has difficulty
26 understanding or communicating in
27 English; or
28 (ii) a person whose disability prevents or
29 restricts the person’s understanding of,
30 or participation in, a decision-making or
31 other process or the person’s expression
32 of wishes or views.
33

s. 10

1 Note: The heading to amended section 9 is to read:

2 **Other principles**

3 **10. Section 10 amended**

4 (1) In section 10(1) delete “should” and insert:

5

6 must

7

8 (2) In section 10(3)(d) delete “relatives and with any” and insert:

9

10 members of the child’s family and with

11

12 (3) Delete section 10(4).

13 **11. Section 12 amended**

14 (1) In section 12(1) delete “arrangements.” and insert:

15

16 arrangements or interim orders made under section 133(2)(c).

17

18 (2) In section 12(2):

19 (a) delete “a Torres Strait Islander child,” and insert:

20

21 Torres Strait Islander child, or in making an interim
22 order under section 133(2)(c) in relation to an
23 Aboriginal child or Torres Strait Islander child or in
24 varying such an order,

25

26 (b) in paragraph (b) delete “a” (2nd occurrence);

- 1 (c) delete paragraphs (c) and (d) and insert:
2
3 (c) placement with a person who is an Aboriginal
4 person or Torres Strait Islander who lives in
5 close proximity to the child's community;
6 (d) placement with either a person who is an
7 Aboriginal person or Torres Strait Islander or a
8 person who is not an Aboriginal person or
9 Torres Strait Islander but who —
10 (i) lives in close proximity to the child's
11 community; and
12 (ii) is responsive to the cultural support
13 needs of the child and is willing and
14 able to encourage and support the child
15 to develop and maintain a connection
16 with the culture and traditions of the
17 child's family or community;
18 (e) placement with a person who is not an
19 Aboriginal person or Torres Strait Islander but
20 who is responsive to the cultural support needs
21 of the child and is willing and able to encourage
22 and support the child to develop and maintain a
23 connection with the culture and traditions of the
24 child's family or community.
25

26 **12. Section 13 amended**

27 In section 13 delete "In the administration of this Act a principle
28 to be observed is that Aboriginal people and Torres Strait
29 Islanders should be allowed" and insert:

31 Aboriginal people and Torres Strait Islanders have a right
32

s. 13

1 **13. Section 14 amended**

2 (1) In section 14 delete the passage that begins with “In the
3 administration” and ends with “should” and insert:

4
5 (1) A family, community or representative organisation of
6 Aboriginal people or Torres Strait Islanders must

7
8 (2) At the end of section 14 insert:

9
10 (2) Consideration must be given to the wishes and views of
11 the child, taking into account the maturity and
12 understanding of the child, and the child’s parents
13 about the participation of a family, community or
14 organisation under subsection (1).
15

16 **14. Section 22 amended**

17 (1) In section 22(4) delete “duties and responsibilities” and insert:

18
19 functions
20

21 (2) After section 22(4) insert:

22
23 (4AA) A public authority prescribed by the regulations as a
24 public authority to which this subsection applies must
25 prioritise a request under subsection (3) to provide
26 assistance to the following —

27 (a) a child in the CEO’s care;

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

- 1 (c) a child under a protection order (special
2 guardianship).
- 3 (4AB) If the relevant officer for a public authority to which
4 subsection (4AA) applies forms the opinion that the
5 public authority cannot comply with a request under
6 subsection (3) consistently with its functions or so as to
7 not unduly prejudice the performance of its functions,
8 the relevant officer must, at the request of the CEO,
9 give the CEO written reasons for the opinion.
- 10 (4AC) In subsection (4AB) —
11 *relevant officer*, for a public authority, means —
- 12 (a) if the public authority is an entity referred to in
13 paragraph (a), (b) or (c) of the definition of
14 *public authority* in section 3 — the principal
15 officer (however described) of that entity; or
- 16 (b) if the public authority is a body referred to in
17 paragraph (d) of the definition of *public*
18 *authority* in section 3 — the principal officer
19 (however described) of that body; or
- 20 (c) if the public authority is the holder of an office,
21 post or position referred to in paragraph (d) of
22 the definition of *public authority* in
23 section 3 — that holder.
24

25 **15. Section 22A inserted**

26 After section 22 insert:
27

28 **22A. Approval of Aboriginal or Torres Strait Islander**
29 **representative organisations**

- 30 (1) The CEO may, in accordance with the regulations,
31 approve an organisation as an Aboriginal or Torres

s. 16

- 1 Strait Islander representative organisation for the
2 purposes of this Act.
- 3 (2) An approval may be subject to conditions specified in
4 the instrument of approval.
- 5 (3) The CEO must make an up-to-date list of Aboriginal or
6 Torres Strait Islander representative organisations
7 available for inspection by members of the public free
8 of charge on the Internet or otherwise, as the CEO
9 considers appropriate.
10

11 **16. Section 24A amended**

12 In section 24A(1) in the definition of *prescribed report*
13 paragraph (d)(i) after “*Bail Act 1982*,” insert:

14
15 the former *Dangerous Sexual Offenders Act 2006*,
16

17 **17. Section 28 amended**

18 In section 28(2):

19 (a) delete “Part” and insert:

20
21 Act,
22

23 (b) in paragraph (a) delete “his or her” and insert:

24
25 the child’s
26

27 (c) in paragraph (a)(ii) delete “relative” and insert:

28
29 member of the child’s family
30

- 1 (d) after paragraph (a) insert:
2
3 (aa) paragraph (a) applies and, on the parent or
4 parents subsequently being found —
5 (i) there is no parent who is willing and
6 able to care for the child; and
7 (ii) no suitable adult member of the child’s
8 family or other suitable adult can be
9 found who is willing and able to care for
10 the child;
11 or
12
13 (e) in paragraph (b) delete “relative” and insert:
14
15 member of the child’s family
16
17 (f) in paragraph (d)(i) and (ii) after “unable” insert:
18
19 or unwilling
20

21 **18. Section 29 amended**

- 22 (1) In section 29(1) delete “Part” and insert:
23
24 Act
25
26 (2) Delete section 29(3)(c) and insert:
27
28 (c) the Court makes an interim order under
29 section 133(2)(c) that the child be placed with a
30 person approved by the Court; or
31

s. 19

1 **19. Section 30 amended**

2 In section 30 delete “Part” and insert:

3

4 Act,

5

6 **20. Section 32 amended**

7 In section 32(1)(a) and (b)(i) delete “relative of the child;” and
8 insert:

9

10 member of the child’s family;

11

12 **21. Section 39 amended**

13 (1) Delete section 39(1).

