

Queensland



CHILD PROTECTION ACT 1999

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Queensland



CHILD PROTECTION ACT 1999

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CHILD PROTECTION ACT 1999

[reprinted as in force on 23 March 2000]

An Act about the protection of children, and for other purposes

CHAPTER 1—PRELIMINARY

PART 1—INTRODUCTION

Short title

1. This Act may be cited as the *Child Protection Act 1999*.

Commencement

- 2.(1) Section 204 commences on the date of assent.
- (2) The remaining provisions commence on a day to be fixed by proclamation.

Definitions

- 3.(1) The dictionary in schedule 4 defines particular words used in this Act.
- (2) Key terms used in this Act are defined in part 3, division 1.

PART 2—PURPOSE AND ADMINISTRATION OF ACT

Purpose of Act

4. The purpose of this Act is to provide for the protection of children.

Principles for administration of Act

5. This Act is to be administered under the following principles—
- (a) every child has a right to protection from harm;
 - (b) the welfare and best interests of a child are paramount;
 - (c) families have the primary responsibility for the upbringing, protection and development of their children;
 - (d) the preferred way of ensuring a child's wellbeing is through the support of the child's family;
 - (e) powers conferred under this Act should be exercised in a way that is open, fair and respects the rights of people affected by their exercise, and, in particular, in a way that ensures—
 - (i) actions taken, while in the best interests of the child, maintain family relationships and are supportive of individual rights and ethnic, religious and cultural identity or values; and
 - (ii) the views of the child and the child's family are considered; and
 - (iii) the child and the child's parents have the opportunity to take part in making decisions affecting their lives;
 - (f) if a child does not have a parent able and willing to protect the child, the State has a responsibility to protect the child, but in protecting the child the State must not take action that is unwarranted in the circumstances;
 - (g) if a child is removed from the child's family—
 - (i) the aim of authorised officers' working with the child and the child's family is to safely return the child to the family if

possible; and

- (ii) the child's need to maintain family and social contacts, and ethnic and cultural identity, must be taken into account;
- (h) if a child is able to form and express views about his or her care, the views must be given consideration, taking into account the child's age or ability to understand;
- (i) if a child does not have a parent able and willing to give the child ongoing protection, the child has a right to long-term alternative care.

Provisions about Aboriginal and Torres Strait Islander children

6.(1) A decision of the chief executive or an authorised officer under this Act about an Aboriginal child or a Torres Strait Islander child must be made only after consultation with the recognised Aboriginal or Torres Strait Islander agency for the child.

(2) However, if consultation is not practicable before making the decision because the agency is not available for consultation or urgent action is required to protect the child, the chief executive or an authorised officer must consult with the agency as soon as practicable after making the decision.

(3) If the chief executive, an authorised officer or the Childrens Court exercises a power under this Act in relation to an Aboriginal or Torres Strait Islander child, the chief executive, officer or court must have regard to—

- (a) the views of the recognised Aboriginal or Torres Strait Islander agency for the child and about Aboriginal traditions and Island custom relating to the child;¹ and
- (b) if it is not practicable to obtain the agency's views—the views of members of the community to whom the child belongs; and
- (c) the general principle that an Aboriginal or Torres Strait Islander child should be cared for within an Aboriginal or Torres Strait Islander community.

¹ The *Acts Interpretation Act 1954*, section 36, contains definitions of Aboriginal tradition and Island custom.

(4) As far as is reasonably practicable, an authorised person must try to conduct consultations, negotiations, family meetings and other proceedings involving an Aboriginal person or Torres Strait Islander (whether a child or not) in a way and in a place that is appropriate to Aboriginal tradition or Island custom.

Chief executive's functions

7. For the proper and efficient administration of this Act, the chief executive's functions are—

- (a) providing, or helping provide, information for parents and other members of the community about the development of children and their safety needs; and
- (b) providing, or helping provide, preventative and support services to strengthen and support families and to reduce the incidence of harm to children; and
- (c) providing, or helping provide, services to families to protect their children if a risk of harm has been identified; and
- (d) providing, or helping provide, services for the protection of children and responding to allegations of harm to children; and
- (e) providing, or helping provide, services that encourage children in their development into responsible adulthood; and
- (f) helping Aboriginal and Torres Strait Islander communities to establish programs for preventing or reducing incidences of harm to children in the communities; and
- (g) providing support and training to approved foster carers to help them care for children under this Act; and
- (h) negotiating and reviewing a statement of commitment between the State and organisations with an interest in foster care that includes the provision of support and resources by the department to foster carers caring for children under this Act; and
- (i) promoting a partnership between the State, local government, non-government agencies and families in taking responsibility for, and dealing with the problem of, harm to children; and

- (j) promoting a partnership between the State and foster carers that recognises the integral part played by foster carers in caring for children under this Act; and
- (k) promoting and helping in developing coordinated responses to allegations of harm to children and responses to domestic violence; and
- (l) cooperating with government entities that have a function relating to the protection of children; and
- (m) consulting with clients of the department and of organisations involved in providing services relating to the purpose of this Act and with client representative groups; and
- (n) consulting with recognised Aboriginal and Torres Strait Islander agencies about the administration of this Act in relation to Aboriginal and Torres Strait Islander children; and
- (o) providing, or helping provide, public education about child abuse and neglect and to encourage people whose occupation involves responsibility for children and members of the public to report suspected child abuse and neglect to the chief executive; and
- (p) collecting and publishing, or helping collect and publish, information and statistics about harm to children; and
- (q) promoting research into the causes and effect of harm to children; and
- (r) encouraging tertiary institutions to provide instruction about harm to children and its prevention and treatment.

PART 3—BASIC CONCEPTS

Division 1—Key terms

Who is a “child”

- 8.** A “**child**” is an individual under 18 years.

What is “harm”

9.(1) “Harm”, to a child, is any detrimental effect of a significant nature on the child’s physical, psychological or emotional wellbeing.

(2) It is immaterial how the harm is caused.

(3) Harm can be caused by—

- (a) physical, psychological or emotional abuse or neglect; or
- (b) sexual abuse or exploitation.

Who is a “child in need of protection”

10. A “**child in need of protection**” is a child who—

- (a) has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm; and
- (b) does not have a parent able and willing to protect the child from the harm.

Who is a “parent”

11.(1) A “**parent**” of a child is the child’s mother, father or someone else (other than the chief executive) having or exercising parental responsibility for the child.

(2) However, a person standing in the place of a parent of a child on a temporary basis is not a parent of the child.

(3) A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.

(4) A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.

(5) A reference in this Act to the parents of a child or to 1 of the parents of a child is, if the child has only 1 parent, a reference to the parent.²

² In some provisions, “parent” has a narrower meaning. The same meaning is given the term in chapter 2, part 2 (see section 23), chapter 2, part 3 (see section 36), chapter 2, part 4 (see section 50) and chapter 4 (see section 119).

Division 2—Custody and guardianship**What is effect of custody**

12.(1) This section applies if—

- (a) an authorised officer or police officer takes a child into the chief executive's custody;³ or
- (b) the chief executive or someone else is granted custody of a child under an assessment order or child protection order.

(2) The chief executive, or other person granted custody of the child, has—

- (a) the right to have the child's daily care; and
- (b) the right and responsibility to make decisions about the child's daily care.

What is effect of guardianship

13. If the chief executive or someone else is granted guardianship of a child under a child protection order, the chief executive or other person has—

- (a) the right to have the child's daily care; and
- (b) the right and responsibility to make decisions about the child's daily care; and
- (c) all the powers, rights and responsibilities in relation to the child that would otherwise have been vested in the person having parental responsibility for making decisions about the long-term care, welfare and development of the child.

³ Under section 18, a child at immediate risk of harm may be taken into custody.

CHAPTER 2—PROTECTION OF CHILDREN

PART 1—CHILDREN AT RISK OF HARM

Chief executive may investigate alleged harm

14.(1) If the chief executive becomes aware (whether because of notification given to the chief executive⁴ or otherwise) of alleged harm or alleged risk of harm to a child and reasonably suspects the child is in need of protection, the chief executive must immediately—

- (a) have an authorised officer investigate the allegation and assess the child's need of protection; or
- (b) take other action the chief executive considers appropriate.

(2) If the chief executive reasonably believes alleged harm may have involved the commission of a criminal offence relating to the child, the chief executive must immediately give details of the alleged harm to the commissioner of the police service.

Child's parents to be told about allegation of harm and outcome of investigation

15.(1) An authorised officer or police officer who is investigating an allegation of harm, or risk of harm, to a child, or assessing the child's need of protection because of the allegation must give details of the alleged harm or risk of harm to at least 1 of the child's parents.

(2) Also, as soon as practicable after completing the investigation, the officer must—

- (a) tell at least 1 of the child's parents about the outcome of the investigation; and
- (b) if asked by the parent—give the information in writing to the parent.

⁴ Section 22 provides for protection from civil liability for persons, who, acting honestly, notify or give information about suspected harm to a child.

(3) 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 (1) or (2) may jeopardise an investigation into the offence; or
- (b) compliance with the subsection 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.

Contact with child at immediate risk of harm

16.(1) This section applies if—

- (a) an authorised officer or police officer is investigating an allegation of harm, or risk of harm, to a child; and
- (b) the officer has been denied contact with the child or can not reasonably gain entry to the place where the officer reasonably believes the child is; and
- (c) the officer reasonably suspects the child—
 - (i) is at immediate risk of harm; or
 - (ii) is likely to leave or be taken from a place and suffer harm if the officer does not take immediate action.

(2) The officer may exercise the following powers—

- (a) enter the place;
- (b) search the place to find the child;
- (c) remain in the place, and have contact with the child for as long as the officer reasonably considers necessary for investigating the allegation.

(3) The officer may exercise a power under subsection (2) with the help, and using the force, that is reasonable in the circumstances.

(4) At the first reasonable opportunity, the officer must record, in a register kept for the purpose by the department or the Queensland Police Service, full details about the exercise of the powers and other actions taken by the officer.

Contact with children in school, child care centre, family day care etc.

17.(1) This section applies if—

- (a) an authorised officer or police officer is investigating an allegation of harm, or risk of harm, to a child; and
- (b) the officer reasonably believes—
 - (i) it is in the child's best interests that the officer has contact with the child before the child's parents are told about the investigation; and
 - (ii) the child's parents knowing in advance about the proposed contact with the child is likely to adversely affect or otherwise prevent the proper and effective conduct of the investigation; and
- (c) the child is at a school, or place where child care is provided, when the officer is to have contact with the child; and
- (d) the officer lawfully enters the school or place.

(2) The officer may have contact with the child, and remain in the school or place, for as long as the officer reasonably considers necessary for investigating the allegation.

(3) Before exercising a power under subsection (2), the officer must notify the principal or other person in charge of the school or place of the intention to exercise the power.

(4) As soon as practicable after the officer has had contact with the child, the officer must tell at least 1 of the child's parents that the officer has had contact with the child and the reasons for the contact.

(5) The officer's obligation under subsection (4) to give reasons for the contact with the child 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 subsection may jeopardise an investigation into the offence; or
- (b) compliance with the subsection may expose the child to harm.

(6) Also, at the first reasonable opportunity, the officer must record, in a

register kept for the purpose by the department or the Queensland Police Service, full details about the exercise of the powers and other actions taken by the officer.

Child at immediate risk may be taken into custody

18.(1) This section applies if—

- (a) an authorised officer or police officer is investigating an allegation of harm, or risk of harm, to a child; and
- (b) the officer reasonably believes the 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) The officer may take the child into the chief executive's custody.

(3) For subsection (2), the officer may—

- (a) enter the place where the officer reasonably believes the child is; and
- (b) search the place to find the child; and
- (c) remain in the place for as long as the officer reasonably considers is necessary to find the child.

(4) The officer may exercise a power under subsection (2) or (3) with the help, and using the force, that is reasonable in the circumstances.

(5) The officer must, as soon as practicable, apply for a temporary assessment order for the child.

(6) Also, the officer may arrange a medical examination of, or for medical treatment for, the child that is reasonable in the circumstances.⁵

(7) The chief executive's custody of the child ends on the earlier of the following to happen—

- (a) the application for the temporary assessment order for the child is decided;
- (b) 8 hours elapses after the child is taken into custody.

⁵ Section 94 (Carrying out medical examinations or treatment) applies to the medical examination or treatment.

Effect of taking child into custody on existing order

19.(1) This section applies if—

- (a) an authorised officer or police officer takes a child into the chief executive's custody; and
- (b) a child protection order granting custody or guardianship of the child to someone other than the chief executive is in force.

(2) The 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.

Officer's obligations on taking child into custody

20.(1) If an authorised officer or police officer takes a child into the chief executive's custody, 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(7); and
- (b) tell the child about his or her being taken into the chief executive's custody;⁶ and
- (c) tell the chief executive the child has been taken into the chief executive's custody and where the child has been taken.

(2) Subsection (1) does not require the officer to tell the child's parents in whose care the child has been placed.

(3) The officer's obligation under subsection (1)(a)(i) 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 subparagraph may

⁶ Section 189 deals with compliance with provisions about giving information.

jeopardise an investigation into the offence; or

- (b) compliance with the subparagraph may expose the child to harm.

Moving child to safe place

21.(1) This section applies if—

- (a) an authorised officer or police officer reasonably believes a child who is under 12 years is at risk of harm but does not consider it necessary to take the child into the chief executive's custody to ensure the child's protection; and
- (b) a parent or other member of the child's family is not present at the place where the child is, and, after reasonable inquiries, the officer can not contact a parent or other member of the child's family.

(2) The officer may, with the help that is reasonable in the circumstances, move the child to a safe place and make arrangements for the child's care at the place.

(3) As soon as practicable after moving the child, the officer must—

- (a) take reasonable steps to tell at least 1 of the child's parents or a family member of the child's whereabouts; and
- (b) if the officer is a police officer—tell the chief executive the child has been moved to a safe place and where the child has been moved.

(4) The child may be cared for at the place under the arrangements until the child's parents or family members resume or assume the child's care.

(5) The moving of the child does not—

- (a) prevent the child's parents or family members resuming or assuming care of the child; or
- (b) affect existing parental rights for the child.

Protection from liability for notification of, or information given about, alleged harm

22.(1) This section applies if a person, acting honestly—

- (a) notifies the chief executive or another officer of the department that the person suspects a child has been, is being or is likely to be, harmed; or
- (b) gives the chief executive, an authorised officer or police officer information about alleged harm to a child.

(2) The person does not incur liability for giving the notification or information.

(3) Also, merely because the person gives the notification or information, the person can not be held to have—

- (a) breached any code of professional etiquette or ethics; or
- (b) departed from accepted standards of professional conduct.

PART 2—TEMPORARY ASSESSMENT ORDERS

Division 1—Preliminary

Meaning of “parent” in pt 2

23. In this part—

“parent”, of a child, means the child’s guardian, and if the child is in a person’s custody or guardianship under this Act, includes anyone else who would be the child’s guardian if the person did not have custody or guardianship of the child.

Purpose of pt 2

24.(1) This part provides for the making of temporary assessment orders.

(2) A temporary assessment order is made to authorise actions necessary as part of an investigation to assess whether a child is a child in need of protection, if the consent of a parent of the child to the actions has not been

able to be obtained or it is not practicable to take steps to obtain the parent's consent.

Division 2—Applications for, and making and effect of, temporary assessment orders

Making of application for order

25.(1) An authorised officer or police officer may apply to a magistrate for a temporary assessment order for a child.

(2) The application must be sworn and state the following—

- (a) the grounds on which it is made;
- (b) the nature of the order sought;
- (c) if taking the child into, or keeping the child in, the chief executive's custody is sought—the proposed arrangements for the child's care.

(3) The magistrate may refuse to consider the application until the applicant 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.

Deciding application

26. A magistrate may decide an application for a temporary assessment order without notifying the child's parents of the application or hearing them on the application.

Making of temporary assessment order

27.(1) The magistrate may make a temporary assessment order for the child only if the magistrate is satisfied—

- (a) an investigation is necessary to assess whether the child is a child in need of protection; and

- (b) the investigation can not be properly carried out unless the order is made.

(2) However, in deciding the application, the magistrate must also be satisfied reasonable steps have been taken to obtain the consent of at least 1 of the child's parents to the doing of the things sought to be authorised under the order or it is not practicable to take steps to obtain the consent.

