



Queensland

Child Protection and Other Acts Amendment Act 2010

Act No. 33 of 2010



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Child Protection and Other Acts Amendment Act 2010

Act No. 33 of 2010

An Act to amend the Child Protection Act 1999, Commission for Children and Young People and Child Guardian Act 2000, Community Services Act 2007, Disability Services Act 2006, Family Services Act 1987, Juvenile Justice and Other Acts Amendment Act 2009 and Public Service Act 2008 for particular purposes

[Assented to 8 September 2010]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Child Protection and Other Acts Amendment Act 2010*.

2 Commencement

- (1) Section 119 commences on the later of the following—
 - (a) the day this Act is assented to;
 - (b) 1 July 2010, immediately after the *Criminal History Screening Legislation Amendment Act 2010*, section 129 commences.
- (2) Sections 121 and 122 commence on the later of the following—
 - (a) the day this Act is assented to;
 - (b) 1 July 2010, immediately after the *Criminal History Screening Legislation Amendment Act 2010*, section 156, to the extent it inserts part 16, division 5, subdivision 4, commences.
- (3) The remaining provisions of this Act commence on a day to be fixed by proclamation.

Part 2 **Amendment of Child Protection Act 1999**

3 **Act amended**

This part amends the *Child Protection Act 1999*.

4 **Omission of s 3A (Notes in text)**

Section 3A—
omit.

5 **Amendment of ch 1, pt 2 hdg**

Chapter 1, part 2, heading, after ‘Purpose’—
insert—
‘, principles’.

6 **Insertion of new ch 1, pt 2, div 1 hdg**

Chapter 1, part 2, after part 2 heading—
insert—

‘Division 1 **Purpose of Act and principles for its administration’.**

7 **Replacement of s 5 (Principles for administration of Act)**

Section 5—
omit, insert—

‘5 **Application of principles**

- ‘(1) This Act is to be administered under the principles stated in this division.
- ‘(2) All other principles stated in this Act are subject to the principle stated in section 5A.

[s 7]

‘5A Paramount principle

‘The main principle for administering this Act is that the safety, wellbeing and best interests of a child are paramount.

Example—

If the chief executive is making a decision under this Act about a child where there is a conflict between the child’s safety, wellbeing and best interests, and the interests of an adult caring for the child, the conflict must be resolved in favour of the child’s safety, wellbeing and best interests.

‘5B Other general principles

‘The following are general principles for ensuring the safety, wellbeing and best interests of a child—

- (a) a child has a right to be protected from harm or risk of harm;
- (b) a child’s family has the primary responsibility for the child’s upbringing, protection and development;
- (c) the preferred way of ensuring a child’s safety and wellbeing is through supporting the child’s family;
- (d) if a child does not have a parent who is able and willing to protect the child, the State is responsible for protecting the child;
- (e) in protecting a child, the State should only take action that is warranted in the circumstances;
- (f) if a child is removed from the child’s family, support should be given to the child and the child’s family for the purpose of allowing the child to return to the child’s family if the return is in the child’s best interests;
- (g) if a child does not have a parent able and willing to give the child ongoing protection in the foreseeable future, the child should have long-term alternative care;
- (h) if a child is removed from the child’s family, consideration should be given to placing the child, as a first option, in the care of kin;

-
- (i) if a child is removed from the child's family, the child should be placed with the child's siblings, to the extent that is possible;
 - (j) a child should only be placed in the care of a parent or other person who has the capacity and is willing to care for the child (including a parent or other person with capacity to care for the child with assistance or support);
 - (k) a child should have stable living arrangements, including arrangements that provide—
 - (i) for a stable connection with the child's family and community, to the extent that is in the child's best interests; and
 - (ii) for the child's developmental, educational, emotional, health, intellectual and physical needs to be met;
 - (l) a child should be able to maintain relationships with the child's parents and kin, if it is appropriate for the child;
 - (m) a child should be able to know, explore and maintain the child's identity and values, including their cultural, ethnic and religious identity and values;
 - (n) a delay in making a decision in relation to a child should be avoided, unless appropriate for the child.

'5C Additional principles for Aboriginal or Torres Strait Islander children

'The following additional principles apply in relation to an Aboriginal or Torres Strait Islander child—

- (a) the child should be allowed to develop and maintain a connection with the child's family, culture, traditions, language and community;
- (b) the long-term effect of a decision on the child's identity and connection with their family and community should be taken into account.

[s 7]

Note—

See also sections 6 (Recognised entities and decisions about Aboriginal and Torres Strait Islander children) and 83 (Additional provisions for placing Aboriginal and Torres Strait Islander children in care).

‘5D Principles about exercising powers and making decisions

‘(1) The following principles are relevant to exercising a power or making a decision under this Act—

- (a) a power under this Act should be exercised in a way that is open, fair and respectful of the rights of each person affected by the exercise of the power;
- (b) to the extent that it is appropriate, the views of relevant persons should be sought and taken into account before a decision is made under this Act;
- (c) if a relevant person for a decision under this Act needs help to participate in or understand the decision making process, or to understand a statutory right relevant to the decision, the relevant person should be given help;
- (d) a relevant person for a decision under this Act may obtain their own legal advice, or be represented by a lawyer or supported by another person, in relation to the decision-making process;
- (e) information about a child affected by a decision under this Act should be shared—
 - (i) only to the extent necessary for the purposes of this Act; and
 - (ii) in a way that protects the child’s privacy.

‘(2) This section does not apply to a court.

‘(3) In this section—

relevant person, for a decision, means each of the following persons—

- (a) the child to whom the decision relates;

- (b) a person who is a parent or sibling of the child and is affected by the decision;
- (c) any long-term guardian of the child.

'5E Obtaining child's views

- '(1) When giving a child an opportunity to express their views under this Act—
 - (a) language appropriate to the age, maturity and capacity of the child should be used; and
 - (b) communication with the child should be in a way that is appropriate to the child's circumstances; and
 - (c) if the child requires help to express their views, the child should be given help; and
 - (d) the child should be given an appropriate explanation of any decision affecting the child, including a decision about the development of a case plan or the effect of the decision or the case plan; and
 - (e) the child should be given an opportunity, and any help if needed, to respond to any decision affecting the child.
- '(2) Nothing in this section requires a child to express a view about a matter.
- '(3) This section does not apply to a court.'

8 Amendment of s 6 (Provisions about Aboriginal and Torres Strait Islander children)

Section 6, heading, 'Provisions'—

omit, insert—

'Recognised entities and decisions'.

9 Insertion of new ch 1, pt 2, div 2 hdg

After section 6—

[s 10]

insert—

‘Division 2 Administration’.

10 Amendment of s 9 (What is *harm*)

Section 9—

insert—

‘(4) Harm can be caused by—

- (a) a single act, omission or circumstance; or
- (b) a series or combination of acts, omissions or circumstances.’.

11 Amendment of s 11 (Who is a *parent*)

Section 11, editor’s note, after ‘(see section 37),’—

insert—

‘chapter 2, part 3AA (see section 51AA),’.

12 Amendment of s 13 (What is effect of guardianship)

Section 13(c), ‘welfare’—

omit, insert—

‘wellbeing’.

13 Amendment of s 14 (Chief executive may investigate alleged harm)

(1) Section 14, heading, ‘Chief executive may investigate’—

omit, insert—

‘Investigation of’.

(2) Section 14(2), ‘may have involved’—

omit, insert—

‘to a child may involve’.

(3) Section 14—

insert—

‘(3) Subsection (2) applies whether or not the chief executive suspects the child is in need of protection.’.

14 Replacement of s 15 (Child’s parents to be told about allegation of harm and outcome of investigation)

Section 15—

omit, insert—

‘15 Child’s parents and long-term guardians to be told about allegation of harm and outcome of investigation

‘(1) This section applies if an authorised officer or police officer—

(a) investigates an allegation of harm or risk of harm to a child; or

(b) assesses a child’s need of protection because of an allegation of harm or risk of harm to the child.

‘(2) If the child does not have long-term guardians, the officer must—

(a) give details of the alleged harm or risk of harm to at least 1 of the child’s parents; and

(b) as soon as practicable after completing the investigation—

(i) tell at least 1 of the child’s parents about the outcome of the investigation; and

(ii) if asked by the parent, give the information about the outcome of the investigation to the parent in writing.

‘(3) If the child has long-term guardians, the officer must—

(a) take, or make a reasonable attempt to take, the actions stated in subsection (2)(a) and (b), but only if the officer is satisfied it would be in the child’s best interests to do so, having regard to—

[s 15]

- (i) the nature and extent of the child’s connection with the child’s parents; and
 - (ii) the evidence in support of the allegation of harm or risk of harm; and
 - (iii) any other relevant matter; and
 - (b) take the actions stated in subsection (2)(a) and (b) in relation to the long-term guardians.
- ‘(4) However, if the officer reasonably believes—
- (a) someone may be charged with a criminal offence for the harm to the child and the officer’s compliance with subsection (2) or (3) may jeopardise an investigation into the offence; or
 - (b) compliance with subsection (2) or (3) may expose the child to harm;
- the officer need only comply with the subsection to the extent the officer considers is reasonable and appropriate in the particular circumstances.
- ‘(5) If, under subsection (3)(a), the officer does not take the actions stated in subsection (2)(a) and (b) but makes a reasonable attempt to take the actions, the officer must document full details about the actions taken by the officer in making the attempt.’.

15 Amendment of s 17 (Contact with children in school, child care centre, family day care etc.)

- (1) Section 17(1)(b)(i) and (ii), after ‘parents’—
insert—
‘or long-term guardians’.
- (2) Section 17(4)—
omit, insert—
- ‘(4) As soon as practicable after the officer has had contact with the child, the officer must—

- (a) if the child has long-term guardians—tell at least 1 of the long-term guardians that the officer has had contact with the child and the reasons for the contact; or
- (b) otherwise—tell at least 1 of the child’s parents that the officer has had contact with the child and the reasons for the contact.’.

16 Amendment of s 18 (Child at immediate risk may be taken into custody)

(1) Section 18(1)—

omit, insert—

‘(1) This section applies if an authorised officer or police officer reasonably believes a child is at risk of harm and the child is likely to suffer harm if the officer does not immediately take the child into custody.’.

(2) Section 18—

insert—

‘(5A) However, subsection (5) does not apply if an authorised officer applies for a temporary custody order for the child.’.

(3) Section 18(7)(a), after ‘order’—

insert—

‘or temporary custody order’.

(4) Section 18(5A) to (7)—

renumber as section 18(6) to (8).