14 (2) In section 39(2):

15 (a) delete “This section applies” and insert:

16

17 The CEO must prepare and implement a plan (a
18 *provisional care plan*) for a child

19

20 (b) in paragraph (a) delete “a child” and insert:

21

22 the child

23

24 (3) Delete section 39(3A) and (3B) and insert:

25

26 (2A) Unless section 88I(2) applies, the CEO must prepare
27 the provisional care plan within 7 working days after
28 the child is taken into provisional protection and care.

-
- 1 (2B) A provisional care plan for a child must —
- 2 (a) be in writing; and
- 3 (b) identify the needs of the child while the child is
- 4 in provisional protection and care; and
- 5 (c) outline steps or measures to be taken to address
- 6 those needs; and
- 7 (d) record decisions made by the CEO about the
- 8 care of the child, including —
- 9 (i) decisions about a placement
- 10 arrangement for the child; and
- 11 (ii) decisions about contact between the
- 12 child and a parent, sibling, other
- 13 member of the child’s family or other
- 14 person who is significant in the child’s
- 15 life; and
- 16 (iii) decisions about a secure care
- 17 arrangement for the child;
- 18 and
- 19 (e) contain a summary of —
- 20 (i) how the principle set out in section 10
- 21 has been applied in connection with the
- 22 decisions recorded in the plan; and
- 23 (ii) the wishes and views expressed by the
- 24 child about the decisions recorded in the
- 25 plan.
- 26 (2C) Subsection (2B)(e) only applies to the application of
- 27 the principle set out in section 10, and to wishes and
- 28 views expressed by the child, after the commencement
- 29 of the *Children and Community Services Amendment*
- 30 *Act 2021* section 21.

s. 22

1 (2D) The CEO must modify a provisional care plan for a
2 child if a decision recorded in the plan is varied,
3 revoked or substituted or a further decision about the
4 care of the child is made by the CEO.

5 (2E) The modification must be made as soon as practicable
6 after the decision is varied, revoked or substituted or
7 the further decision is made.
8

9 **22. Section 41 amended**

10 In section 41(1) in the definition of *appropriate person*:

11 (a) in paragraph (b) delete “relative of the child; or” and
12 insert:

13
14 member of the child’s family; or
15

16 (b) in paragraph (c) delete “relative of the child,” and insert:

17
18 member of the child’s family,
19

20 **23. Section 42 amended**

21 (1) In section 42 delete the definitions of:

22 *parent*

23 *special guardian*

24 (2) In section 42 in the definition of *party to the initial proceedings*
25 delete “made;” and insert:

26
27 made.
28

1 **24. Section 43 amended**

2 In section 43 delete “Part” and insert:

3

4 Act

5

6 **25. Section 44 amended**

7 (1) In section 44(2)(b) delete “sought; and” and insert:

8

9 sought and any proposed conditions of the order; and

10

11 (2) In section 44(3) delete “individual or individuals to whom
12 parental responsibility for the child is proposed to be given
13 under the order.” and insert:

14

15 proposed special guardian.

16

17 **26. Section 50 amended**

18 Delete section 50(3) and insert:

19

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

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

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

28

1 **27. Section 61 amended**

2 (1) Delete section 61(1).

3 (2) In section 61(2)(b) delete “that, having regard to the report
4 mentioned in subsection (3),” and insert:

5

6 that

7

8 (3) After section 61(2) insert:

9

10 (2A) The Court must, in assessing the suitability of the
11 proposed special guardian, have regard to the following
12 as if the order were a placement arrangement —

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

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

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

21 (2B) The Court must not make a protection order (special
22 guardianship) for an Aboriginal child or Torres Strait
23 Islander child if no Aboriginal person or Torres Strait
24 Islander is to be the special guardian unless the CEO
25 has given the Court a written report prepared by a
26 person who meets criteria prescribed by the
27 regulations.

28

- 1 (4) In section 61(3):
2 (a) in paragraph (a) delete “subsection (2)(b)(i) and (ii);
3 and” and insert:
4
5 subsections (2)(b)(i) and (ii) and (2A); and
6
7 (b) in paragraph (b) delete “child.” and insert:
8
9 child; and
10
11 (c) after paragraph (b) insert:
12
13 (c) without limiting paragraph (b), outlines the
14 proposed arrangements for encouraging and
15 supporting the child to develop and maintain
16 contact with the child’s parents, siblings and
17 other members of the child’s family and with
18 other people who are significant in the child’s
19 life, subject to decisions under this Act about
20 that contact; and
21 (d) for an Aboriginal child, Torres Strait Islander
22 child or child of a culturally or linguistically
23 diverse background — is accompanied by a
24 cultural support plan for the child.
25
- 26 (5) Delete section 61(4) and (5) and insert:
27
- 28 (4) However, the report need not be accompanied by a
29 cultural support plan if the application for the
30 protection order (special guardianship) is made under
31 section 69A.

- 1 (5) The Court must, before making a protection order
2 (special guardianship), consider each report given to
3 the Court under this section.
- 4 (6) The CEO must give a copy of each report given to the
5 Court under this section to the other parties to the
6 proceedings.
7

8 **28. Section 63 replaced**

9 Delete section 63 and insert:
10

11 **63. Conditions of protection order (special**
12 **guardianship)**

- 13 (1) A protection order (special guardianship) may include
14 conditions to be complied with by the special guardian
15 about —
16 (a) contact between the child and another person;
17 or
18 (b) for an Aboriginal child, Torres Strait Islander
19 child or child of a culturally or linguistically
20 diverse background — matters that could be
21 included in a cultural support plan for the child.
- 22 (2) It is a condition of a protection order (special
23 guardianship) that the special guardian must not,
24 except with the permission of the Court, make an
25 application under the *Births, Deaths and Marriages*
26 *Registration Act 1998* section 19(1), 23(1) or 31(3) (a
27 ***change of name application***) in relation to the child.
- 28 (3) The Court may, on an application made by the special
29 guardian, permit the making of a change of name
30 application if it is satisfied that —
31 (a) there are exceptional reasons for the change of
32 name; and

- 1 (b) for a child who it is satisfied has sufficient
2 maturity and understanding to consent to the
3 change of name — the child consents to the
4 change.
- 5 (4) A protection order (special guardianship) must not
6 include any conditions other than those referred to in
7 this section.
8

9 **29. Section 64 amended**

10 In section 64(1) in the definition of *condition* delete “(special
11 guardianship).” and insert:

12
13 (special guardianship) other than the condition referred to in
14 section 63(2).
15

16 **30. Section 69B inserted**

17 At the end of Part 4 Division 3 Subdivision 7 insert:
18

19 **69B. Replacement of protection order (special**
20 **guardianship) on notification by CEO**