Provisions of temporary assessment order

28.(1) The magistrate may make a temporary assessment 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) if the magistrate is satisfied it is necessary to provide interim protection for the child while the investigation is carried out—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;⁷
- (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) Also, the order may be made subject to the reasonable conditions the magistrate considers appropriate.

(3) In addition, the order may also 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

⁷ Section 94 (Carrying out medical examinations or treatment) applies to the medical examination or treatment.

(b) the entry is necessary for the effective enforcement of the order.

(4) 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.

(5) 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.

Duration of temporary assessment orders

29.(1) A temporary assessment order must state the time when it ends.

(2) The stated time must not be more than 3 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.

Special orders

30.(1) An authorised officer or police officer may apply for a temporary assessment order (a "**special order**") by phone, fax, radio or another form of communication if the officer considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the officer's remote location.

(2) Before applying for the order, the officer must prepare an application stating the grounds on which the order is sought.

(3) The officer may apply for the order before the application is sworn.

(4) After making the order, the magistrate must immediately fax a copy of it to the officer if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy of the order to the officer—

(a) the magistrate must tell the officer—

- (i) what the terms of the order are; and
- (ii) the date and time the order was made; and
- (b) the officer must complete a form of order (“**order form**”) and write on it—
 - (i) the magistrate’s name; and
 - (ii) the date and time the magistrate made the order; and
 - (iii) the order’s terms.

(6) The facsimile order, or the order form properly completed by the officer, authorises the exercise of powers under the order made by the magistrate.

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

- (a) the sworn application; and
- (b) if the officer completed an order form—the completed order form.

(8) On receiving the documents, the magistrate must attach them to the order.

(9) A court must find the exercise of the power by an officer was not authorised by a special order if—

- (a) an issue arises in a proceeding before the court whether the exercise of the power was authorised by a special order; and
- (b) the order is not produced in evidence; and
- (c) it is not proved by the person relying on the lawfulness of the entry that the officer obtained the order.

Order—procedure before entry

31.(1) This section applies if an authorised officer or police officer is intending to enter a place under an authority under a temporary assessment order.

(2) Before entering the place, the officer must do or make a reasonable attempt to do the following things—

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- (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 facsimile order or order form mentioned in section 30(6), a copy of the facsimile order or order form 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.⁸

(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 assessment orders***Explanation of temporary assessment orders**

32. Immediately after a temporary assessment order is made for a child, the applicant for the order must—

- (a) give a copy of the order, or facsimile order or order form under section 30(6), to at least 1 of the child's parents; and
- (b) explain the terms and effect of the order; and
- (c) inform the parent—
 - (i) about the right of appeal; and

⁸ For a police officer, see the *Police Powers and Responsibilities Act 1997*, section 112 (Supplying police officer's details)

- (ii) that, because of the duration of the order, if the parent wishes to appeal against the order, an appeal should be started immediately;⁹ and
- (iii) how to appeal; and
- (d) tell the child about the order.¹⁰

Police officers to notify chief executive of certain orders

33. If a temporary assessment order is made on the application of a police officer, the officer must immediately give copies of the application and order to the chief executive.

Extension of temporary assessment orders

34.(1) An authorised officer or police officer may apply to a magistrate for an order to extend the term of a temporary assessment order for a child.

(2) The application must be made before the order ends.

(3) This part applies, with all necessary changes, to the application as if it were an application for a temporary assessment order.

(4) The magistrate may, by order, extend the order until the end of the next business day after it would have otherwise ended if the magistrate is satisfied—

- (a) the order has not ended; and
- (b) the officer intends to apply for a court assessment order or child protection order for the child before the order ends.

(5) A temporary assessment order may not be extended more than once.

Effect of temporary assessment order on existing child protection orders

35. If a temporary assessment order is made for a child for whom a child

⁹ Under section 29, the duration of a temporary assessment order must be not more than 3 days.

¹⁰ Section 189 deals with compliance with provisions about giving information.

protection order is already in force, the temporary assessment order prevails to the extent of any inconsistency between the orders.

PART 3—COURT ASSESSMENT ORDERS

Division 1—Preliminary

Meaning of “parent” in pt 3

36. In this part—

“parent”, of a child, means the child’s guardian, and if the child is in a person’s custody or guardianship under this Act, includes anyone else who would be the child’s guardian if the person did not have custody or guardianship of the child.

Purpose of pt 3

37.(1) This part provides for the making of court assessment orders.

(2) A court assessment order is made to authorise actions necessary as part of an investigation to assess whether a child is a child in need of protection if—

- (a) the consent of a parent of the child to the actions has not been able to be obtained or it is not practicable to take steps to obtain the parent’s consent; and
- (b) more than 3 days is necessary to complete the investigation and assessment.¹¹

¹¹ Under part 2, a temporary assessment order may be obtained for not more than 3 days.

Division 2—Application for, and making and effect of, court assessment orders**Application for court assessment order**

38.(1) An authorised officer or police officer may apply to the Childrens Court for a court assessment order for a child.

(2) The application must—

- (a) be sworn; and
- (b) state the grounds on which it is made; and
- (c) state the nature of the order sought; and
- (d) comply with applicable rules of court; and
- (e) be filed in the court.

Registrar to fix time and place for hearing

39. When the application is filed, the registrar of the Childrens Court must immediately fix a time and place for hearing the application having regard to the principle that it is in the best interests of the child for the application to be heard as soon as possible.

Notice of application

40.(1) As soon as practicable after the application is filed, the applicant must—

- (a) personally serve a copy of it on each of the child's parents; and
- (b) tell the child about the application.¹²

(2) However, if it is not practicable to serve the copy personally, a copy of the application may be served on a parent by leaving it at, or by sending it by post to, the parent's residential address last known to the applicant.

(3) The copy of the application served under this section must state—

¹² Section 189 deals with compliance with provisions about giving information.

- (a) when and where the application is to be heard; and
- (b) the application may be heard and decided even though the parent does not appear in court.

Respondents to application

41. The child's parents are respondents to the application.

Hearing of application in absence of parents

42.(1) The Childrens Court may hear and decide the application in the absence of the child's parents only if—

- (a) the parents have been given reasonable notice of the hearing and fail to attend or continue to attend the hearing; or
- (b) it is satisfied it was not practicable to give the parents notice of the hearing.

(2) Subsection (1) does not limit the jurisdiction of the court to exclude a person from a proceeding.

Making of court assessment order

43. The Childrens Court may make a court assessment order only if the court is satisfied an investigation is necessary to assess whether the child is a child in need of protection and the investigation can not be properly carried out unless the order is made.

Provisions of court assessment order

44.(1) The order may provide for any 1 or more of the following the court considers to be appropriate in the circumstances—

- (a) authorising an authorised officer or police officer to have contact with the child;
- (b) authorising the medical examination or treatment of the child;
- (c) if the court is satisfied it is necessary to provide interim protection for the child while the investigation is carried out—

Child Protection Act 1999

- (i) granting temporary custody of the child to the chief executive; and
- (ii) authorising an authorised officer or police officer to take the child into, or keep the child in, the chief executive's custody while the order is in force;
- (d) making provision about the child's contact with the child's family during the chief executive's custody of the child;
- (e) 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) Also, the order may be made subject to the reasonable conditions the court considers appropriate.

(3) In addition, the order may also 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 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 the order.

(4) 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.

(5) 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.

Order—procedure before entry

45.(1) This section applies if an authorised officer or police officer is intending to enter a place under an authority under a court assessment 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 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.¹³

(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.

Duration of court assessment orders

46.(1) A court assessment order for a child must state the time when it ends.

(2) The stated time must not be more than 4 weeks after the day the hearing of the application for the order is first brought before the court.¹⁴

(3) The order ends at the stated time unless it is extended or earlier revoked.

(4) Regardless of subsections (1) to (3), the order ends when the child turns 18 years.

¹³ For a police officer, see the *Police Powers and Responsibilities Act 1997*, section 112 (Supplying police officer's details)

¹⁴ Under section 39, the registrar fixes the time and place for hearing the application.

Division 3—Other provisions about court assessment orders**Chief executive's obligations after making of court assessment order**

47. As soon as practicable after a court assessment order for a child is made, the chief executive must give to the parties to the application for the order—

- (a) a copy of the order; and
- (b) a written notice—
 - (i) explaining the terms and effect of the order; and
 - (ii) stating that a party may appeal against the decision to make the order within 28 days after the order is made; and
 - (iii) stating how to appeal.

Extension of court assessment orders

48.(1) An authorised officer may apply to the Childrens Court for an order to extend the term of a court assessment order for not more than 4 weeks.

(2) The application must be made before the order ends.

(3) This part applies, with all necessary changes, to the application as if it were an application for a court assessment order.

(4) The court may extend the term of the order only if the court is satisfied it is in the child's best interests.

(5) A court assessment order may not be extended more than once.

Variation and revocation of court assessment orders

49.(1) An authorised officer may apply to the Childrens Court for an order to vary or revoke a court assessment order.

(2) This part applies, with all necessary changes, to the application as if it were an application for a court assessment order.

(3) Without limiting the things to which the court may have regard in

deciding the application, the court may have regard to a contravention of the court assessment order or this Act.

PART 4—CHILD PROTECTION ORDERS

Division 1—Preliminary

Meaning of “parent” in pt 4

50. In this part—

“**parent**”, of a child, means the child’s guardian, and if the child is in a person’s custody or guardianship under this Act, includes anyone else who would be the child’s guardian if the person did not have custody or guardianship of the child.

Purpose of pt 4

51.(1) This part provides for the making of child protection orders.

(2) A child protection order is made to ensure the protection of a child the Childrens Court decides is a child in need of protection.¹⁵

Division 2—Applications for, and making and effect of, child protection orders

Application for child protection order

52.(1) An authorised officer may apply to the Childrens Court for a child protection order for a child.

(2) The application must—

(a) state the grounds on which it is made; and

¹⁵ See section 10 (Who is a “child in need of protection”).

- (b) state the nature of the order sought; and
- (c) comply with applicable rules of court; and
- (d) be filed in the court.

Registrar to fix time and place for hearing

53. When the application is filed, the registrar of the Childrens Court must immediately fix the time and place for hearing the application having regard to the principle that it is in the best interests of the child for the application to be heard as early as possible.

Notice of application

54.(1) As soon as practicable after the application is filed, the applicant must—

- (a) personally serve a copy of it on each of the child's parents; and
- (b) tell the child about the application.¹⁶

(2) However, if it is not practicable to serve the copy personally, a copy of the application may be served on a parent by leaving it at, or by sending it by post to, the parent's residential address last known to the applicant.

(3) The copy of the application served under this section must state—

- (a) when and where the application is to be heard; and
- (b) the application may be heard and decided even though the parent does not appear in court.

Respondents to hearing

55. The child's parents are respondents to the application.

Hearing of application in absence of parents

56.(1) The Childrens Court may hear and decide the application in the absence of the child's parents only if—

¹⁶ Section 189 deals with compliance with provisions about giving information.

- (a) the parents have been given reasonable notice of the hearing and fail to attend or continue to attend the hearing; or
- (b) it is satisfied it was not practicable to give the parents notice of the hearing.

(2) Subsection (1) does not limit the jurisdiction of the court to exclude a person from a proceeding.

Making of child protection order

57.(1) The Childrens Court may make a child protection order only if it is satisfied—

- (a) the child is a child in need of protection and the order is appropriate and desirable for the child's protection; and
- (b) a family meeting has been held or reasonable attempts to hold a family meeting have been made; and
- (c) if the making of the order has been contested, a conference between the parties has been held or reasonable attempts to hold a conference have been made; and
- (d) the child's wishes or views, if able to be ascertained, have been made known to the court; and
- (e) the child's protection is unlikely to be ensured by an order under this part on less intrusive terms.

(2) Also, before making a child protection order granting custody or guardianship of a child to a person other than the chief executive, the court must have regard to any report given, or recommendation made, to the court by the chief executive about the person, including a report about the person's criminal history, domestic violence history and traffic history.¹⁷

(3) In addition, before making a child protection order granting long-term guardianship of a child, the court must be satisfied—

- (a) there is no parent able and willing to protect the child within the foreseeable future; or

¹⁷ Section 92 deals with reports about the person's criminal history, domestic violence history and traffic history.

- (b) the child's need for emotional security will be best met in the long-term by making the order.

(4) Further, the court must not grant long-term guardianship of a child to—

- (a) a person who is not a member of the child's family unless the child is already in custody or guardianship under a child protection order; or
- (b) the chief executive if the court can properly grant guardianship to another suitable person.

(5) This section does not apply to the making of an interim order.

Provisions of child protection orders

58.(1) A child protection order may provide for any 1 or more of the following the court considers to be appropriate in the circumstances—

- (a) directing a parent of the child to do or refrain from doing something directly related to the child's protection;
- (b) 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;
- (c) requiring the chief executive to supervise the child's protection in relation to the matters stated in the order;
- (d) granting custody of the child to—
 - (i) a suitable person, other than a parent of the child, who is a member of the child's family; or
 - (ii) the chief executive;
- (e) granting short-term guardianship of the child to the chief executive;
- (f) granting long-term guardianship of the child to—
 - (i) a suitable person, other than a parent of the child, who is a member of the child's family; or

- (ii) another suitable person, other than a member of the child's family, nominated by the chief executive; or
- (iii) the chief executive.

(2) Also, the order may be made subject to the reasonable conditions the court considers appropriate.

Duration of child protection orders

59.(1) A child protection order for a child must state the time when it ends.

(2) The stated time for the order—

- (a) if it does not grant custody or guardianship of the child—must not be more than 1 year after the day it is made; or
- (b) if it grants custody or short-term guardianship of the child—must not be more than 2 years after the day it is made; or
- (c) if it grants long-term guardianship of the child—must be the end of the day before the child turns 18 years.

(3) The order ends at the stated time unless it is extended or earlier revoked.

(4) Regardless of subsections (1) to (3), the order ends when the child turns 18.

Division 3—Other provisions about child protection orders

Chief executive's obligations after making of child protection order

60. As soon as practicable after a child protection order for a child is made, the chief executive must give to the parties to the application for the order—

- (a) a copy of the order; and
- (b) a written notice—
 - (i) explaining the terms and effect of the order; and
 - (ii) stating that a party may appeal against the decision to make

- the order within 28 days after the order is made; and
- (iii) stating how to appeal.

Extension of certain child protection orders

61.(1) An authorised officer may apply to the Childrens Court for an order to extend a child protection order for a child other than an order granting long-term guardianship of a child.

(2) The application must be made before the order ends.

(3) This part applies, with all necessary changes, to the application as if it were an application for a child protection order.

Variation and revocation of child protection orders

62.(1) An authorised officer, interested person for a child or the child may apply to the Childrens Court for an order to—

- (a) vary or revoke a child protection order; or
- (b) revoke a child protection order and make another child protection order in its place.

(2) However, an interested person can not—

- (a) apply for an order to revoke an order and make another child protection order in its place that grants guardianship of a child; or
- (b) apply for an order to revoke an order that grants custody of the child to an interested person and make another child protection order in its place that grants custody of the child to the first interested person; or
- (c) without the leave of the court, apply for an order to vary or revoke a child protection order if another application for an order by an interested person to vary or revoke the order has been decided by the court.

(3) The court may grant leave only if it is satisfied the interested person has new evidence to give to the court.

(4) This part applies, with the changes prescribed in subsection (5) and all other necessary changes, to the application as if it were an application for a

child protection order.

(5) If the application is made by an interested person or the child—

- (a) other interested persons and the chief executive become respondents to the application; and
- (b) immediately after the application is made, the registrar must give written notice to the chief executive of the time and place for hearing the application; and
- (c) as soon as practicable after receiving the registrar's notice, the chief executive must comply with section 54 except so far as it relates to the applicant.

(6) The court may revoke a child protection order under subsection (1)(a) only if it is satisfied the order is no longer necessary to protect the child.

(7) Without limiting the things to which the court may have regard in deciding the application, the court may have regard to a contravention of the child protection order or this Act.

(8) In this section—

“interested person”, for a child, means a parent of the child or a person (other than the chief executive) having custody or guardianship of the child.