17 Replacement of s 20 (Officer’s obligations on taking child into custody)

Section 20—

omit, insert—

[s 17]

‘20 Officer’s obligations on taking child into custody

- ‘(1) This section applies if an authorised officer or police officer takes a child into the chief executive’s custody.
- ‘(2) If the child does not have long-term guardians, the officer must, as soon as practicable—
- (a) take reasonable steps to tell at least 1 of the child’s parents—
 - (i) that the child has been taken into custody and the reasons for the action; and
 - (ii) when the chief executive’s custody ends under section 18(8); and
 - (b) tell the child about their being taken into the chief executive’s custody; and
- Editor’s note—*
- Section 195 deals with compliance with provisions about giving information.
- (c) tell the chief executive the child has been taken into the chief executive’s custody, the reasons for the action and where the child has been taken.
- ‘(3) If the child has long-term guardians, the officer must, as soon as practicable—
- (a) comply with subsection (2)(a) to (c) as if the reference in subsection (2)(a) to parents were a reference to long-term guardians; and
 - (b) comply, or make a reasonable attempt to comply, with subsection (2)(a).
- ‘(4) Subsections (2) and (3) do not require the officer to tell the child’s parents or long-term guardians in whose care the child has been placed.
- ‘(5) The officer’s obligation under subsection (2)(a)(i) or (3) to give reasons for taking the child into custody is limited to the extent the officer considers is reasonable and appropriate in particular circumstances if the officer reasonably believes—

-
- (a) someone may be charged with a criminal offence for harm to the child and the officer's compliance with the provision may jeopardise an investigation into the offence; or
 - (b) compliance with the provision may expose the child to harm.
- ‘(6) If, under subsection (3)(b), the officer does not comply with subsection (2)(a) but makes a reasonable attempt to comply, the officer must document full details about the actions taken by the officer in making the attempt.’.

18 Amendment of s 21A (Unborn children)

- (1) Section 21A(3)—
renumber as section 21A(5).
- (2) Section 21A—
insert—
- ‘(3) If the child is an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must consult with a recognised entity for the child for the purpose of—
 - (a) assessing the likelihood that the child may be in need of protection after he or she is born; and
 - (b) offering help and support to the pregnant woman.
- ‘(4) However, subsection (3) applies only if the pregnant woman agrees to the consultation taking place.’.

19 Amendment of s 23 (Meaning of *parent* in pt 2)

Section 23, definition *parent*, paragraphs (c) and (d)—
omit, insert—

- ‘(c) a person, other than the chief executive, having custody or guardianship of the child under—
 - (i) a law of the State, other than this Act; or

[s 20]

- (ii) a law of another State;
- (d) a long-term guardian of the child.’.

20 Amendment of s 25 (Making of application for order)

- (1) Section 25(2), ‘application must be sworn and state’—
omit, insert—
‘officer must prepare a written application that states’.
- (2) Section 25(3)—
renumber as section 25(4).
- (3) Section 25—
insert—
‘(3) The written application must be sworn.’.

21 Amendment of s 27 (Making of temporary assessment order)

- (1) Section 27(2), ‘the consent of at least 1 of the child’s parents’—
omit, insert—
‘appropriate parental consent’.
- (2) Section 27—
insert—
- ‘(3) In this section—
appropriate parental consent means—
 - (a) if the child does not have long-term guardians—the consent of at least 1 of the child’s parents; or
 - (b) if the child has long-term guardians—the consent of at least 1 of the long-term guardians.’.

22 Amendment of s 29 (Duration of temporary assessment orders)

Section 29(2), ‘3 days’—

omit, insert—

‘3 business days’.

23 Replacement of s 30 (Special orders)

Section 30—

omit, insert—

‘30 Application by particular forms of communication and duplicate order

‘(1) An application under section 25 may be made by phone, fax, radio or another form of communication if the authorised officer or police officer reasonably considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances (including, for example, the officer’s remote location).

‘(2) The application—

- (a) may not be made before the officer prepares the written application under section 25(2); but
- (b) may be made before the written application is sworn.

‘(3) The magistrate may make the order (the *original order*) only if the magistrate is satisfied—

- (a) it was necessary to make the application under subsection (1); and
- (b) the way the application was made under subsection (1) was appropriate.

‘(4) After the magistrate makes the original order—

- (a) if there is a reasonably practicable way of immediately giving a copy of the order to the officer (for example, by

[s 23]

sending a copy by fax), the magistrate must immediately give a copy of the order to the officer; or

(b) otherwise—

(i) the magistrate must tell the officer the date and time the order was made and the other terms of the order; and

(ii) the officer must complete a form of the order, including by writing on it—

(A) the magistrate's name; and

(B) the date and time the magistrate made the order; and

(C) the other terms of the order.

‘(5) The copy of the order mentioned in subsection (4)(a), or the form of the order completed under subsection (4)(b), (in either case the *duplicate order*) is a duplicate of, and as effectual as, the original order.

‘(6) The officer must, at the first reasonable opportunity, send to the magistrate—

(a) the written application complying with section 25(2) and (3); and

(b) if the officer completed a form of the order under subsection (4)(b)—the completed form of the order.

‘(7) The magistrate must keep the original order and, on receiving the documents under subsection (6)—

(a) attach the documents to the original order; and

(b) give the original order and documents to the clerk of the court of the relevant magistrates court.

‘(8) Despite subsection (7), if—

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by an order made under this section; and

(b) the original order is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove an order authorised the exercise of the power.’.

24 Amendment of s 31 (Order—procedure before entry)

Section 31(2)(b)(ii), ‘facsimile order or order form mentioned in section 30(6), a copy of the facsimile order or order form’—

omit, insert—

‘duplicate order under section 30(5), a copy of the duplicate order’.

25 Amendment of s 32 (Explanation of temporary assessment orders)

(1) Section 32, ‘Immediately’—

omit, insert—

‘If the child does not have long-term guardians, then, immediately’.

(2) Section 32(a), ‘facsimile order or order form under section 30(6)’—

omit, insert—

‘duplicate order under section 30(5)’.

(3) Section 32(c)(ii), editor’s note, ‘3 days’—

omit, insert—

‘3 business days’.

(4) Section 32—

insert—

‘(2) If the child has long-term guardians, then, immediately after a temporary assessment order is made for a child, the applicant for the order must—

[s 26]

- (a) comply with subsection (1)(a) to (d) as if a reference to parents were a reference to long-term guardians; and
 - (b) comply, or make a reasonable attempt to comply, with subsection (1)(a) to (c).
- ‘(3) If, under subsection (2)(b), the applicant does not comply with subsection (1)(a) to (c) but makes a reasonable attempt to comply, the applicant must document full details about the actions taken by the applicant in making the attempt.’.

26 Amendment of s 34 (Extension of temporary assessment orders)

Section 34(5), ‘3 days’—

omit, insert—

‘3 business days’.

27 Amendment of s 37 (Meaning of *parent* in pt 3)

Section 37, definition *parent*, paragraphs (c) and (d)—

omit, insert—

- ‘(c) a person, other than the chief executive, having custody or guardianship of the child under—
 - (i) a law of the State, other than this Act; or
 - (ii) a law of another State;
- (d) a long-term guardian of the child.’.

28 Amendment of s 38 (Purpose of pt 3)

Section 38(2)(b) and editor’s note, ‘3 days’—

omit, insert—

‘3 business days’.

29 Amendment of s 41 (Notice of application)

Section 41(1) and (2)—

omit, insert—

- ‘(1) As soon as practicable after the application is filed, the applicant must do the following—
- (a) if the child does not have long-term guardians—personally serve a copy of the application on each of the child’s parents;
 - (b) if the child has long-term guardians—
 - (i) personally serve a copy of the application on each of the long-term guardians; and
 - (ii) personally serve, or make a reasonable attempt to personally serve, a copy of the application on each of the child’s parents other than the long-term guardians;
 - (c) tell the child about the application.

Editor’s note—

Section 195 deals with compliance with provisions about giving information.

- ‘(2) If the applicant makes a reasonable attempt to personally serve, but does not personally serve, a copy of the application under subsection (1)(b)(ii), the applicant must document full details about the actions taken in making the attempt.

Example of how an applicant may make a reasonable attempt—

leaving a copy of the application at, or posting a copy of the application to, the parent’s last known residential address’.

30 Amendment of s 45 (Provisions of court assessment order)

- (1) Section 45(2) to (4)—

renumber as section 45(3) to (5).

- (2) Section 45—

[s 31]

insert—

- ‘(2) Before making an order under subsection (1)(d), the court must consider the views of the chief executive about the child’s contact with the child’s family, including—
- (a) whether any contact with the child should be supervised; and
 - (b) the duration and frequency of any contact with the child.’.

31 Insertion of new ch 2, pt 3AA

Chapter 2, after part 3—

insert—

‘Part 3AA Temporary custody orders

‘Division 1 Preliminary

‘51AA Meaning of *parent* in pt 3AA

‘In this part—

parent, of a child, means each of the following persons—

- (a) the child’s mother or father;
- (b) a person in whose favour a residence order or contact order for the child is in operation under the *Family Law Act 1975* (Cwlth);
- (c) a person, other than the chief executive, having custody or guardianship of the child under—
 - (i) a law of the State, other than this Act; or
 - (ii) a law of another State;
- (d) a long-term guardian of the child.

‘51AB Purpose

- ‘(1) This part provides for the making of temporary custody orders.
- ‘(2) The purpose of a temporary custody order is to authorise the action necessary to ensure the immediate safety of a child while the chief executive decides the most appropriate action to meet the child’s ongoing protection and care needs (for example, applying for a child protection order).

‘Division 2 Applications for, and making and effect of, temporary custody orders

‘51AC Making of application for order

- ‘(1) An authorised officer may apply to a magistrate for a temporary custody order for a child.
- ‘(2) The officer must prepare a written application that states the following—
 - (a) the grounds on which it is made;
 - (b) the nature of the order sought;
 - (c) the proposed arrangements for the child’s care.
- ‘(3) The written application must be sworn.
- ‘(4) The magistrate may refuse to consider the application until the officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application be given by statutory declaration.

[s 31]

‘51AD Deciding application

‘A magistrate may decide an application for a temporary custody order without notifying the child’s parents of the application or hearing them on the application.

‘51AE Making of temporary custody order

‘The magistrate may make a temporary custody order for the child only if the magistrate is satisfied—

- (a) the child will be at unacceptable risk of suffering harm if the order is not made; and
- (b) the chief executive will be able, within the term of the temporary custody order, to decide the most appropriate action to meet the child’s ongoing protection and care needs and start taking that action.

‘51AF Provisions of temporary custody order

‘(1) The magistrate may make a temporary custody order for the child that provides for any 1 or more of the following the magistrate considers to be appropriate in the circumstances—

- (a) authorising an authorised officer or police officer—
 - (i) to have contact with the child; and
 - (ii) to take the child into, or keep the child in, the chief executive’s custody while the order is in force;
- (b) authorising the child’s medical examination or treatment;

Editor’s note—

Section 97 (Carrying out medical examinations or treatment) applies to the medical examination or treatment.