- 21 (1) If the CEO becomes aware that each individual who is
22 a special guardian under a protection order (special
23 guardianship) has died, the CEO must give written
24 notice of that fact to the Court as soon as practicable.
- 25 (2) If the CEO gives written notice to the Court under
26 subsection (1), the protection order (special
27 guardianship) is revoked and replaced by a protection
28 order (time-limited) in respect of the child on the day
29 (*notification day*) on which the CEO gives the notice.

s. 31

- 1 (3) The protection order (time-limited) —
- 2 (a) comes into force on notification day; and
- 3 (b) for the purposes of Subdivision 4, is taken to
- 4 specify the shorter of the following periods —
- 5 (i) the period of 2 years beginning on
- 6 notification day;
- 7 (ii) the period beginning on notification day
- 8 and ending on the day before the day on
- 9 which the child reaches 18 years of age.
- 10 (4) As soon as practicable after notification day, the CEO
- 11 must give written notice of the protection order
- 12 (time-limited) to the following —
- 13 (a) the child;
- 14 (b) each other party to the initial proceedings (other
- 15 than the special guardian);
- 16 (c) each other person considered by the CEO to
- 17 have a direct and significant interest in the
- 18 wellbeing of the child.
- 19 (5) Section 67 applies in relation to a protection order
- 20 (time-limited) that comes into force under this section
- 21 as if the reference in section 67(1) to a party to the
- 22 initial proceedings were a reference to a person notified
- 23 of the order under subsection (4).
- 24

25 **31. Section 79 amended**

26 In section 79(2):

- 27 (a) in paragraph (a)(iii) delete “authority;” and insert:
- 28 authority; or
- 29
- 30

1 (b) after paragraph (a)(iii) insert:

2

3 (iv) as otherwise prescribed by the
4 regulations;

5

6 **32. Section 81 replaced**

7 Delete section 81 and insert:

8

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

- 11 (1) Before making a placement arrangement in respect of
12 an Aboriginal child or Torres Strait Islander child, the
13 CEO must consult with each of the following —
- 14 (a) Aboriginal persons or Torres Strait Islanders
15 who are members of the child's family;
 - 16 (b) subject to the regulations, an Aboriginal or
17 Torres Strait Islander representative
18 organisation;
 - 19 (c) an officer who is an Aboriginal person or
20 Torres Strait Islander who, in the opinion of the
21 CEO, has relevant knowledge of the child, the
22 child's family or the child's community.
- 23 (2) If it is not practicable, for reasons of urgency or
24 otherwise, to consult as required under subsection (1)
25 before making a placement arrangement, the
26 consultation must take place as soon as practicable
27 after the placement arrangement is made.
28

1 **33. Section 88C amended**

2 After section 88C(5) insert:

3

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

9

10 **34. Section 88I amended**

11 (1) Delete section 88I(1).

12 (2) In section 88I(5):

13 (a) in paragraph (b) delete “again.” and insert:

14

15 again; and

16

17 (b) after paragraph (b) insert:

18

19 (c) contains a summary of —

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

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

26

1 (3) After section 88I(5) insert:
2

3 (6) Subsection (5)(c) only applies to the application of the
4 principle set out in section 10, and to wishes and views
5 expressed by the child, after the commencement of the
6 *Children and Community Services Amendment*
7 *Act 2021* section 34.
8

9 **35. Part 4 Division 5 Subdivision 3 heading replaced**

10 Delete the heading to Part 4 Division 5 Subdivision 3 and insert:
11

12 **Subdivision 3 — Plans**
13

14 **36. Section 88 deleted**

15 Delete section 88.

16 **37. Section 89 amended**

17 (1) Delete section 89(1).

18 (2) In section 89(2) delete “care plan” and insert:
19

20 plan (a *care plan*)
21

22 (3) After section 89(3) insert:
23

24 (3A) A care plan for a child must —

25 (a) be in writing; and

26 (b) identify the needs of the child; and

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

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- 1 (d) for an Aboriginal child, Torres Strait Islander
2 child or child of a culturally or linguistically
3 diverse background — incorporate a cultural
4 support plan for the child; and
- 5 (e) for a child who has reached 15 years of age
6 (subject to subsection (3F)) — incorporate a
7 leaving care plan for the child; and
- 8 (f) record decisions made by the CEO about the
9 care of the child, including —
- 10 (i) decisions about a placement
11 arrangement for the child; and
- 12 (ii) decisions about contact between the
13 child and a parent, sibling, other
14 member of the child’s family or other
15 person who is significant in the child’s
16 life; and
- 17 (iii) secure care decisions;
- 18 and
- 19 (g) contain a summary of —
- 20 (i) how the principle set out in section 10
21 has been applied in connection with the
22 decisions recorded in the plan; and
- 23 (ii) the wishes and views expressed by the
24 child about the decisions recorded in the
25 plan.
- 26 (3B) Subsection (3A)(d), (e) and (g) do not apply to a care
27 plan in existence immediately before the
28 commencement of the *Children and Community
29 Services Amendment Act 2021* section 37 until the
30 completion of the first review of the plan under
31 section 90 after that commencement.
- 32 (3C) Subsection (3A)(g) only applies to the application of
33 the principle set out in section 10, and to wishes and

1 views expressed by the child, after the commencement
2 of the *Children and Community Services Amendment*
3 *Act 2021* section 37.

4 (3D) The CEO must modify a care plan if a decision
5 recorded in the plan is varied, revoked or substituted or
6 a further decision about the care of the child is made by
7 the CEO.

8 (3E) The modification must be made as soon as practicable
9 after the decision is varied, revoked or substituted or
10 the further decision is made.

11 (3F) The CEO must modify a care plan to include a leaving
12 care plan as soon as practicable after the child reaches
13 15 years of age.
14

15 (4) Delete section 89(5A) and (5) and insert:
16

17 (5) However, the CEO cannot modify a care plan in a
18 manner that would be contrary to section 94(3).
19

20 Note: The heading to amended section 89 is to read:

21 **Care plan**

22 **38. Sections 89A and 89B inserted**

23 After section 89 insert:
24

25 **89A. Cultural support plan**

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

- 1 **89B. Leaving care plan**
2 A *leaving care plan* for a child is a plan that —
3 (a) identifies the needs of the child in preparing to
4 leave the CEO’s care and in transitioning to
5 other living arrangements; and
6 (b) outlines steps or measures to be taken to assist
7 the child to meet those needs (including the
8 social services proposed to be provided when
9 the child leaves the CEO’s care).
10

11 **39. Section 89C inserted**

12 Before section 90 insert:
13

14 **89C. Participation in cultural support plan for**
15 **Aboriginal child or Torres Strait Islander child**

16 If a cultural support plan is required for an Aboriginal
17 child or Torres Strait Islander child, the CEO must,
18 subject to the regulations, give an Aboriginal or Torres
19 Strait Islander representative organisation an
20 opportunity to participate in the preparation of the
21 cultural support plan for the child.
22

23 **40. Section 90 amended**

24 After section 90(2) insert:
25

- 26 (2A) In the course of the review of a care plan for an
27 Aboriginal child or Torres Strait Islander child, the
28 CEO must, subject to the regulations, give an
29 Aboriginal or Torres Strait Islander representative
30 organisation an opportunity to participate in the review
31 of the cultural support plan for the child.
32

1 **41. Section 91 amended**

2 (1) In section 91 delete the definitions of:

3 *care plan*

4 *parent*

5 (2) In section 91 in the definition of *care planning decision* delete
6 “decision referred to in section 88G;” and insert:

7

8 decision;

9

10 (3) In section 91 in the definition of *care plan review panel* delete
11 “section 92;” and insert:

12

13 section 92.