PART 5—ADJOURNMENTS OF PROCEEDINGS AND COURT ORDERED CONFERENCES

Division 1—Adjournments of proceedings

Court may adjourn proceedings

63.(1) The Childrens Court may adjourn a proceeding for a court assessment order or child protection order for a child for a period decided by the court.

(2) However, for a court assessment order the total period of

adjournments must not be longer than 4 weeks.

(3) In deciding the period, the court must take into account the principle that it is in the child's best interests for the application for the order to be decided as soon as possible.

(4) The court must state the reasons for the adjournment and may give directions to the parties to the proceeding about the things to be done by them during the adjournment.

Court's powers to make interim orders on adjournment

64.(1) On the adjournment of a proceeding for a court assessment order or child protection order, the Childrens Court may make an interim order—

- (a) granting temporary custody of the child—
 - (i) for a court assessment order—to the chief executive; or
 - (ii) for a child protection order—to the chief executive or a suitable person who is a member of the child's family; or
- (b) 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) The order has effect for the period of the adjournment.

Court's other powers on adjournment of proceedings for child protection orders

65.(1) On the adjournment of a proceeding for a child protection order, the Childrens Court may also make 1 or more of the following orders—

- (a) an order requiring a written social assessment report about the child and the child's family be prepared and filed in the court;
- (b) an order authorising a medical examination of the child and requiring a report of the examination be filed in the court;¹⁸

¹⁸ Section 94 (Carrying out medical examinations or treatment) applies to the medical examination or treatment.

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- (c) subject to subsection (5), an order about the child's contact with the child's family during the adjournment;
- (d) an order requiring an authorised officer to convene a family meeting;
- (e) an order that a conference between the parties be held before the proceeding continues to decide the matters in dispute or to try to resolve the matters;
- (f) an order that the child be separately legally represented.

(2) If the court makes an order under subsection (1)(a) or (b), the court must state the particular issues the report must address.

(3) Subsection (2) does not limit the issues that may be addressed in the report.

(4) Without limiting subsection (1)(c) an order mentioned in the paragraph may limit or otherwise effect the child contact with the child's family.

(5) The court must not make an order under subsection (1)(c) requiring the chief executive to supervise family contact with the child unless the chief executive agrees to supervise the contact.

Division 2—Court ordered conferences

Registrar to appoint chairperson and convene conference

66.(1) If the Childrens Court orders a conference be held between the parties to a proceeding, the registrar of the court must—

- (a) appoint a chairperson for the conference; and
- (b) convene the conference to be held as soon as practicable after the order is made.

(2) The chairperson must have the qualifications or experience prescribed under rules of court made under the *Childrens Court Act 1992*.

Attendance of parties

67.(1) The chairperson and parties must attend the conference.

(2) However, subsection (1) does not require the child to attend the conference.

(3) The parties may be represented by their legal representatives at the conference.

(4) If the child is an Aboriginal or Torres Strait Islander child, a member of the recognised Aboriginal or Torres Strait Islander agency for the child may attend the conference.

(5) However, no one else can attend the conference without the chairperson's approval.

Communications inadmissible in evidence without consent

68. Anything said at the conference is inadmissible in a proceeding before any court other than with the consent of all the parties.

Report of conference

69.(1) As soon as practicable after the conference is finished, the chairperson must file in the court a report of the conference containing the particulars prescribed under rules of court made under the *Childrens Court Act 1992*.

(2) If the report states the parties have reached an agreement in relation to the application the subject of the proceeding and it is practicable for the application to be heard earlier than the adjournment date, the registrar must immediately—

- (a) fix a new time and place for the hearing of the application; and
- (b) advise the chairperson and the parties of the time and place for the hearing of the application.

(3) If the new time and place for the hearing of the application is not the same day the conference finished, the registrar must confirm the advice by written notice.

PART 6—OBLIGATIONS AND RIGHTS UNDER ORDERS

Division 1—Chief executive’s obligations under child protection orders

Chief executive’s obligations about meeting child’s protection needs under certain orders

70.(1) If a child protection order is made for a child, other than an order granting long-term guardianship of the child, the chief executive must take steps that are reasonable and practicable to help the child’s family meet the child’s protection needs.

(2) For subsection (1), the chief executive must have regular contact with the child and the child’s parents or other appropriate members of the child’s family.

Charter of rights for a child in care

71.(1) This section applies if, under a child protection order, the chief executive is granted custody or guardianship of a child.

(2) As far as reasonably practicable, the chief executive must ensure the charter of rights for a child in care in schedule 1 is complied with in relation to the child.

(3) Subsection (2) does not limit another provision of this Act.

(4) The chief executive must ensure the child—

- (a) is told about the charter of rights and its effect; and
- (b) is given written information about the charter of rights unless, having regard to the child’s age or ability to understand, the chief executive reasonably believes the child would not be able to understand the information.

Transition from care

72.(1) This section applies to a child or person who is or has been a child in the custody or under the guardianship of the chief executive.

(2) As far as practicable, the chief executive must ensure the child or person is provided with help in the transition from being a child in care to independence.

(3) Without limiting subsection (2), the help may include financial assistance provided under section 158.¹⁹

Division 2—Orders for supervision

Application of div 2

73. This division applies if, under a child protection order for a child, the chief executive is required to supervise the child's protection in relation to matters stated in the order.

Obligations of child's parents and powers of authorised officers

74.(1) The child's parents or other person with whom the child is living must—

- (a) keep the chief executive informed about where the child is living; and
- (b) allow authorised officers to have reasonable contact with the child.

(2) For subsection (1)(b), an authorised officer may enter the place where the child is living at any reasonable time to have contact with the child and to inquire about the child's care.

(3) The officer may exercise the officer's powers under subsection (2) with the help, and using the force, that is reasonable in the circumstances.

Chief executive's powers

75.(1) For giving effect to the child protection order, the chief executive may, by written notice given to a parent of the child, direct the parent to do or refrain from doing something specifically relating to the supervision matters stated in the order.

¹⁹ Section 158 (Payments for care and maintenance)

(2) The notice must state the following—

- (a) the reasons for the decision;
- (b) that the parent may appeal to a tribunal against the decision only on the ground mentioned in subsection (3);
- (c) the appeal must be made within 28 days after the person receives the notice;
- (d) how to appeal.

(3) The parent may appeal against the decision to give the direction only on the ground that the direction does not specifically relate to the supervision matters.

(4) Despite the *Children's Commissioner and Children's Services Appeals Tribunals Act 1996*, section 50(1),²⁰ a tribunal can not grant a stay of the decision.

Division 3—Obligations under orders granting custody or guardianship to member of family or other suitable person

Obligations of family members to department under orders

76.(1) If, under a child protection order, a member of a child's family is granted custody of the child, the family member must help the chief executive achieve the child's future protection, including, for example, by taking part in meetings with the child's family.

(2) The family member must—

- (a) keep the chief executive informed about where the child is living; and
- (b) allow authorised officers to have reasonable contact with the child.

²⁰ *Children's Commissioner and Children's Services Appeals Tribunals Act 1996*, section 50(1) (Operation and implementation of decisions pending appeal)

Obligations of family members and other persons to child's parents

77.(1) If, under a child protection order for a child, a member of the child's family or another suitable person is granted custody or guardianship of the child, the family member or person must—

- (a) tell the parents where the child is living; and
- (b) give them information about the child's care; and
- (c) provide opportunity for contact between the child and the child's parents and appropriate members of the child's family as often as is appropriate in the circumstances.

(2) However, if the Childrens Court is satisfied compliance with the requirements of subsection (1) would constitute a significant risk to the safety of the child or anyone else with whom the child is living, the court may order that all or part of the requirements do not apply, or apply with stated modifications or apply to a stated extent.

Division 4—Placing child in care**Application of div 4**

78. This division applies if, under an assessment order or child protection order for a child, the chief executive is granted custody or guardianship of the child.

Placing child in care

79. The chief executive may place the child in the care of a licensed care service, approved foster carer or other person the chief executive considers appropriate.²¹

Additional provisions for placing Aboriginal and Torres Strait Islander children in care

80.(1) This section applies if the child is an Aboriginal or a Torres Strait

²¹ See also paragraph (b) of the charter of rights for a child in care in schedule 1.

Islander child.

(2) The chief executive must ensure the recognised Aboriginal or Torres Strait Islander agency for the child is consulted before a decision is made about where or with whom the child will live.

(3) However, if because of urgent circumstances it is not practicable to consult the agency before the decision is made, the chief executive must consult with the agency as soon as practicable after making the decision.

(4) In making a decision about the person in whose care the child should be placed, the chief executive must give proper consideration to placing the child, in order of priority, with—

- (a) a member of the child's family; or
- (b) a member of the child's community or language group; or
- (c) another Aboriginal person or Torres Strait Islander who is compatible with the child's community or language group; or
- (d) another Aboriginal person or Torres Strait Islander.

(5) Also, the chief executive must give proper consideration to—

- (a) the views of the recognised Aboriginal or Torres Strait Islander agency for the child; and
- (b) ensuring the decision provides for the optimal retention of the child's relationships with parents, siblings and other people of significance under Aboriginal tradition or Island custom.

Agreements to provide care for children

81.(1) If an approved foster carer agrees to care for the child, the chief executive and foster carer must enter into a written agreement for the child's care.

(2) The terms prescribed under a regulation must be included in the agreement.

Chief executive to tell parents of placing child in care—assessment order

82.(1) This section applies if the order granting custody of the child to the

chief executive is an assessment order.

(2) Subject to subsections (3) and (4), the chief executive must, as soon as practicable after deciding in whose care to place the child, tell the child's parents in whose care the child is placed and where the child is living.

(3) Before complying with subsection (2), the chief executive must consider the matters prescribed under a regulation.

(4) If, after considering the matters, the chief executive reasonably suspects compliance with subsection (2) could constitute a significant risk to the safety of the child or anyone else with whom the child is living, the chief executive need not comply with the subsection.

Chief executive to notify parents of placing child in care—child protection order

83.(1) This section applies if the order granting custody or guardianship of the child to the chief executive is a child protection order.

(2) Subject to subsections (3) and (4), the chief executive must, as soon as practicable after deciding in whose care to place the child, give written notice of the decision to the child and the child's parents stating the following—

- (a) the person in whose care the child is placed and where the child is living;
- (b) the reasons for the decision;
- (c) that the child and child's parents may appeal to a tribunal against the decision within 28 days after the notice is received;
- (d) how to appeal.

(3) Before complying with subsection (2), the chief executive must consider the matters prescribed under a regulation.

(4) If, after considering the matters, the chief executive reasonably suspects compliance with subsection (2) would constitute a significant risk to the safety of the child or anyone else with whom the child is living, the chief executive may decide not to comply with the subsection.

(5) If the chief executive makes a decision under subsection (4), the chief executive must give written notice of the decision to the child and the child's

parents stating the following—

- (a) that the chief executive has decided not to tell the child's parents the person in whose care the child is placed and where the child is living;
- (b) the reasons for the decision;
- (c) that the child and child's parents may appeal to a tribunal against the decision within 28 days after the notice is received;
- (d) how to appeal.

(6) Subsection (2) does not apply if the chief executive is satisfied it is not reasonably practicable for the chief executive to give the notice because the child is placed in the person's care for less than 7 days.

Chief executive to provide contact between child and child's parents

84.(1) The chief executive must provide opportunity for contact between the child and the child's parents and appropriate members of the child's family as often as is appropriate in the circumstances.

(2) However, the chief executive may refuse to allow, or restrict or impose conditions on, contact between the child and the child's parents or members of the child's family, if the chief executive is satisfied it is in the child's best interests to do so or it is not reasonably practicable in the circumstances for the parents or family member to have the contact.

(3) If the chief executive refuses to allow, or restricts or imposes conditions on contact between the child and a person, the chief executive must give written notice of the decision to each person affected by the decision.

(4) The notice must—

- (a) be given as soon as practicable after the decision is made; and
- (b) state the reasons for the decision; and
- (c) state that the person may appeal to a tribunal against the decision within 28 days after the person receives the notice; and
- (d) state how to appeal.

Chief executive to regularly review arrangements for child's protection

85.(1) This section applies if the order granting custody or guardianship of the child to the chief executive is a child protection order.

(2) The chief executive must review the arrangements in place for the child's protection to ensure the arrangements are in the child's best interests.

(3) The reviews must be conducted at least every 6 months.

Removal from carer's care

86. The chief executive may decide to remove the child from the care of the child's carer if the chief executive is satisfied it is in the child's best interests.

Notice of removal from care

87.(1) This section applies if the order granting custody or guardianship of the child is a child protection order.

(2) As soon as practicable after making the decision to remove the child from the care of the child's carer, the chief executive must give written notice of the decision to the carer and the child unless—

- (a) the child is placed in the carer's care for less than 7 days; or
- (b) if the child is in the care of an approved foster carer—the child is removed under a provision of the agreement under section 81 relating to the duration of the child's care.

(3) The notice to the carer must state the following—

- (a) the reasons for the decision;
- (b) if, under section 88, the carer is entitled to appeal against the decision—
 - (i) that the carer may appeal to a tribunal against the decision; and
 - (ii) the appeal must be made within 28 days after the carer receives the notice; and
 - (iii) how to appeal.

- (4) The notice to the child must state—
- (a) the reasons for the decision; and
 - (b) that the child may appeal to a tribunal against the decision; and
 - (c) the appeal must be made within 28 days after the child receives the notice;
 - (d) how to appeal.

Child carers entitled to appeal against removal from carer's care

88. The child's carer is entitled to appeal against the decision to remove the child from the carer's care if—

- (a) the carer is a relative of the child or was regarded by the child as a member of the child's family before the child was placed in the carer's care; or
- (b) the carer is an approved foster carer and—
 - (i) the child protection order for the child grants the chief executive long-term guardianship of the child; or
 - (ii) the stated reason for the decision is the carer is no longer a suitable person to have the care of the child or the carer is no longer able to meet the standards of care in the statement of standards for the child.

Division 5—Property of child

Application of div 5

89. This division applies if, under a child protection order, the chief executive is granted custody or guardianship of a child.

Management of child's property by public trustee

90.(1) This section applies if—

- (a) the child has an entitlement to property; and

- (b) the chief executive has powers and duties in relation to the property; and
- (c) the chief executive is satisfied it is in the child's best interests for the public trustee to manage the property.

(2) The chief executive may give written notice to the public trustee requiring the public trustee to manage the property for the child.

(3) On receipt of the notice, the public trustee becomes the manager of the property and has the powers and duties in relation to it under the *Public Trustee Act 1978*, part 6,²² as if the child were an incapacitated person.

Audit of trust by public trustee

91.(1) This section applies if the child is a beneficiary under a trust.

(2) For the *Public Trustee Act 1978*, section 60,²³ the chief executive is a person interested in the trust.

PART 7—GENERAL

Report about person's criminal history etc.

92.(1) This section applies if—

- (a) the chief executive intends to give a report or make a recommendation to the Childrens Court, or is asked or required by the court to give a report or make a recommendation to the court, about—
 - (i) a child's parents; or
 - (ii) a person to whom the court is considering granting custody or guardianship of a child; or
- (b) the chief executive proposes to place a child who is in the chief

²² *Public Trustee Act 1978*, part 6 (Management of estates of incapacitated persons)

²³ *Public Trustee Act 1978*, section 60 (Public trustee may direct audit of trusts)

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executive's custody or guardianship in the care of a person, other than an approved foster carer, who has agreed to be the child's carer (the "**proposed carer**").

(2) For ensuring the chief executive or court has all relevant information the chief executive or court needs for assessing the suitability of a person to have the custody, guardianship or care of a child who is found to be a child in need of protection, the chief executive may ask—

- (a) the commissioner of the police service to give the chief executive a written report about the criminal history and domestic violence history of—
 - (i) the parents, person to whom the court is considering granting custody or guardianship or an adult member of the parents' or person's household; or
 - (ii) the proposed carer or an adult member of the proposed carer's household; and
- (b) the chief executive for transport to give the chief executive a written report about the traffic history of the parents, person to whom the court is considering granting custody or guardianship of the child or proposed carer.

(3) The commissioner of the police service or chief executive for transport must comply with the request.

(4) Subsection (2)(a) applies to the criminal history or domestic violence history in the commissioner's possession or to which the commissioner has access.