- (c) directing a parent not to have contact (direct or indirect)—
 - (i) with the child; or

-
- (ii) with the child other than when a stated person or a person of a stated category is present.
- ‘(2) In addition, the order may authorise an authorised officer or police officer to enter and search any place the officer reasonably believes the child is, to find the child, if the magistrate is satisfied—
- (a) entry to a place has been, or is likely to be, refused, or it is otherwise justified in particular circumstances, including, for example, because the child’s whereabouts are not known; and
 - (b) the entry is necessary for the effective enforcement of the order.
- ‘(3) On entering a place, an authorised officer or police officer may remain in the place for as long as the officer reasonably considers necessary for exercising the officer’s powers under this section.
- ‘(4) An authorised officer or police officer may exercise powers under the order with the help, and using the force, that is reasonable in the circumstances.

‘51AG Duration of temporary custody orders

- ‘(1) A temporary custody order must state the time when it ends.
- ‘(2) The stated time must not be more than 3 business days after the day the order is made.
- ‘(3) The order ends at the stated time unless it is extended.
- ‘(4) Regardless of subsections (1) to (3), the order ends when the child turns 18 years.

‘51AH Extension of temporary custody orders

- ‘(1) An authorised officer may apply to a magistrate for an order to extend the term of a temporary custody order for a child.

[s 31]

- ‘(2) This part applies, with all necessary changes, to the application as if it were an application for a temporary custody order.
- ‘(3) The magistrate may extend the temporary custody order only if the magistrate is satisfied the order has not ended.
- ‘(4) The temporary custody order may be extended until the end of the next business day after it would otherwise have ended if the magistrate is satisfied the officer intends to apply for a child protection order for the child within the extended term.
- ‘(5) Unless subsection (4) applies, the temporary custody order may not be extended to a time ending more than 3 business days after the day it was made.
- ‘(6) A temporary custody order may not be extended more than once under subsection (4).

‘51AI Application by particular forms of communication and duplicate order

- ‘(1) An application under section 51AC may be made by phone, fax, radio or another form of communication if the authorised officer reasonably considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances (including, for example, the officer’s remote location).
- ‘(2) The application—
 - (a) may not be made before the officer prepares the written application under section 51AC(2); but
 - (b) may be made before the written application is sworn.
- ‘(3) The magistrate may make the order (the *original order*) only if the magistrate is satisfied—
 - (a) it was necessary to make the application under subsection (1); and
 - (b) the way the application was made under subsection (1) was appropriate.

-
- ‘(4) After the magistrate makes the original order—
- (a) if there is a reasonably practicable way of immediately giving a copy of the order to the officer (for example, by sending a copy by fax), the magistrate must immediately give a copy of the order to the officer; or
 - (b) otherwise—
 - (i) the magistrate must tell the officer the date and time the order was made and the other terms of the order; and
 - (ii) the officer must complete a form of the order, including by writing on it—
 - (A) the magistrate’s name; and
 - (B) the date and time the magistrate made the order; and
 - (C) the other terms of the order.
- ‘(5) The copy of the order mentioned in subsection (4)(a), or the form of the order completed under subsection (4)(b), (in either case the *duplicate order*) is a duplicate of, and as effectual as, the original order.
- ‘(6) The officer must, at the first reasonable opportunity, send to the magistrate—
- (a) the written application complying with section 51AC(2) and (3); and
 - (b) if the officer completed a form of the order under subsection (4)(b)—the completed form of the order.
- ‘(7) The magistrate must keep the original order and, on receiving the documents under subsection (6)—
- (a) attach the documents to the original order; and
 - (b) give the original order and documents to the clerk of the court of the relevant magistrates court.
- ‘(8) Despite subsection (7), if—

[s 31]

- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by an order made under this section; and
- (b) the original order is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove an order authorised the exercise of the power.

'51AJ Order—procedure before entry

- '(1) This section applies if an authorised officer or police officer is intending to enter a place under an authority under a temporary custody order.
- '(2) Before entering the place, the officer must do or make a reasonable attempt to do the following things—
 - (a) identify himself or herself to a person present at the place who is an occupier of the place;
 - (b) give the person—
 - (i) a copy of the order so far as it relates to the entry and searching of the place; or
 - (ii) if the entry and searching is authorised by a duplicate order under section 51AI(5), a copy of the duplicate order so far as it relates to the entry and searching of the place;
 - (c) tell the person the officer is permitted by the order to enter and search the place to find the child;
 - (d) give the person an opportunity to allow the officer immediate entry to the place without using force.
- '(3) For subsection (2)(a), an authorised officer must produce the officer's identity card to the person for inspection.

Editor's note—

For a police officer, see the *Police Powers and Responsibilities Act 2000*, section 637 (Supplying police officer's details).

-
- ‘(4) However, the officer need not comply with subsection (2) if the officer reasonably believes that immediate entry to the place is required to ensure the effective exercise of powers under the order is not frustrated.

‘Division 3 Other provisions about temporary custody orders

‘51AK Explanation of temporary custody orders

- ‘(1) This section applies if a temporary custody order is made for a child.
- ‘(2) If the child does not have long-term guardians, the applicant for the order must immediately—
- (a) provide at least 1 of the child’s parents with—
 - (i) a copy of the order or the duplicate order under section 51AI(5); and
 - (ii) an explanation of the terms and effect of the order; and
 - (iii) information—
 - (A) about the right of appeal; and
 - (B) that, because of the duration of the order, if the parent wishes to appeal against the order, an appeal should be started immediately; and
 - (C) about how to appeal; and
 - (b) tell the child about the order.
- Editor’s note—*
- Section 195 deals with compliance with provisions about giving information.
- ‘(3) If the child has long-term guardians, the applicant for the order must immediately—
- (a) comply with subsection (2)(a) as if a reference to parents were a reference to long-term guardians; and

[s 32]

- (b) comply, or make a reasonable attempt to comply, with subsection (2)(a) in relation to the child's parents other than the long-term guardians; and
 - (c) comply with subsection (2)(b).
- ‘(4) If, under subsection (3)(b), the applicant does not comply with subsection (2)(a) in relation to the child's parents other than the long-term guardians, but makes a reasonable attempt to comply, the applicant must document full details about the actions taken by the applicant in making the attempt.

‘51AL Variation of temporary custody orders

- ‘(1) An authorised officer may apply to a magistrate for an order to vary a temporary custody order for a child.
- ‘(2) This part applies, with all necessary changes, to the application as if it were an application for a temporary custody order.

‘51AM Effect of temporary custody order on existing child protection orders

- ‘(1) This section applies if a temporary custody order is made for a child for whom a child protection order is already in force.
- ‘(2) The child protection order, so far as it relates to the child's custody or guardianship, ceases to have effect while the chief executive's custody of the child continues under the temporary custody order.’.

32 Amendment of s 51D (How case planning must be carried out)

Section 51D(1)(b), editor's note—
omit.

33 Amendment of s 51F (Meaning of *parent* in pt 3A)

Section 51F, definition *parent*, paragraphs (c) and (d)—

omit, insert—

‘(c) a person, other than the chief executive, having custody or guardianship of the child under—

(i) a law of the State, other than this Act; or

(ii) a law of another State;

(d) a long-term guardian of the child.’.

34 Amendment of s 51Q (Dealing with a case plan developed at a meeting)

Section 51Q, ‘7 days’—

omit, insert—

‘10 business days’.

35 Amendment of s 51V (Plan must be reviewed)

(1) Section 51V, heading—

omit, insert—

‘51V Review of plan—no long-term guardian’.

(2) Section 51V(1) to (4)—

renumber as section 51V(2) to (5).

(3) Section 51V—

insert—

‘(1) This section applies if the child does not have a long-term guardian.’.

36 Insertion of new s 51VA

After section 51V—

insert—

‘51VA Review of plan—long-term guardian

‘(1) This section applies if the child has a long-term guardian.

[s 37]

- ‘(2) The chief executive must contact the child at least once every 12 months to give the child an opportunity to make comments or queries about, or ask for a review of, the child’s case plan.
- ‘(3) The long-term guardian must allow the chief executive to have contact with the child at least once every 12 months.
- ‘(4) At any time, the child or the long-term guardian may ask the chief executive to review the case plan.
- ‘(5) On a request under subsection (4)—
 - (a) the chief executive may decide not to review the plan if satisfied it would not be appropriate in all the circumstances; or
Example—

It may not be appropriate to review a case plan when it has been recently reviewed and the child’s circumstances have not changed significantly since the plan was finalised.
 - (b) otherwise, the chief executive must review the plan and prepare—
 - (i) a report about the review under section 51X; and
 - (ii) a revised case plan.
- ‘(6) If, on a request under subsection (4), the chief executive decides not to review the case plan, the chief executive must give written notice of the decision to—
 - (a) the person who made the request; and
 - (b) if it was the child who made the request—the long-term guardian.
- ‘(7) The notice mentioned in subsection (6) must comply with the QCAT Act, section 157(2).’.

37 Insertion of new ch 2, pt 3A, div 6

Chapter 2, part 3A—

insert—

**‘Division 6 Particular evidence inadmissible in
criminal proceedings**

‘51YA Evidence of anything said or done at family group meetings

‘Evidence of anything said or done at a family group meeting is inadmissible in a criminal proceeding before a court other than—

- (a) with the consent of all persons participating in the family group meeting; or
- (b) in a proceeding for an offence committed during the family group meeting.

‘51YB Evidence of anything recorded in a case plan

‘Evidence of anything recorded in a case plan is inadmissible in a criminal proceeding before a court other than with the consent of all persons mentioned in the case plan.’

38 Amendment of s 51ZE (Entering an agreement)

Section 51ZE—

insert—

- ‘(4) Despite section 51ZD(1), the chief executive may enter an assessment care agreement with only 1 of the child’s parents if—
 - (a) it is impractical to obtain the consent of the other parent to the agreement before entering the agreement; or
 - (b) the chief executive has made a reasonable attempt to obtain the consent of the other parent before entering the agreement.
- ‘(5) If the chief executive has not obtained the consent of the other parent before entering an assessment care agreement under subsection (4), the chief executive must make a reasonable attempt to give a copy of the agreement to the other parent,

[s 39]

and obtain the other parent's consent, after the agreement has been entered into.

Note—

See section 51ZI(2) for how the other parent may end the agreement.

- ‘(6) The chief executive may not enter an assessment care agreement with only 1 of the child's parents if another parent refuses to enter the agreement.’.

39 Amendment of s 51ZI (Ending an agreement)

- (1) Section 51ZI(2)—

renumber as section 51ZI(3).

- (2) Section 51ZI—

insert—

- ‘(2) If a care agreement is entered into with only 1 of the child's parents, the other parent may end the agreement at any time by giving at least 2 days notice to the parties.’.