14

15 **42. Section 92 amended**

16 (1) After section 92(3) insert:

17

18 (3A) At least 1 member of the care plan review panel must
19 be an Aboriginal person or Torres Strait Islander.

20

21 (2) After section 92(8) insert:

22

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

25

26

27

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

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

5 (10) If an application referred to the care plan review panel
6 concerns an Aboriginal child or Torres Strait Islander
7 child, the panel constituted for the review must include
8 at least 1 Aboriginal person or Torres Strait Islander.
9

10 **43. Section 94 amended**

11 In section 94(3) delete “in section 89(4)” and insert:

12

13 to modify a care plan
14

15 **44. Section 98 amended**

16 Delete section 98(1) and insert:

17

18 (1) The CEO must ensure that a child who leaves the
19 CEO’s care is provided with social services that the
20 CEO considers appropriate having regard to the needs
21 of the child.
22

23 **45. Section 99 amended**

24 In section 99 delete the passage that begins with “Without” and
25 ends with “for” and insert:

26

27 The CEO must ensure that a person who qualifies for, and
28 seeks,
29

1 **46. Section 100A inserted**

2 At the end of Part 4 Division 6 insert:

3

4 **100A. Provision of explanation to child**

5 The CEO must ensure that, before a child leaves the
6 CEO's care, the child is provided with a written
7 explanation of the assistance that may or must be
8 provided to the child under this Division.

9

10 **47. Section 101 amended**

11 After section 101(1) insert:

12

13 (1A) It is a defence to a charge under subsection (1)
14 involving conduct that may result in a child suffering
15 harm as a result of emotional abuse comprised of
16 exposure to family violence for the accused to prove
17 that the accused was a victim of that family violence.

18

19 **48. Section 104 amended**

20 In section 104(2)(b) delete "relative of the child; or" and insert:

21

22 member of the child's family; or

23

24 **49. Section 105 amended**

25 After section 105(2)(a) insert:

26

27 (aa) for a child who is the subject of a secure care
28 arrangement — the act is done in accordance

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1 with procedures approved by the CEO for the
2 secure care facility where the child lives; or
3

4 **50. Section 115 amended**

5 (1) In section 115(2)(a) delete “subsection (3), who is of the same
6 sex as the child; and” and insert:

7

8 subsection (3); and
9

10 (2) After section 115(3) insert:
11

12 (3A) In determining the appropriateness of a person to do
13 the search or assist in doing the search —

14 (a) if there is no reason to suspect that the child is
15 transgender or intersex — the person must be
16 of the same sex as the child; and

17 (b) in any other case, consideration must be given
18 to —

19 (i) whether the child and the person
20 identify as male, female, transgender or
21 intersex; and

22 (ii) the views of the child (taking into
23 account the maturity and understanding
24 of the child); and

25 (iii) any known views of a member of the
26 child’s family or other person who is
27 significant in the child’s life.
28

29 **51. Section 120 amended**

30 Delete section 120(1).

1 **52. Section 124A amended**

2 (1) In section 124A insert in alphabetical order:

3

4 ***departmental officer*** —

5 (a) means an officer —

6 (i) who is a public service officer; or

7 (ii) who holds an office or position
8 prescribed, or of a class prescribed, for
9 the purposes of this subparagraph; or

10 (iii) whose duties include duties prescribed,
11 or of a class prescribed, for the purposes
12 of this subparagraph;

13 but

14 (b) does not include an officer who is —

15 (i) employed or engaged as a student or
16 volunteer; or

17 (ii) under 18 years of age;

18

19 (2) In section 124A insert in alphabetical order:

20

21 ***early childhood worker*** means an adult who is —

22 (a) any of the following for the purposes of the
23 *Education and Care Services National Law*
24 (*Western Australia*) —

25 (i) an approved provider;

26 (ii) a person with management or control of
27 an education and care service;

28 (iii) a nominated supervisor for an approved
29 education and care service;

30 (iv) an educator;

- 1 (v) a family day care co-ordinator;
2 (vi) a family day care educator assistant;
3 or
4 (b) a licensee as defined in the *Child Care Services*
5 *Act 2007* section 3; or
6 (c) a supervising officer as defined in the *Child*
7 *Care Services Act 2007* section 5A(1); or
8 (d) a member of staff of a child care service, as
9 defined in the *Child Care Services Act 2007*
10 section 4, whose duties include the provision of
11 education and care to children;
12

13 (3) In section 124A insert in alphabetical order:
14

15 ***minister of religion*** —

- 16 (a) means a person who is recognised in
17 accordance with the practices of a faith or
18 religion as a person who is authorised to
19 conduct services or ceremonies in accordance
20 with the tenets of the faith or religion; and
21 (b) includes such a person regardless of how the
22 person's position or title is described (for
23 example, member of the clergy, priest, minister,
24 imam, rabbi or pastor);
25

26 (4) In section 124A insert in alphabetical order:
27

28 ***out-of-home care service provider*** means a person who
29 has entered into an agreement under section 15(1) for
30 the provision of placement services;

1
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27

out-of-home care worker —

(a) means an adult who holds an office or position with, or is otherwise employed or engaged by, an out-of-home care service provider and whose duties include —

(i) the provision of social services to children who are the subject of a placement arrangement or to carers of those children; or

(ii) duties prescribed, or of a class prescribed, for the purposes of this subparagraph;

but

(b) does not include an adult who —

(i) provides care, at the adult's usual place of residence, for children who are the subject of a placement arrangement; or

(ii) is employed or engaged as a student or volunteer;

(5) In section 124A insert in alphabetical order:

psychologist means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the psychology profession (other than as a student);

1 (6) In section 124A insert in alphabetical order:

2

3

school counsellor —

4

(a) means an adult who is employed or engaged in
5 a school, as defined in the *School Education*
6 *Act 1999* section 4, to provide counselling or
7 pastoral care to children who attend the school;
8 but