(5) Subsection (3) applies despite the *Traffic Act 1949*, section 14A.²⁴

(6) Subsection (7) applies to a person in relation to whom the commissioner of the police service must give a report mentioned in subsection (2).

(7) Also, the commissioner may give the chief executive a copy of, or extract from, the commissioner's records in relation to—

- (a) the commission or alleged commission of the following offences by the person—

²⁴ *Traffic Act 1949*, section 14A (Release of driver licence and traffic history)

- (i) a personal offence against anyone;
 - (ii) an offence against the *Drugs Misuse Act 1986*;
 - (iii) an offence against section 161, 162, 163, 164 or 165;²⁵ or
- (b) an application for a protection order under the *Domestic Violence (Family Protection) Act 1989* in which the person is an aggrieved or respondent spouse under that Act.

Family meetings

93.(1) This section applies if—

- (a) the chief executive is satisfied a child is a child in need of protection and action should be taken to ensure the child's protection; or
- (b) the Childrens Court orders a family meeting be convened.

(2) An authorised officer must—

- (a) take reasonable steps to convene a meeting with the child's parents and, if the officer considers it is in the child's best interests, the child and other family members, to provide an opportunity for decisions to be made to ensure, or contribute towards ensuring, the child's protection; and
- (b) give the child's parents a written statement of the reasons the chief executive considers the child is a child in need of protection; and
- (c) tell the child why the officer considers the child is a child in need of protection.²⁶

(3) If the child is an Aboriginal or Torres Strait Islander child, a member of the recognised Aboriginal or Torres Strait Islander agency for the child may also attend the meeting.

(4) The officer must record in writing the decisions made at the meeting

²⁵ Section 161 (Offence to remove child from carer), 162 (Offence to remove child from custody or guardianship), 163 (Offence to refuse contact with child in custody or guardianship), 164 (Offence for person to take child out of State) or 165 (Offence not to comply with certain orders)

²⁶ Section 189 deals with compliance with provisions about giving information.

about the child's protection and, as soon as practicable after the meeting, give a copy of the record to the child's parents, the child and anyone else the officer considers appropriate.

(5) If the meeting is convened under a court order, the officer must file the record in the court.

Carrying out medical examinations or treatment

94.(1) This section applies if—

(a) an authorised officer or police officer—

(i) takes a child into the chief executive's custody; and

(ii) seeks medical examination of, or treatment for, the child;²⁷
or

(b) an order for a child authorises the child's medical examination or treatment.²⁸

(2) A doctor may medically examine or treat the child.

(3) Subsection (2) applies even though the child's parents have not consented to the examination or treatment.

(4) However, subsection (2) is subject to the rights the child has in relation to the examination or treatment.

(5) Also, the doctor may only carry out medical treatment that is reasonable in the circumstances.

(6) If this section applies because of subsection (1)(a), the doctor must give the chief executive or commissioner of the police service a report about the medical examination or treatment.

(7) For the purpose of deciding any liability in relation to the carrying out

²⁷ Under section 18(6), an authorised officer or police officer may arrange for a child's medical examination or treatment.

²⁸ Under section 28(1)(b) a temporary assessment order may authorise the medical examination or treatment of the child. Also, under section 44(1)(b) a court assessment order may authorise the medical examination or treatment of the child.

of the examination or treatment, the doctor is taken to have the consent of the child's parents to the examination or treatment.

Carrying out social assessments

95.(1) If, on an application for a child protection order, the Childrens Court makes an order requiring a social assessment of the child and the child's family, an appropriately qualified practitioner may carry out the social assessment.²⁹

(2) The practitioner does not incur liability for an act or omission done or omitted to be done honestly and without negligence in carrying out the social assessment.

Chief executive's custody or guardianship of child continues pending decision on application for order

96.(1) This section applies if a child is in the chief executive's custody or guardianship under an order and before the order ends an application is made for the extension or variation of the order or for another order.

(2) The custody or guardianship continues until the application is decided unless the Childrens Court orders an earlier end to the custody or guardianship.

²⁹ See section 65(1)(a) (Court's other powers on adjournment of proceedings for child protection orders).

CHAPTER 3—CHILDRENS COURT PROCEEDINGS

PART 1—PRELIMINARY

Application of ch 3

97. This chapter applies to a proceeding under this Act.

Definition for ch 3

98. In this chapter—

“**order**” means a court assessment order or child protection order.

PART 2—JURISDICTION

Court’s jurisdiction and constitution

99.(1) The Childrens Court must be constituted by a judge when exercising its jurisdiction to hear appeals against decisions of the court constituted in another way.

(2) The Childrens Court must be constituted by a judge or magistrate when exercising its jurisdiction to decide applications for child protection orders.

(3) The Childrens Court must be constituted by a judge or magistrate or 2 justices of the peace (magistrates court) when exercising its jurisdiction to—

- (a) decide applications for court assessment orders; or
- (b) make interim orders on applications for court assessment orders or child protection orders or adjourn the hearing of the

applications.³⁰

(4) Subsection (3) has effect despite the *Justices of the Peace and Commissioners for Declaration Act 1991*, section 29(4).³¹

Court's jurisdiction unaffected by pending criminal proceeding

100.(1) The Childrens Court's jurisdiction is not affected merely because a criminal proceeding is pending against—

- (a) the child concerned; or
- (b) a parent of the child; or
- (c) another party to the proceeding in the court; or
- (d) anyone else.

(2) Subsection (1) applies whether or not the criminal proceeding has arisen out of the same or similar facts as those out of which the proceeding in the court has arisen.

PART 3—PROCEDURAL PROVISIONS

Division 1—Court's procedures

Court's paramount consideration

101. In exercising its jurisdiction or powers, the Childrens Court must regard the welfare and best interests of the child as paramount.

³⁰ Under the *Acts Interpretation Act 1954*, section 24AA, the court has power to amend or repeal an instrument or decision it is authorised or required to make. The power is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

³¹ Under the *Justices of the Peace and Commissioners for Declarations Act 1991*, section 29(4), the exercise of powers of justices of the peace (magistrates court) constituting a court are limited unless expressly provided in the Act conferring powers on the justices.

Evidence

102.(1) In a proceeding, the Childrens Court is not bound by the rules of evidence, but may inform itself in any way it thinks appropriate.

(2) If, on an application for an order, the Childrens Court is to be satisfied of a matter, the court need only be satisfied of the matter on the balance of probabilities.

Court to ensure parties understand proceeding

103.(1) In a proceeding for a child, the Childrens Court must, as far as practicable, ensure the child's parents and other parties to the proceeding (including the child if present) understand the nature, purpose and legal implications of the proceeding and of any order or ruling made by the court.

(2) If the child, parent of a child or other party to a proceeding has a difficulty communicating in English or a disability that prevents him or her from understanding or taking part in the proceeding, the Childrens Court must not hear the proceeding without an interpreter to translate things said in the proceeding or a person to facilitate his or her taking part in the proceeding.

Expert help

104.(1) In a proceeding on an application for an order, the Childrens Court may appoint a person having a special knowledge or skill to help the court.

(2) The court may act under subsection (1) on the court's own initiative or on the application of a party to the proceeding.

Division 2—Right of appearance and representation at hearing**Right of appearance and representation**

105.(1) In a proceeding on an application for an order for a child, the child, the child's parents and the other parties may appear in person or be represented by a lawyer.

(2) Also, if the child's parents for any reason can not appear in person,

another person appointed in writing by the parents may, with the leave of the court, present their views and wishes.

Legal representation of child's parents

106.(1) If, in a proceeding on an application for an order for a child, a parent of the child appears in the Childrens Court but is not represented by a lawyer, the court may continue with the proceeding only if it is satisfied the parent has had reasonable opportunity to obtain legal representation.

(2) Subsection (1) does not prevent the court exercising powers under chapter 2, part 5, division 1.³²

Separate legal representation of child

107.(1) If, in a proceeding on an application for an order for a child, the Childrens Court considers it is necessary in the child's best interests for the child to be separately represented by a lawyer, the court may—

- (a) order that the child be separately represented by a lawyer; and
- (b) make the other orders it considers necessary to secure the child's separate legal representation.

(2) Without limiting subsection (1), the court must consider making orders about the child's separate legal representation if—

- (a) the application for the order is contested by the child's parents; or
- (b) the child opposes the application.

(3) The lawyer must—

- (a) act in the child's best interests regardless of any instructions from the child; and
- (b) as far as possible, present the child's views and wishes to the court.

³² Chapter 2 (Protection of children), part 5 (Adjournments of proceedings and court ordered conferences), division 1 (Adjournments of proceedings)

Legal representation of more than 1 child

108.(1) A lawyer may represent more than 1 child in the same proceeding.

(2) However, if the court considers a lawyer should not represent more than 1 child because of a conflict of interest, or a possible conflict of interest, the court may order that a child be represented by another lawyer.

Child can not be compelled to give evidence

109.(1) In a proceeding on an application for an order for a child, the child may only be called to give evidence with the leave of the Childrens Court.

(2) The court may grant leave only if the child—

- (a) is at least 12 years; and
- (b) is represented by a lawyer; and
- (c) agrees to give evidence.

(3) If the child gives evidence, he or she may be cross examined only with the leave of the court.

Court may hear submissions from non-parties to proceeding

110.(1) In a proceeding on an application for an order for a child, the Childrens Court may hear submissions from the following persons—

- (a) a member of the child's family;
- (b) anyone else the court considers is able to inform it on any matter relevant to the proceeding.

(2) A submission may be made by a person's lawyer.

*Division 3—General***Transfer of proceedings**

111.(1) If a magistrate constituting the Childrens Court is of the opinion a

proceeding before the magistrate should be heard by the court constituted by a magistrate at another place, the magistrate may order that the proceeding be transferred to the court constituted by a magistrate at the other place.

(2) A magistrate may act under subsection (1) on the magistrate's own initiative or on the application of a party to the proceeding.

Hearing of applications together

112.(1) The Childrens Court may hear 2 or more applications for orders together if, before any of the applications are decided, a party to the proceeding for any of the applications asks that the applications be heard together and the court considers it is in the interests of justice that the applications be heard together.

(2) Subsection (1) applies even though the parties, or all of the parties, to the proceedings are not the same.

Costs

113. The parties, other than the child, to a proceeding in the Childrens Court for an order must pay their own costs of the proceeding.

PART 4—COURT APPEALS

Who may appeal

114.(1) The following persons may appeal to the appellate court against a decision on an application for a temporary assessment order for a child—

- (a) the applicant;
- (b) the child;
- (c) the child's parents.

(2) A party to the proceeding for an application for a court assessment order or child protection order for a child may appeal to the appellate court against a decision on the application.

How to start appeal

115.(1) The appeal is started by filing a written notice of appeal with the registrar of the appellate court.

(2) The registrar must give the decision-maker a copy of the notice.

(3) The appellant must serve a copy of the notice on the other persons entitled to appeal against the decision.

(4) The notice of appeal must be filed within 28 days after the decision is made.

(5) The court may at any time extend the period for filing the notice of appeal.

(6) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

Stay of operation of decisions

116.(1) The appellate court may stay a decision appealed against to secure the effectiveness of the appeal.

(2) A stay—

(a) may be given on the reasonable conditions the court considers appropriate; and

(b) operates for the period fixed by the court; and

(c) may be revoked or amended by the court.

(3) However, the period of a stay must not extend past the time when the court decides the appeal.

(4) An appeal against a decision affects the decision, or carrying out of the decision, only if the decision is stayed.

Hearing procedures

117.(1) An appeal against a decision of a magistrate on an application for a temporary assessment order is not restricted to the material before the magistrate.

(2) An appeal against another decision must be decided on the evidence

and proceedings before the Childrens Court.

(3) However, the appellate court may order that the appeal be heard afresh, in whole or part.

Powers of appellate court

118. In deciding an appeal, the appellate court may—

- (a) confirm the decision appealed against; or
- (b) vary the decision appealed against; or
- (c) set aside the decision and substitute another decision.

CHAPTER 4—INTERSTATE TRANSFERS OF GUARDIANSHIP AND CUSTODY OF CHILDREN

Meaning of “parent” in ch 4

119. In this chapter—

“parent”, of a child, means the person who would be the child’s guardian if an order or interstate order was not in force for the child.

Transfers from other States

120.(1) This section applies if—

- (a) an interstate welfare authority has custody or guardianship of a child under an interstate order; and
- (b) the child has entered, or is about to enter, Queensland; and
- (c) the authority asks the chief executive to make a declaration under this section.

(2) The chief executive may, by written declaration, assume custody or guardianship of the child—

- (a) if the interstate order is effective for less than 2 years—for not

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- more than the remainder of the period stated in it; or
- (b) if the interstate order is effective for 2 years or more but is not effective until the child turns 18 years—for the lesser of—
- (i) the remainder of the period stated in it; or
 - (ii) 2 years; or
- (c) if the interstate order is effective until the child turns 18 years—until the child turns 18 years.

(3) On the making of the declaration, the interstate order is taken to be a child protection order under the terms stated in the declaration.

(4) For subsection (3), the chief executive may declare the interstate order applies to the chief executive's custody or guardianship to and only to the stated extent, or with the stated changes necessary, to make it consistent with this Act.

Notice of declaration

121. As soon as practicable after making the declaration about assuming the custody or guardianship of a child, the chief executive must—

- (a) give a copy of the declaration to the child and the child's parents; and
- (b) explain the terms and effects of the declaration to them.

Transfer to other States

122.(1) The chief executive may arrange for an interstate welfare authority to assume the custody or guardianship of a child who is under the chief executive's custody or guardianship under this Act.

(2) Before making the arrangement, the chief executive must give written notice of the arrangement to—

- (a) the child and the child's parents; and
- (b) if the child has a carer—the carer.

(3) The notice must state the following—

- (a) the grounds for the arrangement;

- (b) the facts and circumstances forming the basis for the grounds;
- (c) that the child, child's parents and, if applicable, the carer, may make, within a stated period of at least 14 days, written submissions to the chief executive about why the arrangement should not be made.

(4) If, after considering all written submissions made within the stated time, the chief executive still considers grounds exist to make the arrangement, the chief executive may make the arrangement.

(5) The arrangement can not take effect until—

- (a) the end of the time to appeal against the decision to make the arrangement; or
- (b) if an appeal is made against the decision—the appeal is decided.

(6) The chief executive must give written notice of the chief executive's decision to the child, the child's parents and, if applicable, the carer.

(7) The notice must—

- (a) be given as soon as practicable after the decision is made; and
- (b) state the reasons for the decision; and
- (c) state that the child, child's parents and, if applicable, the carer may appeal to a tribunal against the decision to make the arrangement within 28 days after the notice is received.

CHAPTER 5—REGULATION OF CARE

PART 1—STANDARDS OF CARE

Statement of standards

123.(1) The chief executive must take reasonable steps to ensure a child who, for the purposes of this Act, is placed in the care of an approved foster carer, licensed care service or departmental care service, is cared for in a way that meets the following standards (the “**statement of standards**”)—

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- (a) the child's dignity and rights will be respected at all times;
- (b) the child's needs for physical care will be met, including adequate food, clothing and shelter;
- (c) the child will receive emotional care that allows him or her to experience being cared about and valued and that contributes to the child's positive self-regard;
- (d) the child's needs relating to his or her culture and ethnic grouping will be met;
- (e) the child's material needs relating to his or her schooling, physical and mental stimulation, recreation and general living will be met;
- (f) the child will receive education, training or employment opportunities relevant to the child's age and ability;
- (g) the child will receive positive guidance when necessary to help him or her to change inappropriate behaviour;
- (h) the child will receive dental, medical and therapeutic services necessary to meet his or her needs;
- (i) the child will be given the opportunity to participate in positive social and recreational activities appropriate to his or her developmental level and age;
- (j) the child will be encouraged to maintain family and other significant personal relationships;
- (k) if the child has a disability—the child will receive care and help appropriate to the child's special needs.

(2) For subsection (1)(g), techniques for managing the child's behaviour must not include corporal punishment or punishment that humiliates, frightens or threatens the child in a way that is likely to cause emotional harm.

(3) For subsection (1)(j), if the chief executive has custody or guardianship of the child, the child's carer must act in accordance with the chief executive's reasonable directions.