40 Amendment of s 52 (Meaning of *parent* in pt 4)

Section 52, definition *parent*, paragraphs (c) and (d)—

omit, insert—

- ‘(c) a person, other than the chief executive, having custody or guardianship of the child under—
- (i) a law of the State, other than this Act; or
 - (ii) a law of another State;
- (d) a long-term guardian of the child.’.

41 Amendment of s 59 (Making of child protection order)

- (1) Section 59(6)—

renumber as section 59(9).

- (2) Section 59(2) to (5)—

renumber as section 59(4) to (7).

(3) Section 59—

insert—

‘(2) Before making a child protection order, the court may have regard to any contravention of this Act or of an order made under this Act.

‘(3) When deciding whether a case plan is appropriate under subsection (1)(b)(ii), it is not relevant whether or not all persons who participated in the development or revision of the plan agreed with the plan.’.

(4) Section 59—

insert—

‘(8) Before the court extends or makes a further child protection order granting custody or short-term guardianship of the child, the court must have regard to the child’s need for emotional security and stability.’.

42 Amendment of s 61 (Types of child protection orders)

Section 61, ‘any of the following child protection orders it’—

omit, insert—

‘any 1 or more of the following child protection orders that the court’.

43 Amendment of s 65 (Variation and revocation of child protection orders)

(1) Section 65(6), ‘necessary to protect the child’—

omit, insert—

‘appropriate and desirable for the child’s protection’.

(2) Section 65(7)—

omit, insert—

[s 44]

- ‘(7) Without limiting the things to which the court may have regard in deciding an application under this section, the court—
- (a) may have regard to a contravention of the child protection order or this Act; and
 - (b) for an application to revoke a child protection order granting long-term guardianship of a child under section 61(f)(i) or (ii)—must have regard to the child’s need for emotional security and stability.’.

44 Insertion of new ch 2, pt 4, div 4

Chapter 2, part 4—

insert—

‘Division 4 Transition orders

‘65A Court may make transition order

- ‘(1) This section applies if a court—
- (a) in relation to a child protection order granted under section 61(d) or (e)—
 - (i) refuses to extend the order or grant a further order before the order ends; or
 - (ii) revokes the order; or
 - (iii) decides an appeal against the making of the order in favour of a person other than the chief executive; or
 - (b) in relation to a child protection order granted under section 61(f)—
 - (i) revokes the order; or
 - (ii) decides an appeal against the making of the order in favour of a person other than the chief executive.

-
- ‘(2) The court may make an order (a *transition order*) that the child protection order ends on a later day stated in the transition order.
 - ‘(3) The transition order may be made on the court’s own initiative or on the application, made orally or in the approved form, of a party to the proceeding.
 - ‘(4) If a party applies for the transition order and the court adjourns the proceeding before deciding the application, the child protection order continues in force, despite the decision mentioned in subsection (1), until the application is decided.
 - ‘(5) The day stated in the transition order as the day on which the child protection order ends may not be more than 28 days after the day of the court’s decision under subsection (1), even if a party applied for the transition order and the court adjourned the proceeding before deciding the application.
 - ‘(6) The court may make a transition order in a proceeding only once.

‘65B Grounds for making transition order

- ‘(1) A court may make a transition order if satisfied the order is necessary to allow for the gradual transition of the child into the care of the child’s parents in a way that—
 - (a) supports the child; and
 - (b) may reduce any disruption or distress experienced by the child; and
 - (c) is otherwise in the best interests of the child.
- ‘(2) When deciding whether to make a transition order—
 - (a) the court must have regard to—
 - (i) the child’s wishes and views, if able to be ascertained; and
 - (ii) the parents’ readiness to care for the child; and
 - (b) the court may have regard to any other relevant matter.

[s 45]

Example for paragraph (b)—

The court may have regard to information, from the person caring for the child under the child protection order, about the child's needs.

'65C Effect of stay of decision about child protection order

'If, under section 119, an appellate court stays a decision mentioned in section 65A(1), a transition order made in relation to the decision ends on the day the decision is stayed.

'65D Transition plans

'If the court makes a transition order in relation to a child, the chief executive must prepare a plan, for the period of the transition order, that—

- (a) states how the chief executive intends to provide for the support and gradual transition of the child into the care of the child's parents; and
- (b) includes matters prescribed under a regulation for inclusion in the plan.'

45 Amendment of s 67 (Court's powers to make interim orders on adjournment)

- (1) Section 67(1), 'all or any'—

omit, insert—

'any 1 or more'.

- (2) Section 67(1)—

insert—

'(c) an interim order authorising an authorised officer or police officer to have contact with the child.'

- (3) Section 67(2) and (3)—

renumber as section 67(5) and (6).

- (4) Section 67—

insert—

- ‘(2) In addition, the court may make an interim order authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child is, to find the child, if the court is satisfied—
- (a) entry to a place has been, or is likely to be, refused, or it is otherwise justified in particular circumstances, including, for example, because the child’s whereabouts are not known; and
 - (b) the entry is necessary for the effective enforcement of an order made under subsection (1)(c).
- ‘(3) On entering a place, an authorised officer or police officer may remain in the place for as long as the officer considers necessary for exercising the officer’s powers under this section.
- ‘(4) An authorised officer or police officer may exercise the officer’s powers under the order with the help, and using the force, that is reasonable in the circumstances.’.
- (5) Section 67(6), as renumbered, definition *parent*, paragraphs (c) and (d)—

omit, insert—

- ‘(c) a person, other than the chief executive, having custody or guardianship of the child under—
- (i) a law of the State, other than this Act; or
 - (ii) a law of another State;
- (d) a long-term guardian of the child.’.

46 Insertion of new s 67A

After section 67—

insert—

[s 47]

‘67A Order—procedure before entry

- ‘(1) This section applies if an authorised officer or police officer is intending to enter a place under an authority under an interim order mentioned in section 67(2).
- ‘(2) Before entering the place, the officer must do or make a reasonable attempt to do the following things—
 - (a) identify himself or herself to a person present at the place who is an occupier of the place;
 - (b) give the person a copy of the order so far as it relates to the entry and searching of the place;
 - (c) tell the person the officer is permitted by the order to enter and search the place to find the child;
 - (d) give the person an opportunity to allow the officer immediate entry to the place without using force.
- ‘(3) For subsection (2)(a), an authorised officer must produce the officer’s identity card to the person for inspection.

Editor’s note—

For a police officer, see the *Police Powers and Responsibilities Act 2000*, section 637 (Supplying police officer’s details).

- ‘(4) However, the officer need not comply with subsection (2) if the officer reasonably believes that immediate entry to the place is required to ensure the effective exercise of powers under the order is not frustrated.’

47 Insertion of new s 80A

Chapter 2, part 6, division 3, after section 80—

insert—

‘80A Obligations if child is no longer cared for by long-term guardian

- ‘(1) This section applies if—
 - (a) a child protection order granting long-term guardianship of a child under section 61(f)(i) or (ii) is in force; and

- (b) the child is no longer cared for by the child's long-term guardian.

Examples of situations where a child may no longer be cared for by the child's long-term guardian—

- 1 The child is an older child transitioning to independent living.
 - 2 The relationship between the child and the long-term guardian has broken down to the point where the child is unable to live with the long-term guardian.
- '(2) The long-term guardian must immediately give the chief executive written notice that the care has ended and, if the long-term guardian knows where the child is living, that information.
- '(3) If the chief executive is given notice under subsection (2), the chief executive must review the child's protection and care needs, and wellbeing, and take any further action the chief executive considers appropriate.'

48 Amendment of s 95 (Report about person's criminal history etc.)

- (1) Section 95(1)(b), from 'be the child's carer'—
omit, insert—

'care for the child (the *proposed individual*).

Example for paragraph (b)—

A child is placed in the care of a member of the child's family as part of a plan for reunification with the child's parents.'

- (2) Section 95(2)(a)(ii)—
omit, insert—

'(ii) the proposed individual or an adult member of the proposed individual's household; and'

- (3) Section 95(2)(b), 'carer'—
omit, insert—
'individual'.

[s 49]

- (4) Section 95(3), from ‘if’ to ‘section 14’—
omit, insert—
‘for the purpose of making any other decision under this Act’.
- (5) Section 95(3)(a)(iii)—
omit, insert—
‘(iii) an adult against whom an allegation of harm or risk of harm to a child has been made; and’.

49 Amendment of s 97 (Carrying out medical examinations or treatment)

Section 97(1)(a)(ii), editor’s note, ‘section 18(6)’—
omit, insert—
‘section 18(7)’.

50 Amendment of s 99 (Custody or guardianship of child continues pending decision on application for order)

- Section 99(2)—
omit, insert—
- ‘(2) The order granting the custody or guardianship of the child continues until the application is decided unless the Childrens Court orders an earlier end to the order.
- ‘(3) This section does not affect the application of section 67 in relation to the child.’.

51 Amendment of s 99D (Principles for tribunal in matters relating to this Act)

Section 99D, ‘section 5’—
omit, insert—
‘sections 5A to 5C, to the extent the principles are relevant’.

52 Amendment of s 99H (Constitution of tribunal)

Section 99H(4)(a), ‘section 5’—

omit, insert—

‘sections 5A to 5C’.

53 Replacement of s 104 (Court’s paramount consideration)

Section 104—

omit, insert—

‘104 Court must have regard to particular principles and state reasons

‘(1) In exercising its jurisdiction or powers, the Childrens Court must have regard to the principles stated in sections 5A to 5C, to the extent the principles are relevant.

‘(2) When making a decision under this Act, the Childrens Court must state its reasons for the decision.’.

54 Amendment of s 110 (Separate legal representation of child)

Section 110—

insert—

‘(4) The lawyer is not a party to a proceeding on the application but—

(a) must do anything required to be done by a party; and

(b) may do anything permitted to be done by a party.

‘(5) The parties to the proceeding must act in relation to the proceeding as if the lawyer were a party to the proceeding.

‘(6) The lawyer’s role as the child’s separate legal representative ends when—

(a) the application is decided or withdrawn; or

(b) if there is an appeal in relation to the application—the appeal is decided or withdrawn.’.

[s 55]

55 Amendment of s 113 (Court may hear submissions from non-parties to proceeding)

(1) Section 113(1), after ‘persons’—

insert—

‘(each a *non-party*)’.

(2) Section 113(2), ‘person’s’—

omit, insert—

‘non-party’s’.

(3) Section 113—

insert—

‘(3) The court may allow the non-party to view a document or other information before the court on the application if the court is satisfied—

(a) the document or information is relevant to a submission the non-party may make to the court; and

(b) the non-party needs to view the document or information to make the submission; and

(c) it is in the child’s best interests for the non-party to view the document or information; and

(d) each person to whom the document or information relates—

(i) has been informed that the document or information may be viewed by the non-party; and

(ii) has been given a reasonable opportunity to make submissions to the court about the non-party being allowed to view the document or information.’.

56 Amendment of s 117 (Who may appeal)

(1) Section 117(1), after ‘order’—

insert—

‘or a temporary custody order’.

