

Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

Child Welfare Amendment Bill 1998

A Bill for

An Act to amend the *Child Welfare Act 1947* and to consequentially amend the —

- *Freedom of Information Act 1992;*
- *Spent Convictions Act 1988; and*
- *Young Offenders Act 1994.*

The Parliament of Western Australia enacts as follows:

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1. Short title

This Act may be cited as the *Child Welfare Amendment Act 1998*.

2. Commencement

5 This Act comes into operation on such day as is fixed by proclamation.

3. Principal Act

In this Act the *Child Welfare Act 1947** is referred to as the principal Act.

10 [* Reprinted as at 12 July 1995.
For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, pp. 32-4.]

4. Part VIIIA inserted

15 After Part VIII of the principal Act the following Part is inserted —

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**Part VIIIA — Child Protection
Services Register**

Division 1 — Interpretation

20 **120A. Interpretation**

In this Part, unless the contrary intention appears —

“**approved person**”, in relation to a reporting agency, means a person who holds an office or position in the reporting agency that is prescribed, or belongs

to a class that is prescribed, for the purposes of this definition;

“Judge” means a Judge as defined in section 3 of the *Children’s Court of Western Australia Act 1988*;

5 **“maltreatment”** means —

- (a) an act or course of conduct that results, or is likely to result, in significant physical or psychological harm to a child;
- 10 (b) without limiting paragraph (a), an assault (including a sexual assault) of a child; or
- (c) neglect of a child to an extent that results, or is likely to result, in significant physical or psychological harm to the child,

and **“maltreated”** has a corresponding meaning;

15 **“manager”** means the person for the time being designated as the manager of the register under section 120B;

“register” means the register referred to in section 120C;

20 **“report”** means a report made under section 120F(1);

“reporting agency” means —

- (a) the Department;
- (b) the Police Force of Western Australia;
- 25 (c) the department of the Public Service principally assisting with the administration of the *Education Act 1928*, or an Act that replaces that Act, in relation to government schools;

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- (d) the department of the Public Service principally assisting with the administration of the *Health Act 1911*;
- (e) the department of the Public Service principally assisting with the administration of the *Young Offenders Act 1994*;
- 10 (f) the Disability Services Commission continued by the *Disability Services Act 1993*;
- (g) the Western Australian Alcohol and Drug Authority established under the *Alcohol and Drug Authority Act 1974*; or
- 15 (h) a public hospital or private hospital (as those terms are defined in the *Hospitals and Health Services Act 1927*) that is prescribed for the purposes of this definition.

Division 2 — Administration

120B. The manager

- 20 (1) The Minister shall, in writing, designate an officer of the Department as the manager of the register.
- (2) The functions of the manager are —
- 25 (a) the functions conferred by this Part in relation to the register;
- (b) to provide advice to the Minister on matters relating to the operation of the register;
- (c) to ensure that reporting agencies are aware of the requirements of this Part;

- (d) to facilitate and coordinate the provision of counselling, support and other services by reporting agencies in cases of maltreatment or suspected maltreatment; and
- 5 (e) to formulate guidelines for the purposes of section 120R.

120C. Register to be kept

- (1) The manager shall compile and maintain a register containing the information described in section 120D.
- 10 (2) The register is to be known as the Child Protection Services Register or by such other name as the Minister approves.
- (3) The register may be kept on computer or in such other form or medium as the Minister approves.

15 **120D. Content of register**

- (1) The register is to contain —
 - 20 (a) any relevant information, as determined by the manager, held in the Department immediately before the commencement of the *Child Welfare Amendment Act 1998* concerning —
 - 25 (i) the maltreatment or suspected maltreatment of a child, excluding information that identifies or is likely to identify a person as a person suspected of being responsible for the maltreatment or suspected maltreatment; or
 - (ii) the conviction of a person for an offence involving maltreatment of a child;

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- (b) the information contained in a report; and
- (c) the following information in respect of a child who has been the subject of a report —
- 5 (i) the name of any person convicted of an offence involving the maltreatment described in the report;
- (ii) details of the offence; and
- (iii) the relationship (if any) of the person to the child.
- 10 (2) Subject to section 120O, information referred to in subsection (1)(a)(i) or (b) is to remain in the register until the child concerned reaches the age of 18 years and is then to be removed.
- 15 (3) Subject to subsection (4)(b) and section 120O, information referred to in subsection (1)(a)(ii) or (c) is to remain in the register until the expiry of 60 years after the date of the conviction and is then to be removed.
- 20 (4) Where a person referred to in subsection (1)(a)(ii) or (c)(i) was under the age of 18 years when the person committed the offence, a Judge may —
- (a) on the application of the person; and
- (b) having regard to —
- 25 (i) the person's age when the person committed the offence; and
- (ii) the nature and seriousness of the offence,
- 30 order the removal of the information relating to the offence from the register; and the manager shall comply with any such order.