(4) The application of the standards to the child's care must take into account what is reasonable having regard to—

- (a) the length of time the child is in the care of the carer or care

- service; and
- (b) the child's age and development.

PART 2—LICENSING OF CARE SERVICES AND APPROVAL OF FOSTER CARERS

Division 1—Preliminary

Purpose of pt 2

124. The purpose of this part is to provide a system of licensing services, and approving individuals, to provide care for children to enable the chief executive to ensure the care of children in the chief executive's custody or guardianship meets the standards of care in the statement of standards.

Division 2—Licensing of care services

Individuals can not hold licences

125. An individual is not eligible to hold a licence.

Application for, or renewal of, licence

126.(1) An application for, or renewal of, a licence to provide care services must—

- (a) be made by a corporation; and
- (b) be made to the chief executive in the approved form; and
- (c) nominate an adult to be nominee for the licence; and
- (d) if the application is for renewal of a licence—be made at least 30 days before the licence ends.

(2) The application form approved by the chief executive may require the

disclosure of the criminal history, domestic violence history and traffic history of a person to whom section 143 applies.³³

Restrictions on granting application

127. The chief executive must not grant the application unless the chief executive is satisfied—

- (a) the applicant is a suitable entity to provide care services; and
- (b) the persons who will be responsible for directly managing the service are suitable persons; and
- (c) the standard of care provided or to be provided complies or will comply with the statement of standards; and
- (d) methods for the selection, training and management of people engaged in providing the services are suitable.

Grant of application

128.(1) If the chief executive decides to grant the application, the chief executive must issue and give to the applicant a licence.

(2) The licence must state the licensed premises.

(3) The licence may be issued subject to the reasonable conditions the chief executive considers appropriate.

Duration of licence

129. The licence or its renewal has effect for 3 years.

Refusal of application

130.(1) If the chief executive decides to refuse the application, the chief executive must give written notice of the decision to the applicant.

(2) The notice must—

- (a) be given within 10 days after the decision is made; and

³³ Section 143 (Inquiries about certain persons' suitability)

- (b) state the reasons for the decision; and
- (c) state that the person may appeal to a tribunal against the decision within 28 days after the notice is received; and
- (d) state how to appeal.

Nominees

131.(1) The nominee for a licence is responsible for ensuring—

- (a) the standard of care provided by the service complies with the statement of standards; and
- (b) the persons engaged in the direct care of children for the service are suitable persons.

(2) An adult may be a nominee for more than 1 licence.

Division 3—Approval of foster carers

Only individuals may hold certificates of approval

132.(1) Only an individual is eligible to hold a certificate of approval as an approved foster carer.

(2) Two or more individuals may hold a certificate jointly.

(3) A person living with another person as husband and wife on a genuine domestic basis may only hold a certificate jointly with the other person.

Application for approval or renewal of approval

133.(1) An application for, or renewal of, a certificate of approval as an approved foster carer—

- (a) must be made to the chief executive in the approved form; and
- (b) if the application is for renewal of a certificate of approval—must be made before the certificate ends.

(2) The application form approved by the chief executive may require the

disclosure of the criminal history, domestic violence history and traffic history of a person to whom section 143 applies.³⁴

Restrictions on granting application

134. The chief executive must not grant the application unless the chief executive is satisfied the applicant—

- (a) is a suitable person to be an approved foster carer, and all members of the applicant's household are suitable persons to associate on a daily basis with children; and
- (b) is able to meet the standards of care in the statement of standards; and
- (c) is able to help in appropriate ways towards achieving plans for the child's protection.

Grant of application

135.(1) If the chief executive decides to grant the application, the chief executive must issue and give to the applicant a certificate of approval as an approved foster carer.

(2) The certificate must state the type of care approved to be provided.

(3) The certificate may be issued subject to the reasonable conditions the chief executive considers appropriate.

Duration of approval

136. The certificate of approval has effect for—

- (a) 1 year for an initial certificate; or
- (b) 2 years for the renewal of a certificate.

Refusal of application

137.(1) If the chief executive decides to refuse the application, the chief

³⁴ Section 143 (Inquiries about certain persons' suitability)

executive must give written notice of the decision to the applicant.

(2) The notice must—

- (a) be given within 10 days after the decision is made; and
- (b) state the reasons for the decision; and
- (c) state that the person may appeal to a tribunal against the decision within 28 days after the notice is given; and
- (d) state how to appeal.

Division 4—Amendment, suspension and cancellation of authorities

Amendment of authority on application of holder

138.(1) The holder of an authority may apply to the chief executive for an amendment of the authority.

(2) The chief executive must consider the application and decide whether to grant or refuse it within 28 days after receiving it.

(3) If the chief executive is satisfied the amendment is necessary or desirable, the chief executive must grant the application.

(4) If the chief executive is not satisfied the amendment is necessary or desirable, the chief executive must—

- (a) refuse the application; and
- (b) give written notice to the applicant of the decision.

(5) The notice must—

- (a) be given within 10 days after the chief executive decides to refuse the application; and
- (b) state the reasons for the decision; and
- (c) state that the applicant may appeal to a tribunal against the decision within 28 days after the notice is received; and
- (d) state how to appeal.

Amendment of authority by the chief executive

139.(1) The chief executive may amend an authority at any time if—

- (a) the holder agrees to the amendment; or
- (b) the chief executive considers it is necessary or desirable because—
 - (i) the holder is not meeting the standards required under the authority or a condition of the authority; or
 - (ii) the holder has contravened a provision of this Act; or
 - (iii) the authority was issued because of a materially false or misleading representation or declaration (made either orally or in writing); or
 - (iv) of another circumstance prescribed under a regulation.

(2) If the chief executive considers it necessary or desirable to amend an authority under subsection (1)(b), the chief executive must give the holder a written notice under this section.

(3) The notice must state the following—

- (a) the proposed amendment and the grounds for the amendment;
- (b) the facts and circumstances forming the basis for the grounds;
- (c) that the holder may make written representations to the chief executive to show why the authority should not be amended;
- (d) the term, at least 28 days after the notice is given to the holder, within which the representations may be made.

(4) After the end of the term stated in the notice, the chief executive must consider the representations properly made by the holder.

(5) If the chief executive is satisfied the amendment is necessary or desirable, the chief executive must give written notice to the holder of the decision.

(6) The notice must—

- (a) be given within 10 days after the decision is made; and
- (b) state the reasons for the decision; and
- (c) state that the holder may appeal to a tribunal against the decision

within 28 days after the notice is received; and

- (d) state how to appeal.

(7) If the chief executive is not satisfied the amendment is necessary or desirable, the chief executive must, as soon as practicable, give written notice to the holder of the decision.

Authority may be suspended or cancelled

140. The chief executive may suspend or cancel an authority on the following grounds—

- (a) the holder is not meeting the standards required under the authority or another condition of the authority;
- (b) the holder has contravened a provision of this Act;
- (c) the authority was issued because of a materially false or misleading representation or declaration (made either orally or in writing);
- (d) it is inappropriate for the holder to continue to hold the authority because of a circumstance prescribed under a regulation.

Procedure for suspension or cancellation

141.(1) If the chief executive considers a ground exists to suspend or cancel the authority (the “**proposed action**”), the chief executive must give the holder written notice that states the following—

- (a) the proposed action;
- (b) the grounds for the proposed action;
- (c) the facts and circumstances forming the basis for the grounds;
- (d) if the proposed action is suspension of the authority, the proposed suspension period;
- (e) that the holder may make, within a stated time of at least 28 days, written representations to show why the proposed action should not be taken.

(2) If, after considering all written representations made within the stated

time, the chief executive still considers a ground to take the proposed action exists, the chief executive may—

- (a) if the proposed action was to suspend the authority for a stated period—suspend the authority for not longer than the proposed suspension period; or
- (b) if the proposed action was to cancel the authority—either cancel the authority or suspend it for a period.

(3) The chief executive must inform the holder of the decision by written notice.

(4) The notice must be given within 10 days after the chief executive makes the decision.

(5) If the chief executive decides to suspend or cancel the authority, the notice must state—

- (a) the reasons for the decision; and
- (b) that the holder may appeal to a tribunal against the decision within 28 days after the notice is received; and
- (c) how to appeal.

(6) The chief executive must record particulars of the suspension or cancellation on the authority.

Amendment, suspension and cancellation of authorities

142.(1) This section applies if the chief executive—

- (a) grants an application to amend an authority or decides to amend an authority; or
- (b) decides to suspend or cancel an authority.

(2) The holder of the authority must, on receipt of written notice by the chief executive, give the authority to the chief executive within the period, not less than 7 days, stated in the notice.

(3) If a suspended authority is returned to the chief executive, the chief executive must return it to the holder at the end of the suspension.

(4) A suspension or cancellation takes effect on the later of—

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- (a) the day on which the notice is given; or
- (b) if a later day is stated in the notice—the later day.

(5) If an authority is returned to the chief executive for amendment, the chief executive must—

- (a) cancel the existing authority; and
- (b) issue and give to the holder a new authority containing the amendment; and
- (c) give the holder written notice stating—
 - (i) the old authority has been cancelled; and
 - (ii) the way in which the new authority is different from the old authority.

(6) The new authority—

- (a) takes effect on the later of—
 - (i) the day on which the notice is given to the holder; or
 - (ii) if a later day is stated in the notice—the later day; and
- (b) has effect for the remainder of the term of the old authority.

(7) In this section—

“**holder**”, of an authority, includes a former holder of an authority.

*Division 5—General***Inquiries about certain persons’ suitability**

143.(1) This section applies—

- (a) for a licence—
 - (i) to the person who will be or is responsible for directly managing the service under the licence; and
 - (ii) to anyone else directly engaged in the care of children for the service; and
- (b) for a certificate of approval—

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- (i) to an applicant for, or holder of, the certificate; and
- (ii) to another adult member of the household of an applicant for, or holder of, the certificate.

(2) Without limiting the matters to which the chief executive may have regard in considering the suitability of a person to which this section applies, the chief executive may—

- (a) ask the commissioner of the police service for a written report about the person's criminal history and domestic violence history; and
- (b) ask the chief executive for transport for a written report about the person's traffic history.

(3) If asked by the chief executive—

- (a) the commissioner of the police service must give the chief executive a written report about the person's criminal history and domestic violence history; and
- (b) the chief executive for transport must give the chief executive a written report about the person's traffic history.

(4) Subsection (3)(a) applies to the criminal history or domestic violence history in the commissioner's possession or to which the commissioner has access.

(5) Subsection (3)(b) applies despite the *Traffic Act 1949*, section 14A.³⁵

Effect of failure to decide application for, or for renewal of, authority

144.(1) If the chief executive fails to decide an application for an authority within 90 days after it is properly made—

- (a) the chief executive is taken to have decided to refuse the application; and
- (b) the applicant is taken to have received notice of the decision at the end of the time.

(2) If an application is properly made for renewal of an authority, the

³⁵ *Traffic Act 1949*, section 14A (Release of driver licence and traffic history)

authority is taken to continue to have effect from the day that it would, apart from this subsection, have ended until the application is decided.

(3) However, if the application is refused, the authority continues to have effect until notice of the decision is given to the applicant.

(4) Subsection (2) does not apply if the authority is earlier suspended or cancelled.

Offence to contravene condition of licence

145. A licensee must not contravene a condition of the licence.

Maximum penalty—50 penalty units.

Authorised officer may require production of licence, approval etc.

146.(1) An authorised officer may—

- (a) require a licensee or holder of a certificate of approval to produce to the officer—
 - (i) the person's licence or certificate of approval; or
 - (ii) a document required to be kept by the person under this Act; and
- (b) inspect, take extracts from, make copies of or keep a document produced to the officer under paragraph (a).

(2) An authorised officer—

- (a) may keep a document under subsection (1)(b) only to take copies of it; and
- (b) must, as soon as practicable after taking the copies, return it to the person who produced it.

Authorised officer may enter and inspect licensed premises

147.(1) An authorised officer may, at any reasonable time, enter and inspect licensed premises to ensure this Act is being complied with.

(2) The officer may be accompanied by a police officer and may talk to anyone involved in providing the care service.

CHAPTER 6—ADMINISTRATION

PART 1—AUTHORISED OFFICERS

Appointment

148.(1) The chief executive may appoint any of the following persons to be an authorised officer—

- (a) an officer or employee of the department;
- (b) a person included in a class of persons declared by regulation to be eligible for appointment as an authorised officer.

(2) However, the chief executive may appoint a person to be an authorised officer only if—

- (a) in the chief executive's opinion, the person has the necessary expertise or experience to be an authorised officer; or
- (b) the person has satisfactorily finished training approved by the chief executive.

Limitation of powers

149.(1) The powers of an authorised officer may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice of the chief executive given to the officer.

(2) Notice under subsection (1)(c) may be given orally, but must be confirmed in writing as soon as practicable after it is given.

Conditions of appointment

150.(1) An authorised officer holds office on the conditions stated in the officer's instrument of appointment.

(2) An authorised officer—

- (a) if the appointment provides for a term of appointment—ceases

holding office at the end of the term; and

- (b) may resign by signed notice of resignation given to the chief executive.

Identity card

151.(1) The chief executive must give each authorised officer an identity card.

(2) The identity card must—

- (a) contain a recent photograph of the officer; and
- (b) be signed by the officer; and
- (c) identify the person as an authorised officer under this Act; and
- (d) include an expiry date.

(3) A person who ceases to be an authorised officer must return his or her identity card to the chief executive within 21 days after the person ceases to be an authorised officer, unless the person has a reasonable excuse for not returning it.

Maximum penalty—40 penalty units.

(4) This section does not prevent the giving of a single identity card to a person for this Act and other Acts.

Production of identity card

152.(1) An authorised officer may exercise a power under this Act in relation to someone else (the “**other person**”) only if the officer first produces his or her identity card for the other person’s inspection.

(2) If, for any reason, it is not practicable to comply with subsection (1), the officer must produce the identity card for the other person’s inspection at the first reasonable opportunity.

Authorised officer to give notice of damage

153.(1) This section applies if an authorised officer damages property in the exercise of a power under this Act.

(2) The authorised officer must immediately give written notice of the particulars of the damage to the person who appears to the authorised officer to be the property's owner.

(3) If the authorised officer believes the damage was caused by a latent defect in the property or other circumstances beyond the authorised person's control, the authorised officer may state this in the notice.

(4) If, for any reason, it is not practicable to comply with subsection (2), the authorised officer must—

- (a) leave the notice at the place where the damage happened; and
- (b) ensure the notice is left in a reasonably secured way in a conspicuous position.

(5) This section does not apply to damage the authorised officer believes, on reasonable grounds, is trivial.

Compensation

154.(1) A person may claim from the State the cost of repairing or replacing property damaged in the exercise or purported exercise of a power under this Act.

(2) The cost may be claimed and ordered to be paid in a proceeding—

- (a) brought in a court of competent jurisdiction for the recovery of the amount claimed; or
- (b) for an offence against this Act brought against the person claiming the amount.

(3) A court may order an amount be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(4) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

PART 2—GENERAL

Delegation by chief executive

155. The chief executive may delegate the chief executive’s powers under this Act to an appropriately qualified officer or employee of the department.

Approved forms

156. The chief executive may approve forms for use under this Act.

Coordination

157.(1) Each service provider should take all reasonable steps to coordinate decision-making and delivery of services to children and families.

(2) The chief executive is responsible for—

- (a) ensuring ways exist to coordinate the roles and responsibilities of service providers in promoting the protection of children and child protection services; and
- (b) establishing ways to coordinate the roles and responsibilities of service providers to investigate particular cases of harm to children and to take action to secure the protection of children.

(3) In this section—

“service provider” means—

- (a) the chief executive of a department or an organisation involved in the administration of this Act; or
- (b) the chief executive of a department or an organisation involved in providing services relating to the purpose of this Act.

Payments for care and maintenance

158.(1) The chief executive may pay the allowance prescribed under a regulation to a child’s carer for the child’s care and maintenance.

(2) Also, the chief executive may pay the amount decided by the chief

executive towards expenses incurred in the care and maintenance of a person who has been a child in the custody or under the guardianship of the chief executive to the person or the person's carer to help the person with the transition from being a child in care to independence.

(3) Subsections (1) and (2) have effect subject to appropriation by Parliament of an amount for the purposes.