(2) Section 117(3), definition *parent*, paragraphs (c) and (d)—
omit, insert—

‘(c) a person, other than the chief executive, having custody or guardianship of the child under—

(i) a law of the State, other than this Act; or

(ii) a law of another State;

(d) a long-term guardian of the child.’.

57 Amendment of s 120 (Hearing procedures)

Section 120(1), after ‘order’—

insert—

‘or a temporary custody order’.

58 Amendment of s 122 (Statement of standards)

Section 122(1), ‘section 82’—

omit, insert—

‘section 82(1)’.

59 Amendment of s 126 (Restrictions on granting application)

(1) Section 126(e)—

omit, insert—

‘(e) the standard of care provided complies, and will continue to comply, with the statement of standards; and’.

(2) Section 126—

insert—

‘(g) the applicant’s primary function is a function relating to the care of children in need of protection who are in the custody or guardianship of the chief executive; and

[s 60]

- (h) any accommodation provided by the applicant to children in need of protection is, and will continue to be, at a place that the applicant has a suitable right to occupy.

Example of a place that an applicant has a suitable right to occupy—

residential premises leased, rented or owned by the applicant

Example of a place that an applicant does not have a suitable right to occupy—

a motel room booked by the applicant’.

60 Insertion of new 129A

After section 129—

insert—

‘129A Licensee’s obligations

‘A licensee must ensure that—

- (a) care services provided by the licensee comply with the standards of care stated in the statement of standards; and
- (b) each person the licensee engages to provide care services is a suitable person; and
- (c) for carrying on a regulated business or employing persons in regulated employment under the Commissioner’s Act—the Commissioner’s Act, chapter 8 is complied with.’.

61 Amendment of s 130 (Nominees)

Section 130(1)—

omit, insert—

- ‘(1) The nominee for a licence is responsible for ensuring the licensee complies with section 129A unless—
- (a) if the nominee is in a position to influence the conduct of the licensee in relation to the licensee’s

compliance—the nominee took reasonable steps to ensure the licensee complied; or

- (b) the nominee was not in a position to influence the conduct of the licensee in relation to the licensee's compliance.'.

62 Amendment of s 136D (Issue of certificate)

Section 136D—

insert—

- '(7) If the approved carer starts to live with his or her spouse after the issue of the certificate but before its expiry day, the certificate continues to have effect until the day mentioned in subsection (6).'

63 Amendment of s 140AB (Definitions for sdiv 3)

- (1) Section 140AB, definition *disqualifying event*—

omit.

- (2) Section 140AB—

insert—

'prohibiting event, for a person, means—

- (a) the person is issued with or given a negative prescribed notice or negative exemption notice other than—
- (i) under a prescribed provision; or
 - (ii) on cancellation of a positive prescribed notice or positive exemption notice that is suspended; or
- (b) the person's positive prescribed notice or positive exemption notice is suspended; or
- (c) an application for a prescribed notice or exemption notice about the person is withdrawn.'

[s 64]

64 Amendment of s 140AC (Immediate suspension)

Section 140AC(1), (2) and (5), ‘disqualifying event’—
omit, insert—
‘prohibiting event’.

65 Amendment of s 140AF (End of suspension)

Section 140AF(2), ‘disqualifying event’—
omit, insert—
‘prohibiting event’.

66 Amendment of s 159 (Payments for care and maintenance)

- (1) Section 159(1), after ‘a child’s carer’—
insert—
‘or long-term guardian’.
- (2) Section 159(3) and (4)—
renumber as section 159(4) and (5).
- (3) Section 159—
insert—
‘(3) A payment may be made to the person or the person’s carer under subsection (2) whether the person is a child or an adult.’.
- (4) Section 159(5), as renumbered, after ‘carers’—
insert—
‘or long-term guardians’.

67 Amendment of s 159A (Purpose)

Section 159A, after ‘needs of children’—

insert—

‘and promote their wellbeing’.

68 Amendment of s 159B (Principles for coordinating service delivery and exchanging information)

(1) Section 159B, after paragraph (a)—

insert—

‘(aa) the State is responsible for ensuring that children and families receive the family support services that they need in order to decrease the likelihood of the children becoming in need of protection;’.

(2) Section 159B(d), after ‘protection’—

insert—

‘, and children who may become in need of protection,’.

(3) Section 159B(f), ‘welfare’—

omit, insert—

‘safety, wellbeing’.

(4) Section 159B(f), editor’s note—

omit.

(5) Section 159B(aa) to (f)—

renumber as section 159B(b) to (g)

69 Insertion of new s 159BA

After section 159B—

insert—

‘159BA Who is a *relevant child*

‘In this chapter—

relevant child means—

(a) a child in need of protection; or

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- (b) a child who may become a child in need of protection if preventative support is not given to the child or the child's family.'.

70 Amendment of s 159C (What is *relevant information*)

- (1) Section 159C(1), definition *relevant information*, paragraph (a)(ii)—

omit, insert—

‘(ii) help the chief executive take action, or decide if he or she reasonably suspects a child is in need of protection, under section 14; or’.

- (2) Section 159C(1), definition *relevant information*, paragraph (a)(vi) and (vii), ‘child in need of protection’—

omit, insert—

‘relevant child’.

- (3) Section 159C(1), definition *relevant information*, paragraph (b)(ii) and (iii)—

renumber as paragraph (b)(iv) and (v).

- (4) Section 159C(1), definition *relevant information*, paragraph (b)—

insert—

‘(ii) decide whether information about an unborn child who may need protection after birth should be given to the chief executive; or

(iii) help the chief executive to offer help and support to a pregnant woman under section 21A; or’.

- (5) Section 159C(1), definition *relevant information*—

insert—

‘(c) in relation to the chief executive giving information to a service provider under section 159M(4)—information that the chief executive reasonably believes may help the service provider to—

-
- (i) assess or respond to the health, educational or care needs of a relevant child; or
 - (ii) otherwise make plans or decisions relating to, or provide services to, a relevant child or the child's family.'.
- (6) Section 159C(2)—
omit, insert—
- '(2) Relevant information may be information about—
- (a) a relevant child, the child's family or someone else; or
 - (b) a pregnant woman or her unborn child.'.
- (7) Section 159C—
insert—
- '(5) Relevant information does not include information mentioned in subsection (1), definition *relevant information*, paragraph (b)(ii) or (iii) unless the mother of the unborn child or pregnant woman agrees to the information being provided to the other service provider before it is provided.'.

71 Amendment of s 159D (Other definitions for ch 5A)

Section 159D, definition *service provider*—

insert—

- '(c) a recognised entity.'

72 Replacement of s 159F (Service providers' responsibilities)

Section 159F—

omit, insert—

'159F Service providers' responsibilities

'Service providers must take reasonable steps to coordinate decision-making and the delivery of services to relevant children and their families in order to appropriately and

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effectively meet the protection and care needs of children and support their families.’.

73 Amendment of s 159G (Chief executive’s responsibilities)

- (1) Section 159G(1)(a), ‘and child protection services’—
omit, insert—
‘, child protection services and family support services’.
- (2) Section 159G(1)(b)(ii), ‘welfare’—
omit, insert—
‘wellbeing’.

74 Amendment of s 159M (Particular prescribed entities giving and receiving relevant information)

- Section 159M—
insert—
- ‘(4) The chief executive may give, to any other service provider, relevant information mentioned in section 159C(1), definition *relevant information*, paragraph (c).’.

75 Amendment of s 159O (Release of information by a health services designated person)

- Section 159O(1)(a) and (2), ‘welfare’—
omit, insert—
‘wellbeing’.

76 Amendment of 159R (Interaction with other laws)

- Section 159R(2), examples—
omit, insert—
‘*Examples of other laws for subsection (2)—*
- *Education (General Provisions) Act 2006*, section 426

- *Health Services Act 1991*, section 62A(1)
- *Youth Justice Act 1992*, section 288
- *Police Service Administration Act 1990*, section 10.1’.

77 Amendment of s 171 (Application for warrant for apprehension of child)

- (1) Section 171(2), ‘application must be sworn and state’—
omit, insert—
‘officer must prepare a written application that states’.
- (2) Section 171(3)—
renumber as section 171(4).
- (3) Section 171—
insert—
‘(3) The written application must be sworn.’.

78 Replacement of s 173 (Special warrants)

Section 173—
omit, insert—

‘173 Application by particular forms of communication and duplicate warrant

- ‘(1) An application under section 171 may be made by phone, fax, radio or another form of communication if the authorised officer or police officer reasonably considers it necessary because of—
- (a) urgent circumstances; or
 - (b) other special circumstances (including, for example, the officer’s remote location).
- ‘(2) The application—
- (a) may not be made before the officer prepares the written application under section 171(2); but

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- (b) may be made before the written application is sworn.
- ‘(3) The magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
 - (a) it was necessary to make the application under subsection (1); and
 - (b) the way the application was made under subsection (1) was appropriate.
- ‘(4) After the magistrate issues the original warrant—
 - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the officer (for example, by sending a copy by fax), the magistrate must immediately give a copy of the warrant to the officer; or
 - (b) otherwise—
 - (i) the magistrate must tell the officer the date and time the warrant is issued and the other terms of the warrant; and
 - (ii) the officer must complete a form of warrant, including by writing on it—
 - (A) the magistrate’s name; and
 - (B) the date and time the magistrate issued the warrant; and
 - (C) the other terms of the warrant.
- ‘(5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- ‘(6) The officer must, at the first reasonable opportunity, send to the magistrate—
 - (a) the written application complying with section 171(2) and (3); and
 - (b) if the officer completed a form of warrant under subsection (4)(b)—the completed form of warrant.

-
- ‘(7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6)—
- (a) attach the documents to the original warrant; and
 - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- ‘(8) Despite subsection (7), if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
 - (b) the original warrant is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.’.

79 Amendment of s 174 (Warrants—procedure before entry)

Section 174(2)(b)—

omit, insert—

- ‘(b) give the person a copy of the warrant or, if the entry is authorised by a duplicate warrant under section 173(5), a copy of the duplicate warrant;’.

80 Amendment of s 186 (Confidentiality of notifiers of harm or risk of harm)

Section 186(5)(a), ‘welfare’—

omit, insert—

‘wellbeing’.

81 Amendment of s 187 (Confidentiality of information obtained by persons involved in administration of Act)

- (1) Section 187(1)(a)(x), ‘and’—

omit, insert—

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‘or’.

- (2) Section 187(1)(a)—

insert—

‘(xi) a person allowed to view a document or information under section 113; and’.

- (3) Section 187(3)(b), ‘welfare’—

omit, insert—

‘wellbeing’.

- (4) Section 187(3)(c)(iii), ‘division’—

omit, insert—

‘Act (including, for example, this division or section 159M)’.