- (5) For the purposes of subsection (1), a person is convicted of an offence if the person is found guilty of the offence and notwithstanding that —
- (a) a spent conviction order is made under section 39 of the *Sentencing Act 1995* in respect of the conviction; or
 - (b) having been found guilty of the offence, a conviction is not recorded under section 55 of the *Young Offenders Act 1994*.

120E. Register to include information in respect of spent convictions

Information referred to in section 120D(1)(a)(ii) or (c) in respect of a particular conviction is to remain in the register despite the fact that the conviction becomes —

- (a) a spent conviction under the *Spent Convictions Act 1988*; or
- (b) a conviction to which section 189 of the *Young Offenders Act 1994* applies.

Division 3 — Reports and notification

120F. Duty of approved person to provide report of maltreatment

- (1) If an approved person in a reporting agency is satisfied, following an assessment or investigation carried out by that person or any other person, that a child has been maltreated or is at serious risk of maltreatment, the approved person shall make a report to the manager containing the following information —

- (a) the name, sex, date of birth and address of the child;

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- (b) details of the maltreatment or risk of maltreatment, excluding details that identify or are likely to identify a person as a person suspected of being responsible for the maltreatment or of posing the risk of maltreatment;
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- (c) details of counselling, support or other services provided, or to be provided, to the child or to members of the child's family (whether by the approved person, another officer or employee of the reporting agency or another person or body); and
- (d) such other information as may be prescribed.
- 15
- (2) The making of a report as required by subsection (1) is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law or as a breach of any professional ethics or standards.
- 20
- (3) Subject to any guidelines issued under section 120R, the report is to be made in such manner and form as the manager determines.

120G. Notification of report

- 25
- (1) If a report is made under section 120F(1), the manager shall cause notification to be given to —
- (a) a parent, guardian or other person responsible for the day to day care, welfare and development of the child; and
- (b) the child, if the child has reached the age of 12 years,

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that the report has been made and that the information it contains has been recorded in the register.

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- (2) Notification under subsection (1) is to —
- (a) include a summary of the contents of the report; and
 - (b) be given in such manner as the manager determines is appropriate to protect the interests of the child.
- 10
- (3) The manager may —
- (a) defer notification under subsection (1)(a) or (b) for such period as the manager considers appropriate; or
 - (b) dispense with notification under subsection (1)(a) or (b),
- if the manager is satisfied that it is in the best interests of the child to do so.
- 15
- (4) Without limiting subsection (3), the manager may exercise a power given by that subsection in relation to notification of a child if the manager is satisfied that the child does not have sufficient maturity to understand the content of the report or the
- 20
- circumstances to which it relates.

120H. Notification of information recorded under s. 120D(1)(c)

- 25
- (1) The manager shall, as soon as practicable after information relating to the conviction of a person is recorded in the register under section 120D(1)(c), take all reasonable steps to notify the person that the information has been so recorded.
- (2) Notification under subsection (1) is to include a summary of the information recorded.

- 5 (3) Where the person was under the age of 18 years when the person committed the offence, notification under subsection (1) is to include a statement of the person's right to apply for the removal of the information under section 120D(4).

Division 4 — Access to register and related information

120I. Circumstances in which access permitted

10 The manager is only to permit access to information in the register or any other information provided or obtained for the purposes of this Part —

- 15 (a) in the circumstances set out in sections 120J and 120K;
- (b) if the information is required by a Judge for the purposes of determining an appeal under section 120L; or
- (c) in accordance with a decision of a Judge on an appeal under section 120L.

120J. Access for approved persons

- 20 (1) On receiving a report in respect of a child, the manager shall, if the manager is satisfied that it is in the best interests of the child to do so —
- 25 (a) notify the approved person who made the report of the existence of any other information in the register in respect of the child and permit the approved person to have access to that information; and
- (b) permit any other approved person to have access to —
- (i) the information in the report; and

(ii) any other information in the register in respect of the child.

5 (2) Where the manager receives an inquiry from an approved person as to whether the name of a particular person (“**the suspected person**”) is recorded in the register under section 120D(1)(a)(ii) or (c), the manager shall in the best interests of the child concerned —

10 (a) advise the approved person whether or not the suspected person’s name is so recorded; and

(b) if it is so recorded, permit the approved person to have access to the information in the register in respect of the suspected person.

120K. Access for children, parents, etc.

15 (1) Subject to subsection (3), the manager shall, at the request of a parent, guardian or other person responsible for the day to day care, welfare and development of the child, permit the person to have access to the information in the register in respect of the child.

20 (2) Subject to subsections (3) and (4), the manager shall, at the request of a child who has reached the age of 12 years, permit the child to have access to the information in the register in respect of the child.

25 (3) The manager may refuse access under subsection (1) or (2) if the manager is satisfied that it is in the best interests of the child to do so.