CHAPTER 7—ENFORCEMENT AND LEGAL PROCEEDINGS

PART 1—OFFENCES

Obstruction of authorised officer etc.

159.(1) A person must not obstruct an authorised officer or police officer in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(2) However, a child does not commit an offence against subsection (1) merely because the child resists being taken into custody under this Act for the child's protection or being moved to a safe place under section 21.

Impersonation of authorised officer

160. A person must not pretend to be an authorised officer.

Maximum penalty—40 penalty units.

Offence to remove child from carer

161.(1) In this section—

“**child**” means a child in the chief executive's custody or guardianship under an assessment order or child protection order.

(2) A person must not unlawfully remove a child from the care of the child's carer.

Maximum penalty—150 penalty units or 18 months imprisonment.

(3) A person must not keep a child who has been taken in contravention of subsection (2).

Maximum penalty for subsection (3)—150 penalty units or 18 months imprisonment.

Offence to remove child from custody or guardianship

162.(1) A person must not unlawfully remove a child from the custody or guardianship of another person who has the custody or guardianship under this Act.

Maximum penalty—150 penalty units or 18 months imprisonment.

(2) A person must not keep a child who has been taken in contravention of subsection (1).

Maximum penalty for subsection (2)—150 penalty units or 18 months imprisonment.

Offence to refuse contact with child in custody or guardianship

163.(1) In this section—

“**child**” means a child in the chief executive's custody or guardianship under an assessment order or child protection order.

(2) This section applies if an authorised officer reasonably asks a person for permission to enter premises for the purpose of having contact with a child in the premises to ensure the child's protection.

(3) The person must not refuse the officer's request unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—50 penalty units.

Offence for person to take child out of State

164. A person who has the care of a child in the chief executive's custody

or guardianship must not take the child out of the State with the intention of obstructing, preventing or defeating the administration or enforcement of this Act.

Maximum penalty—150 penalty units or 18 months imprisonment.

Offence not to comply with certain orders

165.(1) A child's parent must not knowingly contravene a provision of an order directing the parent not to have contact (direct or indirect)—

- (a) with the child; or
- (b) with the child other than when a stated person or a person of a stated category is present.

Maximum penalty—100 penalty units or 1 year's imprisonment.

(2) For subsection (1), a person who is in the Childrens Court when the order is made or is given notice of the order is taken to know the contents of the order.

PART 2—WARRANT FOR APPREHENSION OF CHILD

Application for warrant for apprehension of child

166.(1) An authorised officer or police officer may apply to a magistrate for a warrant for apprehension of a child if—

- (a) under an order, the chief executive has been granted custody or guardianship of the child but has not been able to take the child into custody; or
- (b) the child has been unlawfully removed from a person's custody or guardianship under this Act.

(2) The application must be sworn and state the grounds on which it is made.

(3) The magistrate may refuse to consider the application until the

applicant 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.

Issue of warrant

167.(1) A magistrate may issue a warrant for apprehension of the child if the magistrate is satisfied—

- (a) the warrant is necessary to enable an authorised officer or police officer to take the child into the chief executive’s custody; or
- (b) the child has been unlawfully removed from a person’s custody or guardianship under this Act.

(2) The warrant authorises an authorised officer or police officer—

- (a) to enter any 1 or more places the officer reasonably believes the child is; and
- (b) to search the places to find the child; and
- (c) to remain in the places for as long as the officer considers is reasonably necessary to find the child; and
- (d) to take the child to a safe place.

(3) The warrant must state the day, within 14 days after the warrant’s issue, when it ends.

(4) An authorised officer or police officer may exercise powers under the warrant with the help, and using the force, that is reasonable in the circumstances.

Special warrants

168.(1) An authorised officer or police officer may apply for a warrant for apprehension of a child (a “**special warrant**”) by phone, fax, radio or another form of communication because of—

- (a) urgent circumstances; or

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(b) other special circumstances, including, for example, the officer's remote location.

(2) Before applying for the warrant, the officer must prepare an application stating the grounds on which the warrant is sought.

(3) The officer may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a copy of it to the officer if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy of the warrant to the officer—

(a) the magistrate must tell the officer—

(i) what the terms of the warrant are; and

(ii) the date and time the warrant was issued; and

(b) the officer must complete a form of warrant (“**warrant form**”) and write on it—

(i) the magistrate's name; and

(ii) the date and time the magistrate issued the warrant; and

(iii) the warrant's terms.

(6) The facsimile warrant, or the warrant form properly completed by the officer, authorises the exercise of powers under the warrant made by the magistrate.

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

(a) the sworn application; and

(b) if the officer completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) A court must find the exercise of the power by an authorised officer or police officer was not authorised by a special warrant if—

(a) an issue arises in a proceeding before the court whether the exercise of the power was authorised by a special warrant; and

- (b) the warrant is not produced in evidence; and
- (c) it is not proved by the person relying on the lawfulness of the entry that the officer obtained the warrant.

Warrants—procedure before entry

169.(1) This section applies if an authorised officer or police officer is intending to enter a place under a warrant for apprehension of a child.

(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 warrant, or if the entry is authorised by a facsimile warrant or warrant form mentioned in section 168(6), a copy of the facsimile warrant or warrant form;
- (c) tell the person the officer is permitted by the warrant 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.³⁶

(4) However, the officer need not comply with subsection (2) if the officer reasonably believes immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

³⁶ For a police officer, see the *Police Powers and Responsibilities Act 1997*, section 112 (Supplying police officer's details)

PART 3—GENERAL POWERS OF AUTHORISED OFFICERS

Division 1—Preliminary

Application of pt 3

170. This part applies if an authorised officer—

- (a) lawfully enters a place in the course of performing a function or exercising a power under chapter 2, including, for example—
 - (i) under section 16 or 18³⁷ in investigating an allegation of harm, or risk of harm, to a child; or
 - (ii) under an assessment order in investigating whether a child is a child in need of protection; or
- (b) enters a place under a warrant for apprehension of a child who, under section 162, has been unlawfully removed from a person's custody or guardianship.³⁸

Division 2—Power of seizure of authorised officers

Power of seizure

171. The authorised officer may seize a thing at the place if the officer reasonably believes—

- (a) the thing—
 - (i) may be received in evidence in a proceeding on an application for an order for the child; or
 - (ii) is evidence of an offence in relation to the child or the child's unlawful removal from custody or guardianship; and

³⁷ Section 16 (Contact with child at immediate risk of harm) or 18 (Child at immediate risk may be taken into custody)

³⁸ A warrant for apprehension of a child may be issued under part 2.

- (b) the seizure is necessary to prevent the thing being—
 - (i) hidden, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.

Procedure after seizure of thing

172.(1) As soon as practicable after seizing the thing, the authorised officer must give a receipt for it to the person from whom it was seized.

(2) If, for any reason, it is not practicable to comply with subsection (1), the officer must—

- (a) leave the receipt at the place of seizure; and
- (b) ensure the receipt is left in a reasonably secure way and in a conspicuous position.

(3) The receipt must describe generally the seized thing and its condition.

(4) The officer must allow a person who would be entitled to the seized thing if it were not in the officer's possession, at any reasonable time—

- (a) to inspect it; or
- (b) if it is a document—to copy it.

(5) The officer must return the seized thing to the person—

- (a) at the end of 1 year; or
- (b) if a prosecution for an offence involving it is started within 1 year—at the end of the prosecution and any appeal from the prosecution.

(6) Despite subsection (5), the officer must return the seized thing to the person if the officer is satisfied its retention as evidence is no longer necessary.

Forfeiture of seized thing on conviction

173.(1) On the conviction of a person of an offence involving the seized thing, the court may order its forfeiture to the State.

(2) The court may make any order to enforce the forfeiture it considers appropriate.

(3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

Dealing with forfeited things etc.

174.(1) On forfeiture, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.

(2) Without limiting subsection (1), the chief executive may destroy the thing.

Division 3—Other powers of authorised officers on entry

Power to photograph

175. The authorised officer may photograph or film the place, or anyone or anything in or on the place.

PART 4—EVIDENCE AND LEGAL PROCEEDINGS

Evidentiary provisions

176.(1) This section applies to a proceeding under or in relation to this Act.

(2) Unless a party, by reasonable notice, requires proof of—

- (a) the appointment of an authorised officer under this Act; or
- (b) the authority of an authorised officer to do an act under this Act;

the appointment or authority must be presumed.

(3) A signature purporting to be the signature of the chief executive or an authorised officer is evidence of the signature it purports to be.

(4) A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—

- (a) a stated document is a copy of a licence, certificate of approval,

- notice, declaration or decision made, issued or given under this Act;
- (b) on a stated day, or during a stated period, a stated person was or was not the holder of a licence or certificate of approval;
 - (c) a licence or certificate of approval—
 - (i) was or was not issued or given for a stated term; or
 - (ii) was or was not in force on a stated day or during a stated period; or
 - (iii) was or was not subject to a stated condition;
 - (d) on a stated day, a licence or certificate of approval was suspended for a stated period or cancelled;
 - (e) on a stated day, a stated person was given a stated notice under this Act;
 - (f) the whereabouts of a child's parents could not be ascertained after stated reasonable inquiries;
 - (g) on a stated day, a family meeting or conference was held;
 - (h) a stated entity is a recognised Aboriginal or Torres Strait Islander agency for a particular Aboriginal or Torres Strait Islander child;
 - (i) another matter prescribed under a regulation.

Proceeding for offences

177. A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

When proceeding may start

178. A proceeding for an offence against this Act may be started within—

- (a) 1 year after the offence is committed; or
- (b) 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

PART 5—CONFIDENTIALITY

Division 1—Preliminary

Definitions for pt 5

179. In this part—

“**publish**”, for information, means to publish it to the public by way of television, newspaper, radio or other form of communication.

“**this Act**” includes the *Children’s Services Act 1965*.

Division 2—Confidentiality in relation to administration of Act

Confidentiality of notifiers of harm

180.(1) This section applies if a person (the “**notifier**”) notifies the chief executive, an authorised officer or police officer that the notifier suspects a child has been, is being or is likely to be, harmed.

(2) The person who receives the notification, or a person who becomes aware of the identity of the notifier, must not disclose the identity of the notifier to another person unless the disclosure is made—

- (a) in the course of performing functions under this Act to another person performing functions under this Act; or
- (b) to the Parliamentary Commissioner for Administrative Investigations conducting an investigation under the *Parliamentary Commissioner Act 1974*; or
- (c) by way of evidence given in a legal proceeding under subsections (3) and (4).

Maximum penalty—40 penalty units.

(3) Subject to subsection (4)—

- (a) evidence of the identity of the notifier or from which the identity of the notifier could be deduced must not be given in a proceeding before a court or tribunal without leave of the court or tribunal;

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and

(b) unless leave is granted, a party or witness in the proceeding—

(i) must not be asked, and, if asked, can not be required to answer, any question that can not be answered without disclosing the identity of, or leading to the identification of, the notifier; and

(ii) must not be asked to produce, and, if asked, can not be required to produce, any document that identifies, or may lead to the identification of, the notifier.

(4) The court or tribunal must not grant leave unless—

(a) it is satisfied—

(i) the evidence is of critical importance in the proceeding; and

(ii) there is compelling reason in the public interest for disclosure; or

(b) the notifier agrees to the evidence being given in the proceeding.

(5) In deciding whether to grant leave, the court or tribunal must take into account—

(a) the possible effects of disclosure on the safety or welfare of the notifier and the notifier's family; and

(b) the public interest in maintaining confidentiality of notifiers.

(6) As far as practicable, an application for leave must be heard in a way that protects the identity of the notifier pending a decision on the application.

Confidentiality of information obtained by persons involved in administration of Act

181.(1) This section applies to a person who—

(a) is or has been—

(i) a public service employee or other person engaged by the chief executive, or a police officer, performing functions under or in relation to the administration of this Act; or

(ii) a licensee, the executive officer of a corporation that is a

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licensee or someone else employed or engaged by a licensee to perform functions under or in relation to the administration of this Act; or

- (iii) an approved foster carer or other carer in whose care a child has been placed under this Act; or
 - (iv) a member of, or person employed or engaged by, a recognised Aboriginal or Torres Strait Islander agency; and
- (b) in that capacity acquired information about another person's affairs or has access to, or custody of, a document about another person's affairs.

(2) The person must not disclose the information, or give access to the document, to anyone else.

Maximum penalty—100 penalty units or 2 years imprisonment.

(3) However, the person may, subject to section 180, disclose the information or give access to the document to someone else—

- (a) to the extent necessary to perform the person's functions under or in relation to this Act; or
- (b) if the disclosure is for purposes directly related to a child's protection or welfare; or
- (c) if the disclosure or giving of access—
 - (i) relates to the chief executive's function of cooperating with government entities that have a function relating to the protection of children; or
 - (ii) is otherwise required or permitted by law.

Example of subsection (3)(b)—

An approved foster carer in whose care a child has been placed under this Act may disclose relevant information about the child to a person, including, for example, a school teacher or member of the carer's immediate family, to help the person understand and meet the child's needs.

(4) Also, a person may disclose the information or give access to the document to another person if the information or document is about the other person.

Confidentiality of information given by persons involved in administration of Act to other persons

182.(1) This section applies if the chief executive, an authorised officer, police officer or anyone else in the course of performing duties under or in relation to the administration of this Act, gives a person (the “**receiver**”) information or a document about another person’s affairs.

(2) The receiver must not disclose the information, or give access to the document, to anyone else.

Maximum penalty—100 penalty units or 2 years imprisonment.

(3) However, the receiver may, subject to section 180, disclose the information or give access to the document to someone else—

- (a) if the disclosure is for purposes directly related to a child’s protection or welfare; or
- (b) if the disclosure or giving of access is otherwise required or permitted by law.

Prohibition of publication of information leading to identity of children

183.(1) A person must not, without the chief executive’s written approval, publish information that identifies, or is likely to lead to the identification of, a child as—

- (a) a child who is or has been the subject of an investigation under this Act of an allegation of harm or risk of harm; or
- (b) a child in the chief executive’s custody or guardianship under this Act; or
- (c) a child for whom an order is in force.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
- (b) for a corporation—1 000 penalty units.

(2) A person must not, without the chief executive’s written approval, publish information that identifies, or is likely to lead to the identification of, a child living in Queensland as a child who—

- (a) has been harmed or allegedly harmed by a parent or step-parent of the child or another member of the child's family; or
- (b) is, or allegedly is, at risk of harm being caused by a parent or step-parent of the child or another member of the child's family.

Maximum penalty for subsection (2)—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
- (b) for a corporation—1 000 penalty units.

Division 3—Confidentiality in relation to proceedings

Production of department's records

184.(1) This section applies if a party to a proceeding in a court or tribunal requires, under applicable rules—

- (a) the chief executive to produce to the court, tribunal or party a document in the department's records under this Act in relation to a child or a child's carer; or
- (b) a government entity to produce to the court, tribunal or party a document mentioned in paragraph (a) that has been given to the entity under section 181.

(2) The requirement must describe the document to be produced—

- (a) by reference to the person or persons to whom it relates; and
- (b) by general reference to the circumstances to which it relates; and
- (c) the period to which the requirement relates.

(3) For subsection (2)(b), the requirement must show the circumstances to be relevant to the proceeding.

(4) A person must not, directly or indirectly, disclose or make use of information obtained under the requirement other than for a purpose connected with the proceeding.

Maximum penalty—100 penalty units or 2 years imprisonment.

(5) Despite any Act to the contrary, if a document in the department's records under this Act in relation to a child or a child's carer is produced in a

proceeding in a court, an officer of the court must not make the document available for inspection to any person other than a party to the proceeding or a lawyer representing a party to the proceeding.

Maximum penalty for subsection (5)—50 penalty units or 1 year's imprisonment.

Refusal of disclosure of certain information during proceeding

185.(1) A person engaged in the administration of this Act may refuse to disclose to a court or tribunal in a proceeding, or to a party to the proceeding, information obtained under or in relation to the administration of this Act, if—

- (a) its disclosure endangers, or is likely to endanger, a person's safety or psychological health; or
- (b) it identifies, or is likely to identify, the source of the information and identification of the source is likely to prejudice the achievement of the purpose of this Act; or
- (c) it is a record of confidential therapeutic counselling with a child or a member of the child's family and its disclosure would prejudice the department's ability to provide counselling services; or
- (d) it is personal information and the person reasonably believes it is not materially relevant to the proceeding.