9

(b) does not include an adult who is employed or
10 engaged as a student or volunteer;

11

12 (7) In section 124A insert in alphabetical order:

13

14

youth justice worker —

15

(a) means an adult who is —

16

(i) a custodial officer, as defined in the
17 *Young Offenders Act 1994* section 3,
18 whose duties include the supervision or
19 monitoring of children; or

20

(ii) a member of the council, as defined in
21 the *Young Offenders Act 1994*
22 section 17A, of an Aboriginal
23 community and is involved in the
24 supervision of a child under an
25 agreement entered into by the council
26 under section 17B of that Act; or

27

(iii) appointed as a monitor under the *Young*
28 *Offenders Act 1994* section 17C(1); or

29

(iv) appointed as a Juvenile Justice Team
30 Coordinator under the *Young Offenders*
31 *Act 1994* section 36(1); or

- 1 (v) assigned as a supervising officer under
2 the *Young Offenders Act 1994*
3 section 77, 108 or 139; or
- 4 (vi) employed or engaged in the department
5 of the Public Service principally
6 assisting in the administration of the
7 *Children’s Court of Western Australia*
8 *Act 1988* or the *Young Offenders*
9 *Act 1994* and whose duties include
10 duties prescribed, or of a class
11 prescribed, for the purposes of this
12 subparagraph;
- 13 but
- 14 (b) does not include an adult who is employed or
15 engaged as a student or volunteer.
16
- 17 (8) In section 124A in the definition of ***commencement day***:
- 18 (a) delete “means —” and insert:
19
20 means the following —
21
- 22 (b) in paragraph (a) delete “operation; or” and insert:
23
24 operation;
25
- 26 (9) In section 124A in the definition of ***commencement day*** insert
27 in alphabetical order according to paragraph designation:
28
- 29 (c) in relation to a minister of religion — the day
30 on which the *Children and Community Services*
31 *Amendment Act 2021* section 52(9) came into
32 operation;
33

s. 52

- 1 (10) In section 124A in the definition of ***commencement day*** insert
2 in alphabetical order according to paragraph designation:
3
- 4 (d) in relation to an assessor — the day on which
5 the *Children and Community Services*
6 *Amendment Act 2021* section 52(10) came into
7 operation;
8
- 9 (11) In section 124A in the definition of ***commencement day*** insert
10 in alphabetical order according to paragraph designation:
11
- 12 (e) in relation to a departmental officer — the day
13 on which the *Children and Community Services*
14 *Amendment Act 2021* section 52(11) came into
15 operation;
16
- 17 (12) In section 124A in the definition of ***commencement day*** insert
18 in alphabetical order according to paragraph designation:
19
- 20 (f) in relation to an early childhood worker — the
21 day on which the *Children and Community*
22 *Services Amendment Act 2021* section 52(12)
23 came into operation;
24
- 25 (13) In section 124A in the definition of ***commencement day*** insert
26 in alphabetical order according to paragraph designation:
27
- 28 (g) in relation to an out-of-home care worker —
29 the day on which the *Children and Community*
30 *Services Amendment Act 2021* section 52(13)
31 came into operation;
32

1 (14) In section 124A in the definition of *commencement day* insert
2 in alphabetical order according to paragraph designation:

3

4 (h) in relation to a psychologist — the day on
5 which the *Children and Community Services*
6 *Amendment Act 2021* section 52(14) came into
7 operation;

8

9 (15) In section 124A in the definition of *commencement day* insert
10 in alphabetical order according to paragraph designation:

11

12 (i) in relation to a school counsellor — the day on
13 which the *Children and Community Services*
14 *Amendment Act 2021* section 52(15) came into
15 operation;

16

17 (16) In section 124A in the definition of *commencement day* insert
18 in alphabetical order according to paragraph designation:

19

20 (j) in relation to a youth justice worker — the day
21 on which the *Children and Community Services*
22 *Amendment Act 2021* section 52(16) came into
23 operation;

24

25 (17) In section 124A in the definition of *doctor* delete “profession;”
26 and insert:

27

28 profession (other than as a student);

29

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1 (18) In section 124A in the definition of *midwife* delete “profession;”
2 and insert:

3

4 profession (other than as a student);

5

6 (19) In section 124A in the definition of *nurse* delete “profession;”
7 and insert:

8

9 profession (other than as a student);

10

11 (20) In section 124A in the definition of *teacher* paragraph (e) delete
12 “section.” and insert:

13

14 section;

15

16 **53. Section 124B amended**

17 (1) Delete section 124B(1)(a) and insert:

18

19 (a) is a person specified in the Table (a *specified*
20 *person*); and

21

Table

boarding supervisor	doctor
midwife	nurse
police officer	teacher

22

1 (2) In section 124B(1)(a) in the Table insert in alphabetical order:

2

assessor

3

4 (3) In section 124B(1)(a) in the Table insert in alphabetical order:

5

departmental officer

6

7 (4) In section 124B(1)(a) in the Table insert in alphabetical order:

8

early childhood worker

9

10 (5) In section 124B(1)(a) in the Table insert in alphabetical order:

11

minister of religion

12

13 (6) In section 124B(1)(a) in the Table insert in alphabetical order:

14

out-of-home care worker

15

16 (7) In section 124B(1)(a) in the Table insert in alphabetical order:

17

psychologist

18

1 (8) In section 124B(1)(a) in the Table insert in alphabetical order:

2

school counsellor

3

4 (9) In section 124B(1)(a) in the Table insert in alphabetical order:

5

youth justice worker

6

7 (10) In section 124B(1)(c)(i) delete “doctor, nurse, midwife, police
8 officer, teacher or boarding supervisor; and” and insert:

9

specified person; and

10

11

12 (11) In section 124B(4):

13

(a) delete “A requirement” and insert:

14

The duty

15

16

17 (b) delete “doctor, nurse, midwife, police officer, teacher or
18 boarding supervisor.” and insert:

18

19

specified person.

20

21

1 **54. Section 124BA inserted**

2 After section 124B insert:

3

4 **124BA. Provisions for ministers of religion**

5 (1) In this section —

6 *religious confession* means a confession made by a
7 person to a minister of religion in the minister’s
8 capacity as a minister of religion in accordance with
9 the tenets of the minister’s faith or religion.

10 (2) For the purposes of section 124B(1)(c)(i), a minister of
11 religion who forms a belief on the basis of information
12 disclosed to the minister in the minister’s capacity as a
13 minister of religion is taken to form the belief in the
14 course of the minister’s work.