82 Amendment of s 188 (Confidentiality of information given by persons involved in administration of Act to other persons)

- (1) Section 188(3)(a), ‘welfare’—

omit, insert—

‘wellbeing’.

- (2) Section 188(3)(a) to (c)—

renumber as section 188(3)(b) to (d).

- (3) Section 188(3)—

insert—

‘(a) if the use, disclosure or giving of access is authorised by the chief executive under section 189B; or’.

83 Amendment of s 189A (Making information available for Youth Justice Act 1992)

Section 189A(1) and (5), ‘juvenile’—

omit, insert—

‘youth’.

84 Insertion of new s 189B

Chapter 6, part 6, division 2—

insert—

‘189B Research

- ‘(1) For the purpose of allowing a person to carry out research, the chief executive may authorise the person to have access to information relating to the administration of this Act, including information from an officer of the department or a client.
- ‘(2) The chief executive may only authorise the person to have access to the information if the chief executive is satisfied—
 - (a) the research is consistent with a function of the chief executive under section 7; and
 - (b) the information will be collected in a way that could not reasonably be expected to result in the identification of any of the individuals it relates to.
- ‘(3) The chief executive may contact, or authorise the person to contact, a client to ask if they would like to participate in the research being carried out by the person.
- ‘(4) The chief executive may authorise the person to use or disclose the information, or give access to the information, to someone else.

Note—

Under section 188, the person must not use, disclose or give access to the information unless it is authorised by the chief executive under this section.

- ‘(5) In this section —

client means any of the following persons—

- (a) a child to whom this Act applies;

[s 85]

- (b) a person who was a child to whom this Act applied;
- (c) a member of the family of a person mentioned in paragraph (a) or (b);
- (d) an approved carer under this Act.’.

85 Amendment of s 195 (Compliance with provisions about explaining and giving documents)

Section 195—

insert—

‘(7) In this section—

parent includes a long-term guardian of the child.’.

86 Amendment of s 199 (Further guiding principle)

Section 199(3), ‘section 5 or 104’—

omit, insert—

‘the application of chapter 1, part 2, division 1 or section 104’.

87 Amendment of s 205 (Meaning of *parent* for ch 7)

Section 205, definition *parent*, paragraphs (c) and (d)—

omit, insert—

‘(c) a person, other than the chief executive, having custody or guardianship of the child under—

- (i) a law of the State, other than this Act; or
- (ii) a law of another State;
- (d) a long-term guardian of the child.’.

88 Amendment of s 210 (Notice of decision)

Section 210(2), ‘3 days’—

omit, insert—

‘3 business days’.

89 Amendment of s 246A (Chief executive to review department’s involvement with particular children)

Section 246A(1)(b)(i)(A), after ‘child’—

insert—

‘in the course of performing functions under or relating to the administration of this Act’.

90 Amendment of s 246C (Chief executive may seek information from entities)

Section 246C, ‘welfare’—

omit, insert—

‘wellbeing’.

91 Amendment of s 246E (Protection from liability for giving information to chief executive)

(1) Section 246E(2)—

omit, insert—

‘(2) The person is not liable, civilly, criminally or under an administrative process, for giving the information.’.

(2) Section 246E(4)—

omit, insert—

‘(4) Without limiting subsections (2) and (3)—

(a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and

(b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—

[s 92]

- (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
- (ii) is not liable to disciplinary action for giving the information.’

92 Amendment of sch 2 (Reviewable decisions and aggrieved persons)

Schedule 2, table, before the first entry—
insert—

‘refusing a request to review a case the person making the request’
plan under section 51VA

93 Amendment of sch 3 (Dictionary)

- (1) Schedule 3, definitions *criminal history*, *disqualifying event*, *member* of a person’s household and *parent*—
omit.
- (2) Schedule 3—
insert—
‘**charge**, of an offence, means a charge in any form, including, for example, the following—
 - (a) a charge on an arrest;
 - (b) a notice to appear served under the *Police Powers and Responsibilities Act 2000*, section 382;
 - (c) a complaint under the *Justices Act 1886*;
 - (d) a charge by a court under the *Justices Act 1886*, section 42(1A), or another provision of an Act;
 - (e) an indictment.**criminal history**, of a person, means all of the following—

-
- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this definition, including spent convictions;
 - (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this definition;
 - (c) every disqualification order made under the *Commission for Children and Young People and Child Guardian Act 2000* in relation to the person, whether before or after the commencement of this definition;
 - (d) every disqualification order and offender prohibition order made under the *Child Protection (Offender Prohibition Order) Act 2008* in relation to the person, whether before or after the commencement of this definition.

long-term guardian, of a child, means a person, other than the chief executive, who is granted long-term guardianship of the child under a child protection order.

Note—

See section 61(f)(i) and (ii).

member, of a person's household—

- (a) includes—
 - (i) someone who lives in the person's home; and
 - (ii) an adult who, because of the nature of their contact with the child in need of protection and the context in which that contact happens, may create an unacceptable level of risk to the child; but
- (b) does not include a parent of the child living in the person's home if the child was placed in the care of the person under section 82(1).

parent for—

- (a) chapter 2, part 2—see section 23; or
- (b) chapter 2, part 3—see section 37; or

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- (c) chapter 2, part 3AA—see section 51AA; or
- (d) chapter 2, part 3A, see section 51F; or
- (e) chapter 2, part 4—see section 52; or
- (f) chapter 7—see section 205; or
- (g) other provisions—see section 11.

Editor's note—

The definition *parent* applying to the provisions mentioned in paragraphs (a) to (f) is the same.

prohibiting event, for chapter 4, part 2, division 4, subdivision 3, see section 140AB.

relevant child, for chapter 5A, see section 159BA.

spent conviction means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under the Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

temporary custody order means an order under chapter 2, part 3AA.

transition order see section 65A(2).'

- (3) Schedule 3, definition *carer*, 'section 82'—

omit, insert—

'section 82(1).'

98 Amendment of s 156 (Employment and businesses regulated by this chapter)

Section 156(2), after ‘employment’—

insert—

‘, or the carrying on of a business.’.

99 Amendment of s 176 (Giving notification under pt 4)

(1) Section 176(2)(b)—

omit, insert—

‘(b) if the employer did not give the certification mentioned in subsection (3)(b)—be accompanied by the alternative certifications relating to the employee.’.

(2) Section 176(3)(b)—

omit, insert—

‘(b) certification by the employer that the employer has sighted the employee’s proof of identity documents.’.

100 Amendment of s 178 (Application for an eligibility declaration)

(1) Section 178(3)(b) and (4)(a), ‘person’—

omit, insert—

‘applicant’.

(2) Section 178(4)(b), from ‘documents’ to ‘regulation’—

omit, insert—

‘applicant’s proof of identity documents’.

101 Amendment of s 200 (Form of application)

(1) Section 200(1)(d)—

omit, insert—

‘(d) if the applicant did not sight the documents as mentioned in subsection (2)(b)—be accompanied by the alternative certifications relating to the employee.’.

(2) Section 200(2)(b)—

omit, insert—

‘(b) certification by the applicant that the applicant has sighted the employee’s proof of identity documents; and’.

102 Amendment of s 212 (Form of application)

Section 212(2)(b), from ‘documents’ to ‘regulation’—

omit, insert—

‘applicant’s proof of identity documents’.

103 Amendment of s 249 (Giving notification under pt 5)

(1) Section 249(2)(b)—

omit, insert—

‘(b) if the employer did not give the certification mentioned in subsection (3)(b)—be accompanied by the alternative certifications relating to the employee.’.

(2) Section 249(3)(b)—

omit, insert—

‘(b) certification by the employer that the employer has sighted the employee’s proof of identity documents.’.

104 Amendment of s 261 (Form of application)

(1) Section 261(1)(d)—

omit, insert—

‘(d) if the applicant did not sight the documents as mentioned in subsection (2)(b)—be accompanied by the alternative certifications relating to the employee.’.

(2) Section 261(2)(b)—

omit, insert—

‘(b) certification by the applicant that the applicant has sighted the employee’s proof of identity documents; and’.

105 Amendment of s 273 (Form of application)

Section 273(2)(b), from ‘documents’ to ‘regulation’—

omit, insert—

‘applicant’s proof of identity documents’.

106 Amendment of s 343 (Commissioner must give information about particular approved teachers to college of teachers)

(1) Section 343, heading, ‘approved teachers’—

omit, insert—

‘persons’.

(2) Section 343(1) and (2)—

omit, insert—

‘(1) This section applies if the commissioner—

(a) has, under the *Education (Queensland College of Teachers) Act 2005*, section 15D, advised the college of teachers that an applicant for registration or permission to teach under that Act holds a positive notice; and

(b) the commissioner reasonably believes the person is still an applicant for registration or permission to teach under that Act.

‘(2) If the person’s positive notice is suspended or cancelled under part 4, division 11 or expires under section 231, the commissioner must give the college written notice of the suspension, cancellation or expiry.’.

(3) Section 343(4), from ‘complying’—

omit, insert—

‘stating the college may need to have regard to the matters mentioned in the *Education (Queensland College of Teachers) Act 2005*, section 11(1) for deciding whether the applicant is suitable to teach.’.

107 Amendment of s 345 (Use of information obtained under this chapter about a person)

Section 345—

insert—

- ‘(2) However, the commissioner may use information about a person who is, or seeks to be, engaged by the commission for deciding whether to obtain information about the person under section 357P’.

108 Amendment of s 349 (Replacement notice if change in employment etc. details generally)

(1) Section 349(2)—

omit, insert—

- ‘(2) However, this section does not apply if—
- (a) the holder of a positive notice is or was, during the term of the positive notice—
 - (i) employed in regulated employment as a volunteer; or
 - (ii) carrying on a regulated business other than for financial reward; and
 - (b) a relevant change within the meaning of section 350(7) happens for the holder.

Note—

See section 350 in relation to the holder of a positive notice to whom circumstances mentioned in this subsection apply.’.

(2) Section 349(4) to (6)—

omit, insert—

- ‘(4) The commissioner may issue to the holder—
- (a) for the holder of a positive notice—a replacement positive notice and, if the holder also has a positive notice blue card, a replacement positive notice blue card; or
 - (b) for the holder of a positive exemption notice—a replacement positive exemption notice.
- ‘(5) If the commissioner issues to the holder a replacement positive notice, positive notice blue card or positive exemption notice, the holder must return the replaced notice or card to the commissioner within 14 days after receiving the replacement notice or card.
- Maximum penalty—10 penalty units.
- ‘(6) The commissioner must cancel the previously held positive notice, positive notice blue card or positive exemption notice if the commissioner has issued a replacement notice or card.’.

109 Replacement of s 350 (Replacement notice if change from employment as a volunteer to employment other than as a volunteer etc.)