(2) However, on the application of a party to the proceeding, the court or tribunal may order the disclosure of the information if it is satisfied—

- (a) it is materially relevant to the proceeding; and
- (b) its disclosure is, on balance, in the public interest.

(3) To enable the court or tribunal to make a decision about the disclosure of the information, the person must disclose the information to the judicial officers of the court or tribunal.

(4) In deciding whether or not the information should be disclosed, the judicial officers must deal with the information in a way that ensures it is not disclosed to anyone else.

(5) If the court or tribunal refuses to order its disclosure, the judicial officers must return any document containing the information produced to

them.

(6) In this section—

“**judicial officers**”, for a court or tribunal, means the person or persons constituting the court or tribunal.

Prohibition of publication of certain information for proceedings

186. A person must not publish—

- (a) information given in evidence in a proceeding under this Act in the Childrens Court, or other Childrens Court records, without the court’s approval; or
- (b) information that identifies, or is likely to lead to the identification of, a person as a party to a proceeding under this Act.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
- (b) for a corporation—1 000 penalty units.

Restrictions on reporting certain court proceedings

187.(1) If, in a proceeding for an offence of a sexual nature, a child is a witness or the person in relation to whom the offence is alleged to have been committed is a child, a report of the proceeding must not disclose prohibited matter relating to the child unless the court expressly authorises the matter to be included in the report.

(2) If, in another proceeding, a child is a witness or the person in relation to whom an offence is alleged to have been committed is a child, the court or justice may order that a report of the proceeding must not disclose prohibited matter relating to the child other than matter stated in the order.

(3) Also, a report of a proceeding to which subsection (1) or (2) relates must not disclose the name of an authorised officer or police officer involved in the proceeding unless the court or justice expressly authorises the officer’s name to be included in the report.

(4) A person who makes or publishes a report of a proceeding in contravention of subsection (1), (2) or (3) commits an offence.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
- (b) for a corporation—1 000 penalty units.

(5) However, subsections (1), (2) and (3) do not apply to—

- (a) a record of evidence of the proceeding made under the *Recording of Evidence Act 1962*; or
- (b) a report made for the department or Queensland Police Service.

(6) In this section—

“film” includes a slide, videotape, videodisc or other form of recording from which a visual image can be produced.

“proceeding” means a proceeding before a court in relation to an offence or before a justice taking an examination of witnesses for an indictable offence, but does not include a proceeding for a charge of an offence against a child.

“prohibited matter”, for a child, means—

- (a) the child’s name, address, school or place of employment, or another particular likely to lead to the child’s identification; or
- (b) a photograph or film of the child or of someone else that is likely to lead to the child’s identification.

“report”, of a proceeding, includes a report of part of the proceeding.

Division 4—General

Release of information by health service employees

188. An officer, employee or agent of the department in which the *Health Services Act 1991* is administered may, for this Act, give the chief executive or the Childrens Court or an authorised officer or police officer, information that—

- (a) is subject to confidentiality under the *Health Services Act 1991*, section 63; and
- (b) is relevant to the protection or welfare of a child.

PART 6—GENERAL

Compliance with provisions about explaining and giving documents

189.(1) This section applies if, under a provision of this Act, the chief executive or an authorised officer or police officer is authorised or required to explain the terms and effects of an order or declaration, or give information or a notice to—

- (a) a child; or
- (b) a child's parents, each of a child's parents or at least 1 of a child's parents; or
- (c) a child's carer.

(2) The chief executive or officer need only comply with the provision to the extent that is reasonably practicable in the circumstances.

(3) Without limiting subsection (2), it is not, for example, reasonably practicable to comply with the provision in relation to a child's parents if, after reasonable inquiries, the parents or their whereabouts can not be ascertained or, if ascertained, can not be contacted.

(4) Also, so far as compliance relates to telling the child about a matter, the chief executive or officer need only comply with the provision to the extent that the chief executive or officer reasonably considers is appropriate in the circumstances having regard to the child's age or ability to understand the matter.

(5) However, if under the provision an authorised officer is required to give the child's parents a copy of a document or information in writing, the officer must also give the child the information in writing the officer considers is appropriate in the circumstances having regard to the child's age or ability to understand the information.

Exercise of powers and compliance with obligations by others

190. If, under a provision of this Act, an authorised officer or police officer is authorised or required to exercise a power or perform a function—

- (a) the power may be exercised or the function performed by another authorised officer or police officer who could exercise or perform

- a power or function of the same type; and
- (b) the officer is taken to have complied with the provision.

Protection from liability

191.(1) An official, does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

(3) In this section—

“official” means—

- (a) the chief executive; or
- (b) an authorised officer or police officer; or
- (c) a person acting under the direction of a person mentioned in paragraph (a) or (b).

CHAPTER 8—MISCELLANEOUS

Appeals against appealable decisions

192. An aggrieved person for an appealable decision may appeal to a tribunal against the decision.³⁹

Regulation-making powers

193.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made for or about the following—

- (a) the suitability of persons involved in, and the use of premises for,

³⁹ Aggrieved persons and appealable decisions are in schedule 2. Appeals are dealt with in the *Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996*, part 5.

providing care services;

- (b) fees;
- (c) the records to be kept and returns to be made by persons and the inspection of records;
- (d) the conduct of family meetings.

(3) A regulation may impose a penalty of not more than 20 penalty units for contravention of a provision of a regulation.

CHAPTER 9—REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

PART 1—REPEALS

Repeal of Children’s Services Act 1965

194. The *Children’s Services Act 1965* is repealed.

References to repealed Act

195. In an Act or document, a reference to the *Children’s Services Act 1965* may, if the context permits, be taken to be a reference to this Act.

PART 2—SAVINGS AND TRANSITIONAL PROVISIONS

Definitions for pt 2

196. In this part—

“commencing day” means the day this part commences.

“director” means the director under the repealed Act.

“existing care and protection order”, for a child, means an order in force immediately before the commencing day—

- (a) under section 49(4)(a)(iii) of the repealed Act admitting the child to the director’s care and protection; or
- (b) under section 61(4)(a)(iii) of the repealed Act admitting the child to the director’s care and control.

“existing supervision order”, for a child, means an order in force immediately before the commencing day—

- (a) under section 49(4)(a)(ii) of the repealed Act ordering that the director have protective supervision over and in relation to the child; or
- (b) under section 61(4)(a)(ii) of the repealed Act ordering the director to exercise supervision over and in relation to the child.

“existing section 47 declaration”, for a child, means a declaration in force immediately before the commencing day under section 47 of the repealed Act admitting the child to the director’s care and protection.

“existing section 134 declaration”, for a child, means a declaration in force immediately before the commencing day under section 134(4) of the repealed Act admitting the child to the director’s care and protection.

“repealed Act” means the *Children’s Services Act 1965*.

Existing section 47 declarations and care and protection orders

197.(1) An existing section 47 declaration or existing care and protection order continues in force under this Act as if it were a child protection order granting the chief executive guardianship of the child.

(2) An existing section 47 declaration, or existing care and protection order made under section 49(4)(a)(iii) of the repealed Act, and continued in force under subsection (1) ends—

- (a) if, immediately before the commencing day, the declaration or order had been in force for more than 3 years—when the child turns 18 years; or

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- (b) if, immediately before the commencing day, the declaration or order had been in force for 1 or more years but not more than 3 years—3 years after it was originally made or, if the child earlier turns 18 years, when the child turns 18 years; or
- (c) if, immediately before the commencing day, the declaration or order had been in force for less than 1 year—2 years after it was originally made or, if the child earlier turns 18 years, when the child turns 18 years.

(3) An existing care and protection order made under section 61(4)(a)(iii) of the repealed Act and continued in force under subsection (1) ends 1 year after the commencing day or, if the child earlier turns 18 years, when the child turns 18 years.

Existing supervision orders

198.(1) An existing supervision order continues in force under this Act as if it were a child protection order requiring the chief executive to supervise the child's protection in relation to the matters stated in the order.

(2) An existing supervision order continued in force under subsection (1) ends 1 year after the commencing day or, if the child earlier turns 18 years, when the child turns 18 years.

Existing section 134 declarations

199.(1) On the day of the commencing day, the chief executive must, by written declaration, assume guardianship of each child the subject of an existing section 134 declaration.

(2) The declaration may assume guardianship of the child for—

- (a) if the interstate order for the child states it ends after a stated period—the lesser of—
 - (i) the remainder of the stated period; or
 - (ii) 2 years; or
- (b) if the interstate order for the child states it ends when the child turns 18 years—not more than 2 years or, if the child earlier turns 18 years, until the child turns 18 years.

(3) On the making of the declaration, the interstate order is taken to be a child protection order under the terms stated in the declaration.

(4) For subsection (3), the chief executive may declare the interstate order applies to the chief executive's guardianship to and only to the stated extent, or with the stated changes necessary, to make it consistent with this Act.

(5) To remove any doubt, it is declared that the declaration may be made even if the interstate order has ended before the commencing day.

(6) The declaration is taken—

(a) to be a declaration under section 120;⁴⁰ and

(b) to have had effect from the commencing day.

Licensed institutions under repealed Act

200.(1) A licence issued by the Minister under part 4 of the repealed Act for an institution, and in force immediately before the commencing day, continues in force as if it were a licence to provide care services under this Act.

(2) For this Act, the governing authority of the institution is taken to be the licensee and the person in charge of the institution is taken to be the nominee.

(3) A licence continued in force under subsection (1) ends on the anniversary of its issue in the third year after the commencing day.

Approved foster parents

201.(1) The holder of an approval to act as a foster parent under part 10 of the repealed Act, and in force immediately before the commencing day, continues in force as if it were a certificate of approval as an approved foster carer under this Act.

(2) An approval continued in force under subsection (1) ends on the anniversary of its issue in the second year after the commencing day.

⁴⁰ Section 120 (Transfers from other States)

Existing applications and proceedings for care and protection orders

202. An application under the repealed Act for an order that a child be admitted to the chief executive's care and protection, and a proceeding in the Childrens Court for the application, not finally dealt with at the commencing day, may be continued and dealt with under this Act as if it were an application for a child protection order.

Applications to revoke or substitute certain orders under repealed Act

203.(1) In this section—

“existing section 49 order”, for a child, means an order in force immediately before the commencing day under section 49(4)(a)(ii) or (iii) of the repealed Act—

- (a) ordering the director have protective supervision over and in relation to the child; or
- (b) admitting the child to the director's care and protection.

(2) An application under the repealed Act to revoke or substitute an existing section 49 order for a child not finally dealt with at the commencing day may be continued and dealt with under this Act as if it were an application to vary or revoke a child protection order for the child.

Exemption from expiry of Children's Services Regulation 1966

204. Despite the *Statutory Instruments Act 1992*, part 7, the *Children's Services Regulation 1966* does not expire at the end of 30 June 1999⁴¹ but remains in force until the earliest of the following, when it ceases to have effect—

- (a) the commencement of section 194;⁴²
- (b) the end of 31 December 1999;

⁴¹ The *Children's Services Regulation 1966* was exempted from expiry under the *Statutory Instruments Act 1992*, part 7 (Staged automatic expiry of subordinate legislation), for the period ending at midnight on 30 June 1999—see the *Statutory Instruments Regulation 1992*, section 5.

⁴² Section 194 (Repeal of Children's Services Act 1965)

- (c) the repeal or expiry of the regulation, other than under the part or as mentioned in paragraph (a) or (b).

CHAPTER 10—AMENDMENTS

Acts amended

205. The Acts mentioned in schedule 3 are amended as shown in the schedule.

SCHEDULE 1**CHARTER OF RIGHTS FOR A CHILD IN CARE**

section 71

Because—

The Parliament recognises the State has responsibilities for a child in need of protection who is in the custody or under the guardianship of the chief executive under this Act,

this Act establishes the following rights for the child—

- (a) to be provided with a safe and stable living environment;
- (b) to be placed in care that best meets the child's needs and is most culturally appropriate;
- (c) to maintain relationships with the child's family and community;
- (d) to be consulted about, and to take part in making, decisions affecting the child's life (having regard to the child's age or ability to understand), particularly decisions about where the child is living, contact with the child's family and the child's health and schooling;
- (e) to be given information about decisions and plans concerning the child's future and personal history, having regard to the child's age or ability to understand;
- (f) to privacy, including, for example, in relation to the child's personal information;
- (g) if the child is under the long-term guardianship of the chief executive, to regular review of the child's care arrangements;
- (h) to have access to dental, medical and therapeutic services, necessary to meet the child's needs;
- (i) to have access to education appropriate to the child's age and development;

SCHEDULE 1 (continued)

- (j) to have access to job training opportunities and help in finding appropriate employment;
- (k) to receive appropriate help with the transition from being a child in care to independence, including, for example, help about housing, access to income support and training and education.

SCHEDULE 2**APPEALABLE DECISIONS AND AGGRIEVED PERSONS**

section 192 and schedule 4, definitions “**aggrieved person**” and “**appealable decision**”

Appealable decision	Aggrieved person
Directing a parent in relation to a supervision matter stated in a child protection order (section 75)	The parent given the direction
Deciding in whose care to place a child under a child protection order granting the chief executive custody or guardianship (section 83(2))	The child’s parents or the child
Not informing a child’s parents of person in whose care the child is and where the child is living (section 83(4))	A parent given the notice or the child
Refusing to allow, restricting, or imposing conditions on, contact between a child and the child’s parents or a member of the child’s family (section 84(2))	A person affected by the decision
Removing child from carer’s care (section 86)	A carer entitled to appeal under section 88 or the child
Arranging for an interstate welfare authority to assume custody or guardianship of a child (section 122)	The child’s parents, child or child’s carer
Refusing application for, or renewal of, a licence (section 130)	The applicant or licensee

SCHEDULE 2 (continued)

Refusing application for, or renewal of, a certificate of approval (section 137)	The applicant or certificate holder
Refusing an application for an amendment of authority (section 138)	The authority holder
Amending an authority (section 139)	The authority holder
Suspending or cancelling an authority (section 141)	The authority holder

SCHEDULE 3**AMENDMENT OF ACTS**

section 205

ADOPTION OF CHILDREN ACT 1964**1. Section 6—***insert—*

‘**“chief executive for child protection”** means the chief executive of the department in which the *Child Protection Act 1999* is administered.’.

2. Section 19(7)—*omit, insert—*

‘(7) Despite section 23, if, under the *Child Protection Act 1999*, the chief executive for child protection has custody or guardianship of a child, it is not necessary for that chief executive’s consent to the child’s adoption to be evidenced by an instrument of consent.’.

3. Section 20(3), from ‘Where’ to ‘1965’—*omit, insert—*

‘If the chief executive for child protection has custody or guardianship of the child under a child protection order under the *Child Protection Act 1999*,’.

4. Section 27(3)(a)—*omit, insert—*

‘(a) to a child in the custody or under the guardianship of the chief

SCHEDULE 3 (continued)

executive for child protection under a child protection order under the *Child Protection Act 1999*; or’.

5. Section 27(4), from ‘a child in care’—

omit, insert—

‘in the custody or under the guardianship of the chief executive for child protection under a child protection order under the *Child Protection Act 1999*.’.

6. After section 34—

insert—

‘Effect of interim orders on child protection orders

‘**34A.(1)** If an interim order is made for a child for whom a child protection order is in force, the child protection order does not have effect while the interim order is in force.

‘(2) In this section—

“**child protection order**”, for a child, means a child protection order under the *Child Protection Act 1999* granting the chief executive for child protection custody or guardianship of the child.’.

7. Section 35(1)—

omit.

CHILD CARE ACT 1991**1. Section 13(1)(b)—**

omit.

SCHEDULE 3 (continued)

2. Section 13(1)(c), ‘or (b)’—

omit.

3. Section 13(1)(c)—

renumber as section 13(1)(b).

4. Section 14(1)(g), after ‘1965,’—

insert—

‘the *Child Protection Act 1999*,’.

5. Section 14(1)(h), after ‘1965’—

insert—

‘, or an assessment order or child protection order under the *Child Protection Act 1999*,’.