15 (3) A minister of religion is not excused from criminal
16 responsibility for an offence under section 124B(1) on
17 the grounds that —

18 (a) the minister’s belief is based on information
19 disclosed to the minister during a religious
20 confession; or

21 (b) disclosure of the minister’s belief or
22 information on which the belief is based is
23 otherwise contrary to the tenets of the
24 minister’s faith or religion.
25

26 **55. Section 125A amended**

27 In section 125A(4A) delete “relative of a child in a facility,” and
28 insert:

29

30 member of the child’s family,
31

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1 **56. Section 131B amended**

2 In section 131B(1)(b) delete “exercising appropriate control
3 over” and insert:

4
5 appropriately and safely managing
6

7 **57. Section 131D amended**

8 In section 131D(d) delete “exercise appropriate control over”
9 and insert:

10
11 appropriately and safely manage
12

13 **58. Section 131 amended**

14 (1) In section 131 delete the definition of *parent*.

15 (2) In section 131 in the definition of *child* delete “proceedings;”
16 and insert:

17
18 proceedings.
19

20 **59. Section 132 amended**

21 (1) In section 132 delete “The Court” and insert:

22
23 (1) The Court
24

1 (2) At the end of section 132 insert:
2

3 (2) However, protection proceedings must not be
4 adjourned if the proceedings are for an interim order
5 (secure care).

6 (3) Subsection (2) does not apply if the Court is satisfied
7 that there are exceptional reasons for an adjournment
8 and adjourns the proceedings for a period not
9 exceeding 2 working days.
10

11 **60. Section 133 amended**

12 In section 133(2)(f) delete “sibling or other relative of the child
13 or any” and insert:
14

15 sibling, other member of the child’s family or
16

17 **61. Section 143 amended**

18 (1) Delete section 143(1).

19 (2) Delete section 143(3)(c) and insert:
20

21 (c) an application under section 68 —

22 (i) for the replacement of a protection order
23 (supervision) by another protection
24 order (supervision); or

25 (ii) for the replacement of a protection order
26 (time-limited), protection order (until
27 18) or protection order (special
28 guardianship) by another protection
29 order (other than a protection order
30 (special guardianship)),
31

1 (3) Delete section 143(4) and insert:

2

3 (4) If the CEO makes an application under section 68 for
4 the replacement of a protection order (supervision) by a
5 protection order (time-limited) or protection order
6 (until 18), the CEO must provide the Court with a
7 proposal for the child as soon as practicable after the
8 application is made.

9

10 **62. Section 143A inserted**

11 After section 143 insert:

12

13 **143A. Content of proposal**

14 (1) A proposal under section 143 for a protection order
15 (supervision) must outline proposed arrangements for
16 the supervision of the wellbeing of the child.

17 (2) A proposal under section 143 for a protection order
18 (time-limited) or protection order (until 18) must
19 outline proposed arrangements for safeguarding and
20 promoting the wellbeing of the child, including —

21 (a) proposed arrangements for promoting, where
22 appropriate, the relationship between the child
23 and the child's family or other people who are
24 significant in the child's life; and

25 (b) for an Aboriginal child, Torres Strait Islander
26 child or child of a culturally or linguistically
27 diverse background —

28 (i) proposed arrangements for placement of
29 the child in accordance with the
30 principle set out in section 12 or
31 guidelines established under section 80

- 1 (as the case requires) and the principle
2 set out in section 9(gb); and
3 (ii) a cultural support plan for the child.
- 4 (3) A proposal under section 143 for a protection order
5 (time-limited) or protection order (until 18) for an
6 Aboriginal child or Torres Strait Islander child must
7 outline the consultation that has occurred or is
8 proposed to occur as required under section 81.
- 9 (4) A proposal under section 143 for a protection order
10 (time-limited) must —
11 (a) outline proposed arrangements for working
12 towards the child being returned to or placed
13 with the child’s parents; or
14 (b) if the CEO is of the opinion that such
15 arrangements would be contrary to the best
16 interests of the child or not practicable —
17 contain an explanation of the reasons for the
18 opinion.
- 19 (5) A proposal under section 143 for the extension of a
20 protection order (time-limited) must include plans for
21 securing long-term stability, security and safety in the
22 child’s relationships and living arrangements.
23

24 **63. Section 144 amended**

25 In section 144(2) delete “section 143(4)” and insert:

26

27 section 143A(5),
28

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1 **64. Section 145 amended**

2 Delete section 145(3) and insert:

3

4 (3) Protection proceedings are to be concluded as
5 expeditiously as possible so as to minimise the risk of
6 detrimental effects arising from delay in
7 decision-making.

8 (3A) Subsection (3) does not prevent an adjournment of
9 proceedings to allow for a trial period for particular
10 arrangements or for other appropriate reasons.

11

12 **65. Section 147 amended**

13 Delete section 147(d) and insert:

14

15 (d) if the proceedings relate to a protection order
16 (special guardianship) — the special guardian
17 or proposed special guardian;

18

19 **66. Section 153 amended**

20 In section 153(2):

21 (a) in paragraph (a) before “has” insert:

22

23 is a person who

24

25 (b) delete paragraph (b) and insert:

26

27 (b) is a person whose disability prevents or restricts
28 the party’s understanding of, or participation in,
29 protection proceedings,

30

1 (c) delete “that prevents or restricts the party’s
2 understanding of, or participation in, protection
3 proceedings,”.

4 **67. Section 157 amended**

5 In section 157(1) delete the definition of *parent*.

6 **68. Section 188 amended**

7 (1) In section 188 delete the definition of *industrial inspector*.

8 (2) In section 188 in the definition of *family business* delete “parent
9 or other relative of the child;” and insert:

10
11 member of the child’s family.
12

13 **69. Section 192 amended**

14 In section 192(3)(a)(iii) delete “female, her breasts;” and insert:

15
16 female child or a transgender or intersex child who identifies as
17 female, the breasts;
18

19 **70. Section 195 deleted**

20 Delete section 195.

21 **71. Section 239 amended**

22 In section 239(1):

23 (a) in paragraph (b) delete “child’s relative; or” and insert:

24
25 member of a child’s family; or
26

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- 1 (b) in paragraph (c) delete “child’s relative” and insert:
2
3 member of a child’s family
4

5 **72. Part 10A inserted**

6 After section 241 insert:
7

8 **Part 10A — Enforcement**

9 **Division 1 — Preliminary**

10 **241A. Terms used**

11 In this Part —

12 *authorised purpose* means —

- 13 (a) for an authorised officer — investigating a
14 suspected offence under this Act; or
15 (b) for an industrial inspector or an authorised
16 officer designated under section 25 as an
17 authorised officer for Part 7 — investigating a
18 suspected offence under that Part or monitoring
19 compliance with that Part;

20 *entry warrant* has the meaning given in section 241L;

21 *magistrate* means a magistrate of the Court or a
22 magistrate of the Magistrates Court;

23 *record* means a record of information, irrespective of
24 how the information is recorded or stored or able to be
25 recovered and includes —

- 26 (a) any thing from which images, sounds or
27 writings can be reproduced, with or without the
28 aid of anything else; and

- 1 (b) any thing on which information is recorded or
2 stored, whether electronically, magnetically,
3 mechanically or by some other means;
4 **relevant record** means a record or document that —
5 (a) is required to be kept under this Act; or
6 (b) contains information that is or may be relevant
7 to an offence under this Act.