30 (4) Without limiting subsection (3), the manager may refuse access under subsection (2) if the manager is satisfied that the child does not have sufficient maturity

to understand the information or the circumstances to which it relates.

- 5 (5) If the manager decides to refuse access, the manager shall give written notice of the decision to the person who requested access within 14 days after the decision is made.
- (6) A notice under subsection (5) is to include a statement of the person's right of appeal under section 120L.

120L. Appeals

- 10 (1) A person who is refused access under section 120K may appeal against the decision to a Judge.
- (2) An appeal is to be made by lodging a notice of appeal within one month after the appellant receives written notice of the decision or such further period as a Judge may, in a particular case, direct.
- 15 (3) A notice of appeal is to give details of the decision which is appealed against and set out the grounds of appeal.
- (4) The proceedings on an appeal are to be conducted in the manner prescribed by the rules of court or as a Judge otherwise directs.
- 20 (5) On an appeal, a Judge may —
- (a) confirm, vary or reverse the decision the subject of the appeal; and
- 25 (b) make any incidental or ancillary order.
- (6) The decision of a Judge on an appeal is final and effect is to be given to that decision.

120M. Offence

A person who gains access to the register or to any information provided or obtained for the purposes of this Part without the permission of the manager commits an offence.

Penalty: \$20 000 and imprisonment for 2 years.

Division 5 — General

120N. Commissioner of Police to provide assistance

(1) The Commissioner is to provide such assistance to the manager, including access to criminal records, as is reasonably required for the purpose of obtaining the information referred to in section 120D(1)(c).

(2) In subsection (1) —

“**Commissioner**” means the Commissioner of Police appointed under the *Police Act 1892*.

120O. Alteration of register

(1) The manager shall cause such amendments, alterations or corrections to the register to be made as are necessary to ensure that it is and continues to be an accurate record.

(2) Without limiting subsection (1), the manager shall cause to be removed from the register information referred to in section 120D(1)(a)(ii) or (c) if the conviction is set aside or quashed on appeal.

120P. Manager to report annually to Minister

The Manager, on or before 30 September in each year, is to prepare and present to the Minister a report on the

operation and effectiveness of this Part during the period of 12 months ending on the preceding 30 June, containing such information as is prescribed.

120Q. Confidentiality

- 5 (1) A person to whom this section applies shall not, directly or indirectly, record, disclose, or make use of any information in the register or any other information provided or obtained for the purposes of this Part except —
- 10 (a) for the purpose of performing functions under this Act or another written law;
- (b) as required or allowed by this Act or under another written law; or
- (c) in prescribed circumstances.
- 15 Penalty: \$20 000 and imprisonment for 2 years.
- (2) This section applies to any person who is or has been —
- (a) the manager;
- (b) any other officer of the Department; or
- 20 (c) an officer or employee of a reporting agency.
- (3) Nothing in this section prevents the disclosure of statistical or other information in a form that could not reasonably be expected to lead to the identification of any person to whom it relates.

120R. Guidelines

- (1) The manager may, after consultation with the reporting agencies, issue guidelines to those agencies concerning —
- (a) the procedures to be followed, and criteria to be applied, by an approved person in assessing whether a report is required to be made under section 120F;
 - (b) the manner and form in which a report is to be made for the purposes of section 120F;
 - (c) the ways in which access is to be given to an approved person under section 120J; and
 - (d) any other matter relating to the operation of the register in respect of which the manager considers guidelines to be necessary or desirable.
- (2) To the extent that a provision of the guidelines conflicts or is inconsistent with a provision of this Part, it is of no effect.

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5. Section 142 amended

Section 142 (1) of the principal Act is amended by deleting “the provisions of this Act, other than section 107A (1), (2) or (4) or section 107B (2) or (4),” and inserting the following —

“ section 60, 61, 66B (1) or (2) or 117 (1), (2) or (3) ”.

6. Consequential amendments

- (1) Schedule 1 to the *Freedom of Information Act 1992** is amended in clause 14(1) by inserting before paragraph (a) the following paragraph —

5 “ (aa) section 120P(1) of the *Child Welfare Act 1947*; ”.

[* Reprinted as at 8 July 1997.

For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, pp. 89-90.]

- 10 (2) After section 15 of the *Spent Convictions Act 1988** the following section is inserted —

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15A. Part VIIIA of the *Child Welfare Act 1947*

Section 25(1) and (2) do not apply to Part VIIIA of the *Child Welfare Act 1947*.

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[* Reprinted as at 19 November 1996.

For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 217 and Act No. 10 of 1998.]

- 20 (3) Section 190(2) of the *Young Offenders Act 1994** is amended by inserting after “this Act” the following —

“ or Part VIIIA of the *Child Welfare Act 1947* ”.

[* Reprinted as at 26 November 1996.

For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 259.]