6. Section 32(2)(c), after ‘1965’—

insert—

‘or an assessment order or child protection order has been made under the *Child Protection Act 1999*’.

7. Section 32(3)(c), after ‘1965’—

insert—

‘or an assessment order or child protection order has been made under the *Child Protection Act 1999*’.

SCHEDULE 3 (continued)

CHILDREN'S COMMISSIONER AND CHILDREN'S SERVICES APPEALS TRIBUNALS ACT 1996**1. Part 2, division 1—**

insert—

‘Application of Financial Administration and Audit Act 1977

‘7A. The commission is a statutory body under the *Financial Administration and Audit Act 1977*.’.

2. Section 8(c), ‘foster homes’—

omit, insert—

‘care services’.

3. Schedule, definition “children’s services legislation”, paragraph (c)—

omit, insert—

‘(c) the *Child Protection Act 1999*; or’.

4. Schedule, definition “foster home”—

omit.

5. Schedule, definition “reviewable decision”, paragraph (c)—

omit, insert—

‘(c) an appealable decision under the *Child Protection Act 1999*.’.

SCHEDULE 3 (continued)

CHILDRENS COURT ACT 1992**1. Section 3, definition “appellate court”—**

omit.

2. Section 20(1)(g)—

omit, insert—

‘(g) if the child is an Aboriginal or Torres Strait Islander—

- (i) a representative of an entity whose principal purpose is to provide welfare services to Aboriginal and Torres Strait Islander children and families; or
- (ii) a representative of the recognised Aboriginal or Torres Strait Islander agency for the child under the *Child Protection Act 1999*; or’.

3. Section 20(2)(c), ‘*Children’s Services Act 1965*, part 6 or 7’—

omit, insert—

‘*Child Protection Act 1999*’.

4. Part 4A—

omit.

5. After section 30—

insert—

‘Transitional provision for Child Protection Act 1999

‘31.(1) This section applies if, before the commencement of the *Child*

SCHEDULE 3 (continued)

Protection Act 1999, chapter 3, part 443—

- (a) a person appealed, under part 4A, against a supervision order or care order; and
- (b) the appeal has not been finally decided.

‘(2) The appeal may be dealt with under the *Child Protection Act 1999*.

‘(3) In this section—

“**care order**” means an order under the *Children’s Services Act 1965*, section 49(4)(a)(iii) or section 61(4)(a)(iii).

“**supervision order**” means an order under the *Children’s Services Act 1965*, section 49(4)(a)(ii) or section 61(4)(a)(ii).’.

COMMONWEALTH POWERS (FAMILY LAW—CHILDREN) ACT 1990

1. Schedule 1, ‘*Children’s Services Act 1965*’—

omit, insert—

‘*Child Protection Act 1999*’.

CRIMINAL CODE

1. Section 145A(b)—

omit, insert—

‘(b) the custody of a child under the *Child Protection Act 1999*;’.

⁴³ Chapter 3 (Childrens court proceedings), part 4 (Court appeals)

SCHEDULE 3 (continued)

CRIMINAL LAW (REHABILITATION OF OFFENDERS) ACT 1986**1. Section 9A(1), table, column 1, item 6(1)—**

omit, insert—

‘6.(1) A person registered, licensed or approved under the *Child Care Act 1991* or the *Child Protection Act 1999*; or’.

CRIMINAL LAW (SEXUAL OFFENCES) ACT 1978**1. Section 8(1)(c), ‘*Children’s Services Act 1965*’—**

omit, insert—

‘Child Protection Act 1999’.

DRUGS MISUSE ACT 1986**1. Section 48(7), ‘*Children’s Services Act 1965*, section 138’—**

omit, insert—

‘Child Protection Act 1999, sections 186 and 187⁴⁴’.

⁴⁴ *Child Protection Act 1999*, sections 186 (Prohibition of publication of certain information for proceedings) and 187 (Restrictions on reporting certain court proceedings)

SCHEDULE 3 (continued)

EVIDENCE ACT 1977

1. Schedule 2, entry for ‘*Children’s Services Act 1965*’—
omit.

FAMILY SERVICES ACT 1987

1. Section 2—

omit.

2. Section 4, definitions “certificate of approval”, “criminal history”, “foster care”, “foster care agent”, “foster parent”, “licensee”, “parent”, “premises” and “residential care”—

omit.

3. Section 4—

insert—

‘ “agent” means an agent under a contract entered into under section 9.

“honorary officer” means a person holding appointment as an honorary officer under section 8.’.

4. Sections 6 and 7—

omit.

SCHEDULE 3 (continued)

5. Section 10(1)(c) and (d)—

omit, insert—

- ‘(c) an honorary officer; or
- (d) an agent.’.

6. Section 11—

omit, insert—

‘Advisory committees

‘**11.(1)** The Minister may establish as many advisory committees as the Minister considers appropriate for the administration of this Act.

‘**(2)** An advisory committee has the functions the Minister decides.

‘**(3)** A member of an advisory committee is entitled to be paid the fees and allowances that may be decided by the Governor in Council.’.

7. Section 12(1)—

insert—

‘Maximum penalty—40 penalty units or 2 years imprisonment.’.

8. Section 12(2)(a) and (b), ‘, visiting justice’—

omit.

9. Section 12(2), ‘, justice’—

omit.

10. Section 12(2)—

insert—

‘Maximum penalty for subsection (2)—40 penalty units or 2 years imprisonment.’.

SCHEDULE 3 (continued)

11. Sections 56 to 58—

omit.

12. Section 59—

omit, insert—

‘Evidentiary provisions

‘**59.(1)** This section applies to a proceeding under or in relation to this Act.

‘**(2)** Unless a party, by reasonable notice, requires proof of—

- (a) the appointment of an honorary officer under this Act; or
- (b) the authority of an honorary officer to do an act under this Act;

the appointment or authority must be presumed.

‘**(3)** A signature purporting to be the signature of the chief executive or an honorary officer is evidence of the signature it purports to be.

‘**(4)** A certificate purporting to be signed by the chief executive stating a stated document is a copy of a notice or approval given under this Act is evidence of the matter.’.

13. After section 68—

insert—

‘Numbering and renumbering of Act

‘**69.** In the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act must be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.’.

SCHEDULE 3 (continued)

FREEDOM OF INFORMATION ACT 1992**1. Schedule 1, ‘*Children’s Services Act 1965*, section 144’—**

omit, insert—

‘*Child Protection Act 1999*, sections 180 to 182’.

HEALTH ACT 1937**1. Section 31A(9), from ‘affect’—**

omit, insert—

‘affect the *Registration of Births, Deaths and Marriages Act 1962*.’.

2. Section 100H(3), from ‘affect’—

omit, insert—

‘affect the *Registration of Births, Deaths and Marriages Act 1962*.’.

MAINTENANCE ACT 1965**1. Section 9(3), from ‘part—’ to ‘under the *Children’s Services Act 1965*;’—**

omit, insert—

‘part for a child in custody.’.

2. Section 9(3), from ‘such a’—

omit, insert—

‘a child in custody.’.

SCHEDULE 3 (continued)

3. Section 9—*insert—***(4)** In this section—

“chief executive for child protection” means the chief executive of the department in which the *Child Protection Act 1999* is administered.

“child in custody” means a child in the custody or under the guardianship of the chief executive for child protection under a court assessment order or child protection order under the *Child Protection Act 1999*.’.

MENTAL HEALTH ACT 1974**1. Section 52(1)(a), ‘, by virtue of a declaration made under section 47 of the *Children’s Services Act 1965*,’—***omit.***POLICE POWERS AND RESPONSIBILITIES ACT
1997****1. Schedule 1—***insert—**‘Child Protection Act 1999’.***REGISTRATION OF BIRTHS, DEATHS AND
MARRIAGES ACT 1962****1. Section 5(1)—***insert—*

“chief executive for child protection” means the chief executive of the

SCHEDULE 3 (continued)

department within which the *Child Protection Act 1999* is administered.’.

2. Section 28(1), from ‘director within’ to ‘director,’—

omit, insert—

‘chief executive for child protection is the guardian of the child under the *Adoption of Children Act 1964* or has custody or guardianship of the child under the *Child Protection Act 1999*, that chief executive.’.

3. Section 28A(5)(c), from ‘director’—

omit, insert—

‘chief executive for child protection;’.

4. Section 28A(5AA) and (6), ‘director’—

omit, insert—

‘chief executive for child protection’.

5. Section 28A(5AA)(a)(i)—

omit, insert—

‘(i) an authorised officer under the *Child Protection Act 1999*;
or’.

6. Section 28A(6), ‘director’s consent’—

omit, insert—

‘consent of the chief executive for child protection’.

SCHEDULE 3 (continued)

SUCCESSION ACT 1981**1. Section 41(7), ‘director within the meaning of the *Children’s Services Act 1965*’—**

omit, insert—

‘chief executive of the department in which the *Child Protection Act 1999* is administered’.

**YOUNG OFFENDERS (INTERSTATE TRANSFER)
ACT 1987****1. Section 3, definition “guardian”, from ‘who but’ to ‘1965’—**

omit, insert—

‘who, apart from the operation of the *Child Protection Act 1999*,’.

2. Section 3, definition “permanent head”—

omit, insert—

‘**“permanent head”** means the chief executive of the department in which the *Child Protection Act 1999* is administered.’.

SCHEDULE 4**DICTIONARY**

section 3

“aggrieved person”, for an appealable decision, means a person stated opposite the decision in schedule 2.

“appealable decision” means a decision stated in schedule 2.

“appellate court” means—

- (a) for a decision on an application for a court assessment order or child protection order—
 - (i) if the decision was made by the Childrens Court constituted by a judge—the Court of Appeal; or
 - (ii) if the decision was made by the Childrens Court constituted in another way—the Childrens Court constituted by a judge; or
- (b) for a decision on an application for a temporary assessment order—the Childrens Court constituted by a judge.

“appropriately qualified”, for an officer or employee of the department to whom a power under this Act may be delegated, includes having qualifications, experience or standing appropriate to exercise the power.

Example of ‘standing’—

An officer’s classification level in the public service.

“approved form” means a form approved under section 156.

“approved foster carer” means a person who holds a certificate of approval as an approved foster carer.

“assessment order” means a temporary or court assessment order.

“authorised officer” means a person holding office as an authorised officer under an appointment under this Act.

“authority” means a licence or certificate of approval.

SCHEDULE 4 (continued)

“carer”, of a child, means the person in whose care the child has been placed by the chief executive, and includes an approved foster carer.

“certificate of approval” means a certificate of approval granted under section 135.

“chief executive for transport” means the chief executive of the department in which the *Traffic Act 1949* is administered.

“child” see section 8.

“child in need of protection” see section 10.

“child protection order” means a child protection order under chapter 2, part 4, and includes—

- (a) an order extending, varying or revoking a child protection order; and
- (b) an interim order in relation to a proceeding for a child protection order.

“commission”, of an offence, includes attempted commission of the offence.

“contact”, with a child, includes to see and talk to the child.

“court assessment order” means an order under chapter 2, part 3, and includes—

- (a) an order extending, varying or revoking a court assessment order; and
- (b) an interim order in relation to a proceeding for a court assessment order.

“criminal history”, of a person, means the person’s criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986* and—

- (a) despite sections 6, 8 and 9 of that Act, includes a conviction of the person to which any of the sections applies; and
- (b) despite section 5 of that Act, includes a charge made against the person for an offence.

SCHEDULE 4 (continued)

“departmental care service” means a care service established by the chief executive to accommodate children in the chief executive’s custody or guardianship or other children in need of protection.

“domestic violence history”, of a person, means the history of domestic violence orders made against the person under the *Domestic Violence (Family Protection) Act 1989*.

“executive officer”, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

“family meeting” means a meeting under section 93.

“government entity” see *Public Service Act 1996*, section 21.⁴⁵

“guardian” means a person who is recognised in law as having all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children.⁴⁶

“harm” see section 9.

“holder”, of an authority, means—

- (a) for a licence—the licensee; or
- (b) for a certificate of approval—the holder of the certificate.

“interim order” means an interim order under section 64.⁴⁷

“interstate order”, for a child, means an order made by a court in another State for the child.

“interstate welfare authority” means a government authority in another State that, under a law of that State about the care or protection of children, may be the guardian, or have the custody, of children.

“judge” means a Childrens Court judge.

⁴⁵ Section 21 (What is a “government entity”)

⁴⁶ See the *Family Law Act 1975* (Cwlth), part 7 (Children), division 2 (Parental responsibility).

⁴⁷ Section 64 (Court’s powers to make interim orders on adjournment)

SCHEDULE 4 (continued)

“licence” means a licence to provide care services.

“licensed care service” means a service, operated under a licence, to provide care for children in the chief executive’s custody or guardianship.

“licensed premises” means premises to which a licence relates.

“long-term guardianship”, of a child under a child protection order, means guardianship until the child turns 18 years.

“medical examination” means a physical, psychiatric, psychological or dental examination, assessment or procedure, and includes forensic examination and an examination or assessment carried out by a nursing or other health professional.

“obstruct” includes hinder, resist and attempt to obstruct.

“order” means an assessment order or child protection order.

“parent” for—

- (a) chapter 2, part 2—see section 23;
- (b) chapter 2, part 3—see section 36;
- (c) chapter 2, part 4—see section 50;
- (d) chapter 4—see section 119;
- (e) other provisions—see section 11.⁴⁸

“party”, to a proceeding on an application for an order for a child, means the child, the applicant or a respondent to the application, and includes the chief executive if the application is for a court assessment order made by a police officer.

“place” includes—

- (a) land or premises; and

⁴⁸ In chapter 2 (Protection of children), part 2 (Temporary assessment orders), part 3 (Court assessment orders) and part 4 (Child protection orders) and chapter 4 (Interstate transfers of guardianship and custody of children), “parent” has a narrower meaning. The meaning given the term in the provisions is the same.

SCHEDULE 4 (continued)

(b) a vehicle, boat or aircraft.

“premises” includes—

- (a) a building or structure, or part of a building or structure; and
- (b) land on which a building or structure is situated.

“protection”, of a child, includes care of the child.

“publish”, for chapter 7, part 5, see section 179.

“reasonably believes” means believes on grounds that are reasonable in the circumstances.

“reasonably suspects” means suspects on grounds that are reasonable in the circumstances.

“recognised Aboriginal or Torres Strait Islander agency”, for an Aboriginal or Torres Strait Islander child, means an entity that, under an agreement between the State and the entity, is the appropriate entity to be consulted about the child’s protection.⁴⁹

“registrar”, of the Childrens Court held at a place, includes the clerk of the Magistrates Court at the place.

“short-term guardianship”, of a child under a child protection order, means guardianship of the child for not more than 2 years.

“statement of standards” see section 123.

“suitable person” means—

- (a) for having the custody or guardianship of a child—a person who is a suitable person under a regulation and agrees to accept the custody or guardianship of the child; or
- (b) for having the daily care of a child—a person who is a suitable person under a regulation; or
- (c) for managing a licensed care service—a person who is a suitable person under a regulation.

⁴⁹ Under the *Acts Interpretation Act 1954*, section 36, “entity” can be an individual, a corporation or an unincorporated body.

SCHEDULE 4 (continued)

“**temporary assessment order**” means an order under chapter 2, part 2, and includes an order extending a temporary assessment order.

“**this Act**”, for chapter 7, part 5, see section 179.

“**traffic history**”, of a person, means the history of the person’s contraventions of section 16 of the *Traffic Act 1949* or section 328A of the Criminal Code, for which the person has been dealt with.⁵⁰

“**tribunal**” means a children services appeals tribunal established under the *Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996*.

⁵⁰ *Traffic Act 1949*, section 16 (Driving etc. whilst under influence of liquor or drugs or with prescribed concentration of alcohol in blood) and section 328A of the Criminal Code (Dangerous operation of a vehicle)

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Child Protection Act 1999 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

4 List of legislation

Child Protection Act 1999 No. 10

date of assent 30 March 1999

ss 1–2, 204 commenced on date of assent

ss 8–9, 11, ch 7 pt 4, ch 7 pt 5 div 1, s 183 (other than s (1)(c)), ch 10 and sch 3 (amnds of the Family Services Act 1987) commenced 10 September 1999 (1999 SL No. 205)

remaining provisions commenced 23 March 2000 (2000 SL No. 45)