Section 350—

omit, insert—

‘350 New notice if relevant change happens for volunteer or person carrying on business other than for financial reward

- ‘(1) This section applies if—
- (a) the holder of a positive notice that is not suspended is or was, during the term of the positive notice—
 - (i) employed in regulated employment as a volunteer; or
 - (ii) carrying on a regulated business other than for financial reward; and

(b) a relevant change happens for the holder.

‘(2) The holder must, within 14 days after the relevant change give notice, in the approved form, to the commissioner about the relevant change.

Maximum penalty—10 penalty units.

‘(3) The commissioner must issue to the holder a new positive notice and, if the holder also has a positive notice blue card, a new positive notice blue card if—

(a) under subsection (7), the notice under subsection (2) is accompanied by the prescribed application fee; and

(b) either—

(i) the commissioner is not aware of any change in disciplinary information or police information about the person since the commissioner last made an employment-screening decision about the person; or

(ii) the commissioner—

(A) is aware of a change in disciplinary information or police information about the person since the commissioner last made an employment-screening decision about the person; and

(B) after considering the change, decides not to suspend or cancel the person’s positive notice.

‘(4) Despite subsection (3), the commissioner is not required to issue the new positive notice or new positive notice blue card if the commissioner is deciding whether to cancel the positive notice under section 237(1)(a), unless the commissioner decides not to cancel the positive notice.

‘(5) If the commissioner issues to the holder a new positive notice or positive notice blue card, the holder must return the person’s previously held notice or card to the commissioner within 14 days after receiving the new notice or card.

Maximum penalty—10 penalty units.

- ‘(6) The commissioner must cancel the previously held positive notice or positive notice blue card if the commissioner has issued a new prescribed notice or an exemption notice.
- ‘(7) The notice under subsection (2) must be accompanied by the prescribed application fee if the application for the positive notice was made on the basis the holder was—
 - (a) employed, or to be employed, in regulated employment as a volunteer; or
 - (b) carrying on, or proposing to carry on, a business other than for financial reward.
- ‘(8) In this section—

prescribed application fee means—

- (a) for a notice given under subsection (2) for a relevant change mentioned in the definition *relevant change*, paragraph (a)—the prescribed fee for a prescribed notice application about a person employed in regulated employment other than as a volunteer; or
- (b) for a notice given under subsection (2) for a relevant change mentioned in the definition *relevant change*, paragraph (b)—the prescribed fee for a prescribed notice application about a person carrying on a regulated business for financial reward.

relevant change, for the holder of a positive notice, means the holder—

- (a) becomes employed in regulated employment other than as a volunteer; or
- (b) starts carrying on a regulated business for financial reward.’.

110 Insertion of new ch 8A

After section 357—

insert—

‘Chapter 8A Criminal history checks, and assessing suitability, of persons engaged by the commission

‘Part 1 Preliminary

‘357A Purposes of ch 8A

‘The purposes of this chapter are—

- (a) to enable the commissioner to obtain a prescribed notice or exemption notice for persons who are to be engaged, or to continue to be engaged, by the commission in regulated employment; and
- (b) to require persons who are to be engaged, or to continue to be engaged, by the commission in child-related duties to have a positive notice or positive exemption notice, and to enable the commissioner to obtain a prescribed notice or exemption notice for the persons; and
- (c) to enable the commissioner to obtain the criminal history of, and related information about, a person who proposes to be, or is, engaged by the commission, so that the commissioner can assess the person’s suitability to be, or continue to be, engaged by the commission.

‘357B This chapter applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986

‘This chapter applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

‘357C Commissioner to advise of duties of disclosure etc.

‘Before a person is engaged by the commission, the commissioner must tell the person—

- (a) of the person's duties of disclosure under this chapter; and
- (b) that the commissioner may obtain the information about the person mentioned in section 357P; and
- (c) that guidelines for dealing with information obtained by the commissioner under this chapter are available from the commissioner on request.

'Part 2 Disclosure of criminal history

'357D Person seeking to be engaged by commission must disclose criminal history

'A person seeking to be engaged by the commission must disclose to the commissioner, before being so engaged—

- (a) whether or not the person has a criminal history; and
- (b) if the person has a criminal history—the person's complete criminal history.

'357E Person engaged by commission must disclose changes in criminal history

- '(1) If there is a change in the criminal history of a person engaged by the commission, the person must immediately disclose to the commissioner the details of the change.
- '(2) For a person who does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires a criminal history.

'357F Requirements for disclosure

- '(1) To comply with section 357D or 357E, a person must give the commissioner a disclosure in the approved form.

- ‘(2) The information disclosed by a person about a conviction or charge of an offence in the person’s criminal history must include—
- (a) the existence of the conviction or charge; and
 - (b) when the offence was committed or alleged to have been committed; and
 - (c) the details of the offence or alleged offence; and
 - (d) for a conviction, whether or not a conviction was recorded and the sentence imposed on the person.

‘357G False or misleading disclosure or failure to disclose

- ‘(1) A person must not—
- (a) give the commissioner a disclosure for this part that is false, misleading or incomplete in a material particular; or
 - (b) fail to give the commissioner a disclosure as required under section 357E, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units or 2 years imprisonment.

- ‘(2) Subsection (1)(a) does not apply to a person if the person, when making the disclosure—
- (a) tells the commissioner, to the best of the person’s ability, how it is false, misleading or incomplete; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

part 6 directive means a directive under the *Public Service Act 2008* made for chapter 5, part 6 of that Act.

‘357J Prescribed notice or exemption notice required for child-related duties

- ‘(1) The commissioner must ensure a person does not perform child-related duties in the commission unless—
- (a) if the person is engaged by the commission as a volunteer and is not a police officer or registered teacher—the person has a current positive notice; or
 - (b) otherwise—
 - (i) the person has a current positive notice or current positive exemption notice; or
 - (ii) the commissioner has started to undertake employment screening of the person as provided under section 357K.
- ‘(2) Subsection (1) applies even if the person is engaged by the commission at the time the commissioner proposes to engage the person to perform the child-related duties.

‘357K Undertaking employment screening with consent

- ‘(1) This section applies if—
- (a) the commissioner proposes to engage a person to perform child-related duties in the commission; and
 - (b) the person does not have a prescribed notice or exemption notice.
- ‘(2) With the person’s written consent, the commissioner must undertake child-related employment screening of the person.
- ‘(3) For subsection (2), section 357H applies in relation to the person in the same way as it applies to a person who is to be engaged, or to continue to be engaged, by the commission in regulated employment.

‘357L Engaging public service employee before prescribed notice or exemption notice issued

- ‘(1) This section applies if—
- (a) the commissioner engages a person to perform child-related duties on the basis the commissioner has started to undertake employment screening of the person as mentioned in section 357K; and
 - (b) the person is a public service employee at the time the commissioner engages the person; and
 - (c) either of the following happens—
 - (i) the person’s consent to employment screening is withdrawn, or taken to be withdrawn, under this Act;
 - (ii) the person is issued with a negative notice or negative exemption notice.
- ‘(2) The commissioner must ensure the person does not continue to perform child-related duties.

‘357M Engaging other person before prescribed notice or exemption notice issued

- ‘(1) This section applies if—
- (a) the commissioner engages a person to perform child-related duties on the basis the commissioner has started to undertake employment screening of the person as mentioned in section 357K; and
 - (b) the person is not a public service employee at the time the chief executive engages the person.
- ‘(2) The commissioner—
- (a) may only appoint the person on probation under the *Public Service Act 2008*, section 126 for a period not ending before the prescribed notice or exemption notice is issued to the person; and

- (b) may confirm the person's appointment under the *Public Service Act 2008*, section 126 only if the person is issued with a positive notice or positive exemption notice; and
 - (c) must not confirm the person's appointment under the *Public Service Act 2008*, section 126 if either of the following happens—
 - (i) the person's consent to employment screening is withdrawn, or taken to be withdrawn, under this Act;
 - (ii) the person is issued with a negative notice or negative exemption notice.
- '(3) Subsection (2) does not limit the power under the *Public Service Act 2008*, section 126 to have a longer probationary period or to terminate the person's employment.

'357N Effect of suspension or cancellation of positive notice or positive exemption notice

- '(1) If the commissioner engages a person to perform child-related duties in the commission and the person's positive notice or positive exemption notice is suspended under chapter 8, the commissioner must ensure the person does not perform child-related duties while the notice is suspended.
- '(2) If the commissioner engages a person to perform child-related duties in the commission and the person's positive notice or positive exemption notice is cancelled under chapter 8, the commissioner must ensure the person does not perform child-related duties.

- (c) information about an investigation relating to the possible commission of a serious offence by the person.
- ‘(2) Subject to subsections (3) and (4), the police commissioner must comply with the request.
- ‘(3) The duty imposed on the police commissioner to comply with the request—
 - (a) applies only to information in the police commissioner’s possession or to which the police commissioner has access; and
 - (b) in relation to information mentioned in subsection (1)(c)—applies only to information recorded on a central electronic database kept by the police commissioner.
- ‘(4) The police commissioner must not give information about an investigation relating to the possible commission of a serious offence by the person if—
 - (a) the police commissioner is reasonably satisfied that giving the information—
 - (i) may prejudice or otherwise hinder an investigation to which the information may be relevant; or
 - (ii) may lead to the identification of an informant; or
 - (iii) may affect the safety of a police officer, complainant or other person; or
 - (b) for an investigation that has been completed—the investigation has not led, and the police commissioner is reasonably satisfied it is unlikely to lead, to a reasonable suspicion that the person committed a serious offence; or
 - (c) for an investigation that has not been completed—the police commissioner is reasonably satisfied the investigation is unlikely to lead to a reasonable suspicion that the person committed a serious offence.

‘Division 2 Obtaining information about charges etc.

‘357Q Prosecuting authority to notify commissioner about committal, conviction etc.

- ‘(1) This section applies if a person is charged with a relevant offence and the police commissioner or the director of public prosecutions (a *prosecuting authority*) is aware that the person is engaged by the commission.
- ‘(2) If the person is committed by a court for trial for a relevant offence, the prosecuting authority must, within 7 days after the committal, give written notice to the commissioner of the following—
 - (a) the person’s name;
 - (b) the court;
 - (c) particulars of the offence;
 - (d) the date of the committal;
 - (e) the court to which the person was committed.
- ‘(3) If the person is convicted before a court of a relevant offence, the prosecuting authority must, within 7 days after the conviction, give written notice to the commissioner of the following—
 - (a) the person’s name;
 - (b) the court;
 - (c) particulars of the offence;
 - (d) the date of the conviction;
 - (e) the sentence imposed by the court.
- ‘(4) If the person is convicted of a relevant offence, and has appealed the conviction, and the appeal is finally decided or has otherwise ended, the prosecuting authority must, within 7 days after the decision or the day the appeal otherwise ends, give written notice to the commissioner of the following—

- (a) the person's name;
 - (b) particulars of the offence;
 - (c) the date of the decision or other ending of the appeal;
 - (d) if the appeal was decided—
 - (i) the court in which it was decided; and
 - (ii) particulars of the decision.
- ‘(5) If the prosecution process ends without the person being convicted of a relevant offence, the prosecuting authority must, within 7 days after the process ends, give written notice to the commissioner about the following—
- (a) the person's name;
 - (b) if relevant, the court in which the process ended;
 - (c) particulars of the alleged offence;
 - (d) the date the process ended.
- ‘(6) For subsection (5), a prosecution process ends if—
- (a) an indictment is presented against the person and—
 - (i) a nolle prosequi is entered on the indictment; or
 - (ii) the person is acquitted; or
 - (b) the process has otherwise ended.
- ‘(7) A reference in this section to a conviction of a relevant offence includes a summary conviction of an indictable offence.
- ‘(8) In this section—
- relevant offence*** means—
- (a) an indictable offence; or
 - (b) a disqualifying offence that is not an indictable offence.