8 **241B. Application of Part**

- 9 (1) The powers conferred by this Part on an industrial
10 inspector are in addition to, and do not limit, the
11 powers conferred by the *Industrial Relations Act 1979*.
12 (2) The powers conferred by this Part may be exercised in
13 relation to a suspected offence under this Act, or other
14 conduct, whether occurring before or after the
15 commencement of the *Children and Community*
16 *Services Amendment Act 2021* section 72.

17 **Division 2 — General powers**

18 **241C. Entry to places**

- 19 (1) An authorised officer or industrial inspector may, for
20 an authorised purpose, enter a place if —
21 (a) its occupier gives informed consent to the
22 entry; or
23 (b) the entry is authorised by an entry warrant.
24 (2) An occupier gives informed consent to entry to a place
25 if the occupier gives consent after being informed by
26 an authorised officer or industrial inspector —
27 (a) of the powers the officer or inspector wants to
28 exercise in respect of the place; and

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- 1 (b) of the reasons why the officer or inspector
2 wants to exercise those powers; and
- 3 (c) that the occupier can refuse to consent to the
4 officer or inspector entering the place.
- 5 (3) To investigate a suspected offence under Part 7 or
6 monitor compliance with that Part, an authorised
7 officer or industrial inspector may, at any reasonable
8 time, enter a place in which —
- 9 (a) a child is employed; or
- 10 (b) the officer or inspector believes on reasonable
11 grounds a child is, or may in the future be,
12 employed.
- 13 (4) Entry to a place under subsection (3) may be without
14 informed consent of its occupier or an entry warrant.

15 **241D. Powers after entering place**

- 16 An authorised officer or industrial inspector who enters
17 a place under section 241C may, for an authorised
18 purpose, do any of the following —
- 19 (a) inspect the place and any thing at the place;
- 20 (b) search the place and any thing at the place;
- 21 (c) measure, test, photograph or film any part of
22 the place or any thing at the place;
- 23 (d) take any thing, or a sample of or from any
24 thing, at the place for analysis or testing;
- 25 (e) operate equipment or facilities at the place or
26 direct a person at the place to do so;
- 27 (f) make a copy of, or take an extract from, any
28 record or document at the place;
- 29 (g) seize any thing that is or may afford evidence
30 of an offence under this Act;

- 1 (h) direct (orally or in writing) the occupier of the
2 place, or a person at the place, to give the
3 officer or inspector such assistance as the
4 officer or inspector reasonably requires.

5 **241E. Directions to provide information or documents**

- 6 (1) An authorised officer or industrial inspector may, for
7 an authorised purpose, do any of the following —
8 (a) direct a person —
9 (i) to give information; or
10 (ii) to answer a question put to the person;
11 (b) direct a person to produce a record or document
12 that is in the person's possession or under the
13 person's control;
14 (c) make a copy of a record or document produced
15 in response to a direction under paragraph (b).
16 (2) A direction under subsection (1)(a) —
17 (a) must specify the time at or within which the
18 information or answer is to be given; and
19 (b) may require that the information or answer —
20 (i) be given orally or in writing; and
21 (ii) be given at, or sent or delivered to, a
22 place specified in the direction; and
23 (iii) in the case of written information or a
24 written answer, be sent or delivered by a
25 means specified in the direction; and
26 (iv) be verified by statutory declaration.
27 (3) A direction under subsection (1)(b) —
28 (a) must specify the time at or within which the
29 record or document is to be produced; and

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- 1 (b) may require that the record or document be
2 produced —
- 3 (i) at a place specified in the direction; and
4 (ii) by a means specified in the direction.
- 5 (4) A person is not excused from complying with a
6 direction under this section to give information, answer
7 a question or produce a record or document on the
8 ground that complying with the direction might tend to
9 incriminate the person or render the person liable to a
10 penalty.
- 11 (5) However, any information or answer given by an
12 individual in compliance with such a direction is not
13 admissible in evidence against the individual in
14 criminal or civil proceedings other than proceedings for
15 perjury or for an offence under section 244.
- 16 (6) In giving a direction to a person under this section, an
17 authorised officer or industrial inspector must explain
18 to the person that it is an offence to contravene the
19 direction and the effect of subsections (4) and (5).
- 20 (7) A direction under this section may be given orally or in
21 writing.

22 **241F. Additional powers for relevant records**

- 23 An authorised officer or industrial inspector may, for
24 an authorised purpose, do any of the following —
- 25 (a) operate a computer or other thing on which the
26 officer or inspector suspects on reasonable
27 grounds a relevant record is or may be stored or
28 direct a person who has the custody or control
29 of the computer or thing to do so;

- 1 (b) direct (orally or in writing) a person who is or
2 appears to be in control of a record or document
3 that the officer or inspector suspects on
4 reasonable grounds is a relevant record to give
5 the officer or inspector a translation, code,
6 password or other information necessary to
7 gain access to or interpret and understand the
8 record or document;
- 9 (c) make a copy of or take an extract from, or
10 download or print out, or photograph or film, a
11 record or document that the officer or inspector
12 suspects on reasonable grounds is a relevant
13 record;
- 14 (d) seize a record or document that the officer or
15 inspector suspects on reasonable grounds is a
16 relevant record and retain it for as long as is
17 necessary for the purposes of this Act;
- 18 (e) seize a computer or other thing on which the
19 officer or inspector suspects on reasonable
20 grounds a relevant record is or may be stored
21 and retain it for as long as is necessary for the
22 purposes of this Act;
- 23 (f) take reasonable measures to secure or protect a
24 relevant record, or computer or other thing on
25 which a relevant record is or may be stored,
26 against damage or unauthorised removal or
27 interference.

28 **241G. Contravention of directions**

29 A person who, without reasonable excuse, fails to
30 comply with a direction given to the person under this
31 Division commits an offence.

32 Penalty: a fine of \$12 000.

1 **241H. Exercise of power may be recorded**

2 An authorised officer or industrial inspector may
3 record the exercise of a power under this Division,
4 including by making an audiovisual recording.

5 **241I. Assistance and use of force to exercise power**

6 (1) An authorised officer or industrial inspector exercising
7 a power under this Division may authorise as many
8 other people to assist in exercising the power as are
9 reasonably necessary in the circumstances.