‘357T Guidelines for dealing with information

- ‘(1) The commissioner must make guidelines, consistent with this Act, for dealing with information obtained by the commissioner under this chapter.
- ‘(2) The purpose of the guidelines is to ensure—
 - (a) natural justice is afforded to the persons about whom the information is obtained; and
 - (b) only relevant information is used in assessing the persons’ suitability to be, or continue to be, engaged by the commission; and
 - (c) decisions about the suitability of persons, based on the information, are made consistently.
- ‘(3) The commissioner must give a copy of the guidelines, on request, to a person who is seeking to be engaged, or who is engaged, by the commission.’.

111 Amendment of s 384 (Confidentiality of information about criminal history or related information)

- (1) Section 384(2)(b), after ‘part 7’—

insert—

‘or chapter 8A’.
- (2) Section 384(6), definition *previous part 7*, note, second sentence—

omit, insert—

‘Now see chapter 8A.’.

112 Amendment of s 501 (Particular prescribed police information obtained but not used before commencement)

- Section 501(2), note—

omit.

113 Insertion of new ch 11, pt 14

Chapter 11—

insert—

**‘Part 14 Transitional provisions for
Child Protection and Other
Acts Amendment Act 2010**

‘505 Application of s 349

- ‘(1) This section applies if, before the commencement—
- (a) a relevant change within the meaning of previous section 349 happened in relation to the holder of a positive notice or positive exemption notice that was not suspended; and
 - (b) the commissioner had not cancelled the previously held positive notice, positive notice blue card or positive exemption notice under previous section 349.
- ‘(2) Previous section 349 continues to apply in relation to the relevant change as if the *Child Protection and Other Acts Amendment Act 2010* had not been enacted.

- ‘(3) In this section—

commencement means the commencement of this section.

previous section 349 means section 349 as in force before the commencement.

‘506 Application of s 350

- ‘(1) This section applies if, before the commencement—
- (a) a relevant change within the meaning of previous section 350 happened in relation to the holder of a positive notice that was not suspended; and

- (b) the commissioner had not cancelled the previously held positive notice or positive notice blue card under previous section 350.
- ‘(2) Previous section 350 continues to apply in relation to the relevant change as if the *Child Protection and Other Acts Amendment Act 2010* had not been enacted.
- ‘(3) In this section—
 - commencement* means the commencement of this section.
 - previous section 350* means section 350 as in force before the commencement.

‘507 Fee not payable under s 350 if a fee previously paid

‘Section 350(7) does not apply to the holder of a positive notice if the holder has paid a prescribed application fee in relation to the positive notice under section 350 as in force before the commencement.

‘508 Persons being considered for engagement by the commission at the commencement

- ‘(1) Chapter 8A applies in relation to a person who, at the commencement, is being considered for engagement by the commission or is engaged by the commission.
- ‘(2) For subsection (1), a person is being considered for engagement by the commission at the commencement if—
 - (a) the person applied or otherwise expressed an interest in being engaged by the commission before the commencement; and
 - (b) at the commencement, the commissioner has not finished making an assessment of the person’s suitability for the engagement.
- ‘(3) In this section—
 - commencement* means the commencement of this section.’.

114 Amendment of sch 1, pt 3 (Employment to which chapter 8 of this Act does not apply)

- (1) Schedule 1, part 3, heading, after ‘Employment’—
insert—
‘, or carrying on of a business,’
- (2) Schedule 1, section 28, from ‘employment of’ to ‘relates’—
omit, insert—
‘employment or carrying on of a business of a person who is a registered health practitioner to the extent the activities performed or services provided relate’.
- (3) Schedule 1—
insert—

‘30 Ambulance officers

‘Chapter 8 of this Act does not apply to the employment of a person as an ambulance officer under the *Ambulance Service Act 1991*, section 13 or 14 to the extent the employment relates to the person’s functions under that Act.’

115 Amendment of sch 7 (Dictionary)

Schedule 7—

insert—

‘*alternative certifications*, relating to an employee, means—

- (a) a certification, in the approved form, by a prescribed person that the prescribed person has sighted the employee’s proof of identity documents; and
- (b) a certification, in the approved form, by the employer that the employer did not sight the documents only because—
 - (i) the employee’s usual place of residence is more than 50km from the employer’s business address; or

[s 120]

120 Amendment of s 256 (Particular prescribed police information obtained but not used before commencement)

Section 256(2), note, from ‘for assessing’ to ‘by the department’—

omit, insert—

‘in relation to the engagement, or continued engagement, of the person by the department’.

121 Amendment of s 288 (Provision about persons engaged to provide disability services only to children)

Section 288(2), ‘Sections 89 and 275 to 277’—

omit, insert—

‘Sections 275 to 278’.

122 Amendment of s 289 (Provision about holders of CCYPCG positive notice)

Section 289(2), ‘Sections 89 and 275 to 277’—

omit, insert—

‘Sections 275 to 278’.

Part 6 Amendment of Family Services Act 1987

123 Act amended

This part amends the *Family Services Act 1987*.

124 Amendment of s 38 (Particular police information obtained before commencement)

Section 38(2), note, from ‘for assessing’ to ‘by the department’—

omit, insert—

‘in relation to the engagement, or continued engagement, of the person by the department’.

Part 7 Amendment of Juvenile Justice and Other Acts Amendment Act 2009

125 Act amended

This part amends the *Juvenile Justice and Other Acts Amendment Act 2009*.

126 Amendment of schedule (Consequential amendments)

Schedule, part 4—

omit.

Editor’s note—

Legislation ultimately amended—

- *Child Protection Act 1999*

130 Amendment of s 156 (Application of div 3)

(1) Section 156(1), note, ‘for assessing the suitability of’—

omit, insert—

‘in relation to’.

(2) Section 156—

insert—

‘(1A) However, this division does not apply to duties to be performed in the CCYPCG commission.’

Note—

See the CCYPCG Act, chapter 8A, in relation to duties to be performed in the CCYPCG commission.’.

(3) Section 156(1A) and (2)—

renumber as section 156(2) and (3).

131 Amendment of s 157 (Definitions for div 3)

Section 157, definition *CCYPCG commission*—

relocate to section 150.

132 Amendment of s 158 (Prescribed notice or exemption notice required for child-related duties)

(1) Section 158(1), ‘other than the CCYPCG commissioner’—

omit.

(2) Section 158(2)—

omit.

(3) Section 158(3), ‘or (2)’—

omit.

(4) Section 158(3) and (4)—

renumber as section 158(2) and (3).

[s 133]

133 Amendment of s 159 (Chief executive to apply for prescribed notice or exemption notice)

Section 159(1)(a), ‘other than the CCYPCG commissioner’—
omit.

134 Omission of s 160 (CCYPCG commissioner to undertake child-related employment screening)

Section 160—
omit.

135 Amendment of s 161 (Engaging public service employee before prescribed notice or exemption notice issued)

Section 161(1)(a)—
omit, insert—

‘(a) the chief executive of a department engages a person to perform child-related duties on the basis the chief executive has applied for a prescribed notice or exemption notice about the person as mentioned in section 158(1)(b)(ii); and’.

136 Amendment of s 162 (Engaging other person before prescribed notice or exemption notice issued)

(1) Section 162(1)(a)—
omit, insert—

‘(a) the chief executive of a department engages a person to perform child-related duties on the basis the chief executive has applied for a prescribed notice or exemption notice about the person as mentioned in section 158(1)(b)(ii); and’.

(2) Section 162(3)—
omit, insert—

- ‘(3) Subsection (2) does not limit the power under section 126 to have a longer probationary period or to terminate the person’s employment.’.

137 Insertion of new ch 9, pt 6

Chapter 9—

insert—

**‘Part 6 Transitional provisions for
Child Protection and Other
Acts Amendment Act 2010**

‘264 Definition for pt 6

‘In this part—

commencement means the commencement of this part.

**‘265 CCYPCG commissioner request for criminal history
report not complied with at the commencement**

‘(1) This section applies if—

- (a) the CCYPCG commissioner has, under section 154 or 165C (the *relevant section*), asked the police commissioner for a written report about a person’s criminal history; and
- (b) at the commencement, the police commissioner has not given the report to the CCYPCG commissioner.

‘(2) Despite the relevant section, the police commissioner is no longer required to comply with the CCYPCG commissioner’s request.

**‘266 Criminal history reports obtained by CCYPCG
commissioner before commencement**

‘(1) This section applies if—

[s 138]

- (a) before the commencement, the police commissioner gave the CCYPCG commissioner a written report about a person's criminal history under section 154 or 165C; and
 - (b) at the commencement, the CCYPCG commissioner has not, in relation to the report, made an assessment about the person's suitability for engagement, or continued engagement, by the CCYPCG commission under section 155 or 165D.
- ‘(2) The CCYPCG commissioner must immediately—
- (a) destroy the report; and
 - (b) stop making the assessment.

Note—

Now see the CCYPCG Act, chapter 8A for assessing the person's suitability for engagement, or continued engagement, by the CCYPCG commission.

‘267 Notice not given to CCYPCG commissioner by prosecuting authority at the commencement

- ‘(1) This section applies if—
- (a) before the commencement, a person engaged by the CCYPCG commission is charged with a relevant offence within the meaning of section 170(7); and
 - (b) at the commencement, the police commissioner or director of public prosecutions has not given information about the charge to the CCYPCG commissioner as required by section 170.
- ‘(2) Despite section 170, the police commissioner or director of public prosecutions is no longer required to give the information to the CCYPCG commissioner.’.

138 Amendment of sch 4 (Dictionary)

- (1) Schedule 4, definitions *CCYPCG Act*, *CCYPCG commission*, *CCYPCG commissioner* and *commencement*—

omit.

(2) Schedule 4—

insert—

‘CCYPCG Act see section 150.

CCYPCG commission see section 150.

CCYPCG commissioner see section 150.

commencement—

(a) for chapter 9, part 5—see section 256; or

(b) for chapter 9, part 6—see section 264.’.