10 (2) In exercising the power, an authorised officer or
11 industrial inspector, and a person authorised under
12 subsection (1) to assist the officer or inspector, may use
13 force that is reasonably necessary in the circumstances.

14 **241J. Procedure on seizing things**

15 (1) If an authorised officer or industrial inspector seizes
16 any thing under this Division, the officer or inspector
17 must give the person who was in possession of it a
18 receipt for it in the approved form.

19 (2) If an authorised officer or industrial inspector seizes
20 any thing under this Division, the officer or inspector
21 must, if practicable, allow a person who is otherwise
22 entitled to possession of it to have reasonable access to
23 it.

24 (3) An authorised officer or industrial inspector who seizes
25 any thing under this Division may take reasonable
26 measures to prevent the thing being concealed, lost,
27 damaged or destroyed.

28 (4) If it is not practicable to move any thing that has been
29 seized, an authorised officer or industrial inspector may
30 do whatever is reasonably necessary to secure it where

1 it is situated and to notify people that it is under
2 seizure.

3 (5) A person must not, without the approval of an
4 authorised officer or industrial inspector, interfere or
5 deal with any thing that the person knows, or ought
6 reasonably to know, has been seized by an authorised
7 officer or industrial inspector.

8 Penalty for this subsection: a fine of \$12 000.

9 **241K. Application of *Criminal and Found Property***
10 ***Disposal Act 2006***

11 (1) The *Criminal and Found Property Disposal Act 2006*
12 applies to any thing that is seized under this Division.

13 (2) For the purposes of the *Criminal and Found Property*
14 *Disposal Act 2006*, the Department is a prescribed
15 agency.

16 **Division 3 — Entry warrants**

17 **241L. Application for entry warrant**

18 (1) An authorised officer or industrial inspector may apply
19 to a magistrate for a warrant (an ***entry warrant***)
20 authorising the entry of a place for an authorised
21 purpose.

22 (2) Subject to this section —

23 (a) an application for an entry warrant must be in
24 writing and include the information prescribed
25 by the regulations; and

26 (b) the grounds of the application must be verified
27 by affidavit; and

28 (c) the applicant must appear in person before the
29 magistrate to provide information in support of
30 the application on oath.

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- 1 (3) If the warrant is needed urgently and the applicant
2 reasonably suspects that a magistrate is not available
3 within a reasonable distance of the applicant, an
4 application for an entry warrant may be made by
5 remote communication.
- 6 (4) A magistrate must reject an application for an entry
7 warrant made by remote communication unless
8 satisfied that —
- 9 (a) the warrant is needed urgently; and
10 (b) a magistrate is not available within a reasonable
11 distance of the applicant.
- 12 (5) If an application for an entry warrant is made by
13 remote communication and it is not practicable to send
14 the magistrate written material —
- 15 (a) the application may be made orally; and
16 (b) the magistrate must make a written record of
17 the application and information given in
18 support of it; and
19 (c) if the warrant is issued — the applicant must, as
20 soon as practicable, send the magistrate an
21 affidavit verifying the application and
22 information given in support of it.

23 **241M. Issue and content of entry warrant**

- 24 (1) On an application for an entry warrant, a magistrate
25 may issue the warrant if satisfied that it is necessary for
26 an authorised officer or industrial inspector to enter a
27 place for an authorised purpose.
- 28 (2) An entry warrant must contain the following
29 information —
- 30 (a) a reasonably particular description of the place
31 to which it relates;

-
- 1 (b) a reasonably particular description of the
2 authorised purpose for which entry to the place
3 is required;
- 4 (c) if the authorised purpose is investigating a
5 suspected offence under this Act — the
6 provision of the Act suspected of being
7 contravened;
- 8 (d) the period, not exceeding 14 days, during which
9 it may be executed;
- 10 (e) the name of the magistrate who issued it;
- 11 (f) the date and time when it was issued.
- 12 (3) An entry warrant must be in the form prescribed by the
13 regulations.
- 14 (4) If a magistrate issues an entry warrant on an
15 application made by remote communication —
- 16 (a) if it is practicable to send a copy of the original
17 warrant to the applicant by remote
18 communication, the magistrate must do so; or
- 19 (b) if that is not practicable —
- 20 (i) the magistrate must provide the
21 applicant by remote communication
22 with the information that must be set out
23 in the warrant; and
- 24 (ii) the applicant must complete a form of
25 warrant with the information received
26 and give the magistrate a copy of the
27 form as soon as practicable after doing
28 so; and
- 29 (iii) the magistrate must attach the copy of
30 the form to the original warrant and any
31 affidavit received from the applicant
32 and make them available for collection
33 by the applicant.

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- 1 (5) The copy of the original warrant sent, or the form of
2 the warrant completed, under subsection (4) has the
3 same force and effect as the original warrant.

4 **241N. Refusal of entry warrant**

5 If a magistrate refuses to issue an entry warrant, the
6 magistrate must record on the application, or the
7 written record of the application, the fact of, the date
8 and time of, and the reasons for, the refusal.

9 **241O. Effect of entry warrant**

- 10 (1) An entry warrant comes into force when it is issued by
11 a magistrate.
- 12 (2) An entry warrant may be executed according to its
13 terms by an authorised officer or industrial inspector
14 entitled to enter the place for the authorised purpose
15 specified in the warrant.
- 16 (3) However, if an applicant for an entry warrant
17 contravenes section 241L(5)(c) or 241M(4)(b)(ii),
18 evidence obtained under the entry warrant is not
19 admissible in proceedings in a court or tribunal.
- 20

21 **73. Section 243 amended**

22 In section 243 delete “assessor or an authorised officer.” and
23 insert:

24

25 assessor, authorised officer or industrial inspector.

26

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

28 **Impersonating assessor, authorised officer or industrial inspector**

1 **74. Section 246 amended**

2 In section 246(4) delete “officer or an authorised officer, assists
3 the officer” and insert:

4
5 officer, authorised officer or industrial inspector, assists the
6 officer or inspector
7

8 **75. Section 249 replaced**

9 Delete section 249 and insert:
10

11 **249. Review of Act**

12 (1) The Minister must review the operation and
13 effectiveness of this Act, and prepare a report based on
14 the review —

15 (a) as soon as practicable after the 5th anniversary
16 of the day on which the *Children and*
17 *Community Services Amendment Act 2021*
18 section 75 comes into operation; and

19 (b) after that, at intervals of not more than 5 years.

20 (2) Without limiting subsection (1), the first review under
21 that subsection must address —

22 (a) recommendations 4 and 11 set out in Report 44
23 of the Standing Committee on Legislation of
24 the Legislative Council; and

25 (b) the need for the continuation of section 241E(4)
26 and (5).

